

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

v.

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

Respondents.

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Case Nos. 76981, 77648 & 77733

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

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

Appeal (77648 & 76981)

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

**JOINT APPENDIX TO OPENING BRIEFS
FOR CASE NOS. 77648 & 76981
Volume XXV
JA6059 – JA6301**

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CERTIFICATE OF SERVICE

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

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By: /s/ Gabriela Mercado

1 MR. KRUM: The week before is fine, Your Honor.

2 (Pause in the proceedings)

3 THE COURT: The week before is fine?

4 MR. KRUM: The week before is fine, Your Honor.

5 THE COURT: What day are you guys arguing in the
6 Supreme Court?

7 MR. TAYBACK: That's the 3rd.

8 THE COURT: 3rd. So do you want to come in on --

9 MR. TAYBACK: 4th?

10 THE CLERK: [Inaudible].

11 THE COURT: No, I'm not seeing them on January 2,
12 you're seeing them on January 2.

13 How about on January 5 at 3:00 o'clock?

14 MR. TAYBACK: That's good. Thank you.

15 MR. KRUM: Perfect.

16 MR. FERRARIO: Thank you, Judge.

17 THE COURT: That will be your final pretrial
18 conference. At your final pretrial conference we're not going
19 to bring exhibits, because you're already going to deal with
20 that. But you are going to bring any jury instructions,
21 you're going to exchange your draft jury instructions. If you
22 have limiting instructions you think are appropriate, try and
23 have those, as well. And we're also going to deal with any
24 exhibits that you want in a notebook for the jury. The only
25 reason I suggest that is sometimes documents that we show on

1 screens aren't easily able to be seen by a juror. There's
2 contract documents and things you may want. If there are
3 selected items you want to have in a jury notebook, it will be
4 a single jury notebook. It will be not more than 3 inches.
5 So whatever we put in it has to fit in the 3 inches. And so
6 if you have things you think you want included in that, we'll
7 talk about that. And you're going to -- I will make final
8 decisions on voir dire questions at that time. I encourage
9 you to exchange them a week ahead of time.

10 MR. KRUM: Your Honor, with respect to exhibits we
11 have a date this week of Wednesday or Thursday for our exhibit
12 list. I think in view of today's developments it would be a
13 good idea to push that back to next week.

14 THE COURT: You guys need to get working on it.

15 MR. KRUM: No, we're working on it.

16 THE COURT: It takes a lot longer than you think it
17 does.

18 All right. Anything else that I missed?

19 MR. FERRARIO: There may be some utility to that,
20 Mark, in light of the rulings of the Court today, because the
21 complexion of the case has changed.

22 MR. KRUM: Well, that's -- we're working on it. We
23 understand that, Your Honor. So may we have until Wednesday
24 of next week you think, Mark?

25 MR. TAYBACK: Yeah, that's fine.

1 THE COURT: I still need to see representatives from
2 those parties who remain in the case at the calendar call on
3 December 18th. If you are out of town, I do not do call-ins
4 for calendar calls, Mr. Krum, so just make sure Mr. Morris and
5 Ms. Levin know whatever it is they need to say.

6 I am going to be asking you whether given the
7 rulings I made today it has changed the estimate that you
8 provided to me through Ms. Hendricks on December 4th as the
9 amount of time for trial. Because I need to negotiate for
10 space, and knowing the time that I need is important for me in
11 my space negotiations.

12 MR. RHOW: Your Honor, sorry. One point of
13 clarification as to Mr. Gould specifically. He is out of the
14 case entirely?

15 THE COURT: Well, I granted the motion on the
16 business judgment for him. My understanding is that is the
17 only way that you would be involved, because there are no
18 direct breach of contract claims against you. If there were
19 other types of claims against you that were not protected by
20 the business judgment rule, you might not be out. But I
21 didn't see that in the briefing. But I don't know your case
22 as well as you do.

23 MR. RHOW: Assuming that's the case, I just want to
24 make sure that no one's going to sanction me if I don't show
25 up.

1 THE COURT: Do you think you have any remaining
2 claims against Mr. Gould given my ruling today?

3 MR. KRUM: Your Honor, probably not. But I'll go
4 back through it.

5 THE COURT: If you could communicate if you think
6 there are any, and then I'll have to handle that on a
7 supplemental motion practice.

8 MR. RHOW: Understood, Your Honor.

9 THE COURT: Okay. So the people who I anticipate
10 will be here only in the capacity as witnesses would be --
11 okay, I've got to go back to this list -- Kane, McEachern,
12 Gould, Coddington, Wrotniak. That's all of them. So the people
13 who remain parties are Cotter, Cotter, Adams, and then Mr.
14 Cotter.

15 MR. TAYBACK: Yes, Your Honor. I understand that.

16 THE COURT: All right. So see you on the 18th.

17 MR. TAYBACK: Thank you, Your Honor.

18 MR. KRUM: Thank you.

19 MR. EDWARDS: Your Honor --

20 THE COURT: Yes, Jim.

21 MR. EDWARDS: -- on the 2nd is local counsel going
22 to be here for the exhibits? Do you want local counsel here?

23 THE COURT: Counsel does not need to be here. They
24 can send paralegals. So local counsel does not need to come
25 sit through it if they don't want to.

1 MR. EDWARDS: Okay.

2 THE COURT: But it may be helpful if local counsel
3 is going to be intimately involved in the process of doing it
4 for you to have someone here. But I leave that to work out
5 with your people.

6 Anything else?

7 MS. HENDRICKS: Your Honor, on the exhibit list did
8 we get an extra week, then, so we kind of work through these
9 issues?

10 THE COURT: I'm not involved in the exhibit list
11 issue. That's you guys on 2.67. I'm out of that.

12 MR. FERRARIO: Thank you, Your Honor.

13 THE PROCEEDINGS CONCLUDED AT 12:00 NOON

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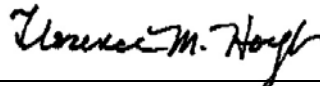
CERTIFICATION

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

AFFIRMATION

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

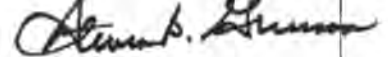
**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

12/12/17

DATE



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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, *et al.*,
Defendants.

AND

READING INTERNATIONAL, INC., a Nevada
corporation,

Nominal Defendant.

Case No.: A-15-719860-B

Dept. No.: XI

Case No.: P-14-082942-E

Dept. No.: XI

Related and Coordinated Cases

BUSINESS COURT

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

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: December 11, 2017

Time of Hearing: 8:30 a.m.

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

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

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

- 3 • Defendant Gould's Motion for Summary Judgment;
- 4 • Individual Defendants' Renewed Motion *in Limine* to Exclude
5 Expert Testimony of Myron Steele Based on Supplemental
6 Authority;
- 7 • Individual Defendants' Motion *in Limine* to Exclude Evidence
8 That Is More Prejudicial Than Probative;
- 9 • Defendant Gould's Motion *in Limine* to Exclude Irrelevant
10 Speculative Evidence;
- 11 • RDI's Motion to Redact Opposition to Plaintiff James J. Cotter,
12 Jr.'s Motion *in Limine* No. 1 re: Advice of Counsel and File
13 Exhibit "E" Under Seal;
- 14 • Plaintiff's Motion *in Limine* No. 1 re: Advice of Counsel;
- 15 • Plaintiff's Motion *in Limine* No. 2 re: the Submission of Merits-
16 Related Evidence by Nominal Defendant Reading
17 International, Inc.;
- 18 • Plaintiff's Motion *in Limine* No. 3 re: After-Acquired Evidence;
- 19 • Plaintiff's Motion to Seal Exhibit 2 to Plaintiff James J. Cotter's
20 Opposition to Motion *in Limine* to Exclude Evidence That Is
21 More Prejudicial Than Probative;
- 22 • Plaintiff's Motion to Seal Exhibits 3-6, 8-9, 11-2 and to Redact
23 Portions of Plaintiff's Supplemental Opposition to Motion for
24 Summary Judgment Nos. 2 and 3 and Gould Summary
25 Judgment Motion;
- 26
- 27
- 28

- 1 • Plaintiff's Motion to Seal Exhibits 7-11, and 15-17 to Plaintiff's
- 2 Supplemental Opposition to Motion for Summary Judgment
- 3 Nos. 2 and 5 and Gould Summary Judgment Motion; and
- 4 • Plaintiff's Motion to Seal Exhibits 4 Through 11 to Plaintiff's
- 5 Supplemental Opposition to Motion for Summary Judgment
- 6 Nos. 2 and 6 and Gould Summary Judgment Motion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21
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23 DISTRICT COURT JUDGE
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1
2 PREPARED AND SUBMITTED BY:

3 COHEN|JOHNSON|PARKER|EDWARDS
4

5 By: /s/ H. Stan Johnson

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Attorneys for Plaintiff

James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

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

) Dept. No. XI

) Jointly Administered

MOTION STAY

AND

**APPLICATION FOR ORDER
SHORTENING TIME**

MORRIS LAW GROUP

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702/474-9400 · FAX 702/474-9422

1 Plaintiff James J. Cotter, Jr. ("Plaintiff") hereby moves the Court
2 to stay this case pending filing and resolution of his forthcoming petition for
3 writ of mandamus of the Court's impending order granting the individual
4 defendants' motions for partial summary judgments Nos. 1 and 2 ("Partial
5 MSJ Nos. 1 and 2") and William Gould's motion for summary judgment
6 ("Gould MSJ"). Plaintiff further moves the Court under EDCR 2.26 for an
7 Order shortening time to notice and hear this Motion.

8
9 MORRIS LAW GROUP

10
11 By: 

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16 1 Washington Mall, 11th Floor
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17 Attorneys for Plaintiff
18 James J. Cotter, Jr.
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DECLARATION OF AKKE LEVIN
IN SUPPORT OF APPLICATION FOR
ORDER SHORTENING TIME

I, Akke Levin, declare:

1. I am an attorney with Morris Law Group, counsel for Plaintiff James J. Cotter, Jr. I have personal knowledge of the facts stated in this declaration except as to those stated on information and belief, which facts I have investigated and believe to be true. I would be competent to testify to them if called upon to do so.

2. On December 11, 2017, the Court heard oral argument on the individual defendants' Partial MSJs, Gould's MSJ, and some of the parties' motions *in limine*. The Court granted Partial MSJ No. 1 regarding Plaintiff's termination and reinstatement; Partial MSJ No. 2 regarding director independence; and Partial MSJ No. 3 regarding the unsolicited Patton Vision offer as to five of the eight defendants. The Court also granted defendant William Gould's MSJ on all claims. The Court further ruled in favor of Edward Kane, Douglas McEachern, Judy Coddington, and Michael Wrotniak on all four of Plaintiff's breach of fiduciary duty claims asserted against them.

3. On December 18, Plaintiff submitted a motion for reconsideration of the Court's rulings on Partial MJS Nos. 1 and 2, Gould's MSJ, and the Court's dismissal of William Gould, Edward Kane, Douglas McEachern, Judy Coddington, and Michael Wrotniak from the case.

4. On December 21, 2017, Plaintiff submitted to the Court a proposed order on all the Court's December 11 rulings.


5. The Motion for Reconsideration is set for hearing on December 28, 2017.

6. Good cause exists under EDCR 2.26 to shorten the time for notice and hearing of this Motion to Stay. Trial is set to begin on January 8,

2018. If the Motion to Stay is set on the regular calendar, it would not be heard until after trial begins, which would defeat its purpose. Plaintiff proposes that the Court hears this Motion on December 28, 2017, the same day and time that the Court scheduled hearing on Plaintiff's Motion for Reconsideration.

7. This Motion is being served by the court's E-Service System to all counsel of record.

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


Akke Levin, Bar No. 9102

ORDER SHORTENING TIME

On application of Akke Levin, counsel for plaintiff James J. Cotter, Jr., and good cause appearing,

IT IS HEREBY ORDERED that the time for notice and hearing of the Motion for Reconsideration and Clarification shall be, and it hereby is, shortened and shall be heard on shortened time on the 28th day of December, 2017, at the hour of 9:00 a.m..

(per agreement)


Judge Elizabeth Goff Gonzalez
District Court Judge, Dept. 11

DATED: 28 DECEMBER 2017

I. INTRODUCTION

The Court on December 11, 2017 dismissed all Plaintiff's four claims against five of the eight defendants because the Court found there were no issues of material fact as to their disinterestedness and

1 independence. The Court's rulings were based the individual defendants'
2 Partial MSJ Nos. 1 and 2 and Gould's MSJ. Plaintiff is seeking
3 reconsideration of this ruling. Plaintiff has prepared and will file—as soon
4 as the Court enters an order on these rulings—a petition for writ of
5 mandamus seeking to vacate the impending order on the motions for
6 summary judgment to the extent the Court does not amend its December 11
7 rulings following the hearing on Plaintiff's Motion for Reconsideration. A
8 stay of this case pending the resolution of Plaintiff's Writ Petition is
9 warranted under *Renown Reg'l Med. Ctr. v. Second Jud. Dist. Ct.*, 130 Nev. ___,
10 ___, 335 P.3d 199 (2014) and NRAP 8(c).

11 II. ARGUMENT

12 A. The Court Should Stay the Case to Permit Plaintiff to file a 13 Writ Petition.

14 Plaintiff's writ petition is based, in part, on the Court's dismissal
15 of all four *claims* against five defendants whereas the individual director
16 defendants other than Gould had filed only motions for partial summary
17 judgment on certain *issues*. In *Renown Reg'l Med. Ctr. v. Second Jud. Dist. Ct.*
18 —a case on point in which the district court found in favor of the plaintiff on
19 two claims "even though the full merits of these claims were not specifically
20 argued" in the motions or at the hearing—the district court "stayed the
21 remainder of the case so that Renown could seek writ relief in [the Nevada
22 Supreme Court]." 130 Nev. ___, ___, 335 P.3d 199, 201 (2014). Given the
23 similarities of both cases (as more fully further discussed in Plaintiff's
24 Motion for Reconsideration) the Court should likewise stay this case.

25 B. The Court Should Stay the Case Pending the Outcome of 26 Plaintiff's Writ Petition.

27 A party may seek a stay of the proceedings in the district court
28 pending the "resolution of a petition to the Supreme Court or Court of
Appeals for an extraordinary writ." NRAP 8(a)(1)(A). The initial stay

1 motion must be made in the district court. *Id.* "In deciding whether to issue
2 a stay or injunction, the Supreme Court or Court of Appeals will generally
3 consider the following factors: (1) whether the object of the appeal or writ
4 petition will be defeated if the stay or injunction is denied; (2) whether
5 appellant/petitioner will suffer irreparable or serious injury if the stay or
6 injunction is denied; (3) whether respondent/real party in interest will
7 suffer irreparable or serious injury if the stay or injunction is granted; and
8 (4) whether appellant/petitioner is likely to prevail on the merits in the
9 appeal or writ petition." NRAP 8(c). Not all factors have to weigh in the
10 moving party's favor: some factors may be particularly strong and
11 "counterbalance other weak factors." *Mikohn Gaming Corp. v. McCrea*, 120
12 Nev. 248, 251, 89 P.3d 36, 38 (2004). As discussed below, however, each of
13 these factors weighs in Plaintiff's favor.

14 **1. The Object of the Writ Petition Would be Defeated if the**
15 **Stay is Denied.**

16 The object of Plaintiff's writ petition will be defeated if trial
17 proceeds on January 8 against just three defendants when the result of a
18 successful writ petition will require a second trial against all eight individual
19 defendants. *Cf. McCrea*, 120 Nev. at 251, 89 P.3d at 39 (finding that the
20 benefits of arbitration, including its purpose to avoid "longer time periods
21 associated with litigation," would "likely be lost" if the appellant "had to
22 simultaneously or sequentially proceed in both judicial and arbitral
23 forums"). Thus, the first factor weighs in Plaintiff's favor.

24 **2. Plaintiff Would Suffer Serious Harm Without a stay.**

25 As demonstrated in Plaintiff's Motion for Reconsideration, the
26 presumption under NRS 78.138 is rebuttable. If Plaintiff is not allowed to
27 rebut the rebuttable presumption against the five dismissed director
28 defendants at trial, Plaintiff will suffer severe harm at trial, because it

1 deprives him of his right to present his case against the five dismissed
2 director defendants to a jury.

3 **3. Defendants would not Suffer Prejudice, much less**
4 **Irreparable Harm, if a Stay is granted.**

5 It would be in all the parties' interest—including defendants'
6 interest—to stay the case and avoid a costly and time-consuming "do over"
7 of the trial that is about to start if the Nevada Supreme Court vacates the
8 district court's impending order. This factor therefore also weighs in
9 Plaintiff's favor.

10 **4. Plaintiff is likely to succeed on the merits.**

11 Plaintiff is likely to prevail on one or more aspects of his Writ
12 Petition, which seeks an order vacating the impending order on Partial MSJ
13 Nos. 1 and 2, Gould's MSJ, and the Court's ruling to dismiss five of the
14 director defendants from the case on the grounds that: (1) Plaintiff did not
15 get notice and an opportunity to be heard before all four claims were
16 dismissed against these five defendants; (2) briefing on Gould's MSJ was still
17 open; and (3) the Court's ruling deprived Plaintiff of the right to introduce
18 evidence at trial to rebut the presumption that the acts and omissions of the
19 five dismissed directors were protected by the business judgment rule.

20 In *Renown*, the Nevada Supreme Court granted the hospital's
21 writ petition in similar circumstances. There, the district court found in
22 favor of the plaintiff "on his breach of contract and intentional interference
23 with contract claims, even though the full merits of these claims were not
24 specifically argued in the cross-motions for summary judgment or at the
25 hearing." 130 Nev. at ___, 335 P.3d at 202. The Nevada Supreme Court
26 granted the writ petition because these claims were not mentioned
27 anywhere "in the six summary judgment briefs" and *Renown* did not receive
28 ten days notice and an opportunity to defend itself on those claims. *Id.*

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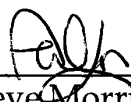
Similarly here, the director defendants other than Gould filed only motions for partial summary judgment on certain issues (not claims) and Plaintiff did not receive notice and an opportunity to defend himself before summary judgment was granted as to five defendants.

As to the third ground, Plaintiff raises a sound legal issue that is meritorious as well: the district court decided Plaintiff's fiduciary duty claims against five directors based solely on the grounds that Plaintiff had failed to raise a disputed issue of material fact regarding their disinterestedness or independence. This factor therefore also weighs in Plaintiff's favor.

III. CONCLUSION

For the reasons stated above, the Court should stay this action pending decision of the Writ Petition.

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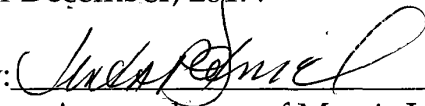
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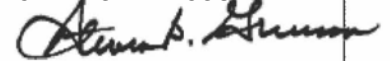
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CERTIFICATE OF SERVICE

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

DATED this 18th day of December, 2017.

By: 
An employee of Morris Law Group



MORRIS LAW GROUP

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1 **NEO**

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18 Attorneys for Plaintiff

19 James J. Cotter, Jr.

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

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

25 Plaintiff,

26 v.

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

Defendants.

and

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

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

) Dept. No. XI

) Jointly Administered

) **NOTICE OF ENTRY OF ORDER**

MORRIS LAW GROUP

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1 PLEASE TAKE NOTICE that an Order Regarding Defendants'
2 Motions for Partial Summary Judgment and Plaintiff's and Defendants'
3 Motions *in Limine* was entered by this Honorable Court on the 28th day of
4 December, 2017. A copy of the Order is attached hereto as Exhibit A.
5

6 MORRIS LAW GROUP
7

8 By: /s/ Akke Levin
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17 Attorneys for Plaintiff
18 James J. Cotter, Jr.
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CERTIFICATE OF SERVICE

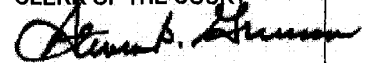
Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served on all interested parties as registered with the Court's E-Filing/E-Service System: **NOTICE OF ENTRY OF ORDER** . The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

DATED this 29th day of December, 2017.

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

EXHIBIT A

JA6084



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Attorneys for Defendants Margaret Cotter,
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Judy Coddington, and Michael Wrotniak

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

MARGARET COTTER, *et al.*,
Defendants.

AND

READING INTERNATIONAL, INC., a Nevada
corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

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

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: December 11, 2017
Time of Hearing: 8:30 a.m.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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22 DISTRICT COURT JUDGE
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PREPARED AND SUBMITTED BY:

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson

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

CLERK OF THE COURT
Alvin B. Hanson

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JA6092

1 Plaintiff James J. Cotter, Jr. ("Plaintiff") hereby moves the Court
2 on an emergency basis under Nev. R. Civ. P. 54(b) for an order certifying the
3 portion of her December 28, 2017 Order that grants William Gould's Motion
4 for Summary Judgment ("Gould MSJ"), grants defendants' motions for
5 partial summary judgments Nos. 1 and 2 ("Partial MSJ Nos. 1 and 2") and
6 dismisses defendants William Gould, Douglas McEachern, Edward Kane,
7 Judy Coddington, and Michael Wrotniak from the case as final. Plaintiff further
8 moves the Court under EDCR 2.26 for an Order shortening time to notice
9 and hear this Motion.
10

11 MORRIS LAW GROUP
12

13 By: 
14

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18 Las Vegas, Nevada 89101

19 Mark G. Krum, Bar No. 10913
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21 1 Washington Mall, 11th Floor
22 Boston, MA 02108

23 Attorneys for Plaintiff
24 James J. Cotter, Jr.
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**DECLARATION OF AKKE LEVIN
IN SUPPORT OF APPLICATION FOR
ORDER SHORTENING TIME**

I, Akke Levin, declare:

1. I am an attorney with Morris Law Group, counsel for Plaintiff James J. Cotter, Jr. I have personal knowledge of the facts stated in this declaration except as to those stated on information and belief, which facts I have investigated and believe to be true. I would be competent to testify to them if called upon to do so.

2. On December 11, 2017, the Court heard oral argument on the individual defendants' Partial MSJs, Gould's MSJ, and some of the parties' motions *in limine*. The Court granted Partial MSJ No. 1 regarding Plaintiff's termination and reinstatement; Partial MSJ No. 2 regarding director independence; and Partial MSJ No. 3 regarding the unsolicited Patton Vision offer as to five of the eight defendants. The Court also granted defendant William Gould's MSJ on all claims. The Court further ruled in favor of Edward Kane, Douglas McEachern, Judy Coddington, and Michael Wrotniak on all Plaintiff's breach of fiduciary duty claims asserted against them.

3. On December 18, 2017, Plaintiff submitted a motion for reconsideration of the Court's rulings on Partial MJS Nos. 1 and 2, Gould's MSJ, and the Court's dismissal of William Gould, Edward Kane, Douglas McEachern, Judy Coddington, and Michael Wrotniak from the case. Plaintiff also submitted a Motion to Stay on December 26, 2017.

4. During the December 28, 2017 hearing, the Court denied Plaintiff's Motion for Reconsideration and Motion to Stay.

5. On December 28, 2017, the Court signed the order on Gould's MSJ, the individual defendants' Partial MSJs, and the MILs ("Order").

1 6. Good cause exists under EDCR 2.26 to shorten the time for
2 notice and hearing of this Motion for Rule 54(b) certification. Trial is set to
3 begin on January 8, 2018. The Court denied Plaintiff's Motion to Stay.
4 Plaintiff plans to seek immediate relief in the Nevada Supreme Court, but
5 the form of relief—direct appeal or writ petition—depends on whether the
6 Court will certify portions of the order as final. If this Motion for Rule 54(b)
7 certification is set on the regular calendar, it would not be heard until after
8 trial begins. Plaintiff proposes a telephonic hearing with counsel on Friday
9 afternoon, December 29, 2017, so that Plaintiff may timely file his writ
10 petition or appeal immediately thereafter.

11 7. This Motion is being served by the court's E-Service
12 System to all counsel of record.

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

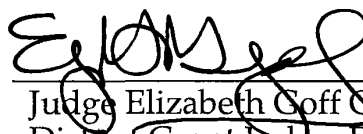
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17 Akke Levin, Bar No. 9102
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ORDER SHORTENING TIME

On application of Akke Levin, counsel for plaintiff James J. Cotter, Jr., and good cause appearing,

IT IS HEREBY ORDERED that the time for notice and hearing of the Motion for Reconsideration and Clarification shall be, and it hereby is, shortened and shall be heard on shortened time on the 4th day of Jan, 2018 at the hour of 8³⁰ a.m. .



Judge Elizabeth Goff Gonzalez
District Court Judge, Dept. 11

DATED: 29 Dec 17

1 **I. INTRODUCTION**

2 The Court on December 11, 2017 dismissed all of Plaintiff's
3 claims against five of the eight defendants because the Court found there
4 were no issues of material fact as to their disinterestedness and
5 independence. The Court's rulings were based the individual defendants'
6 Partial MSJ Nos. 1 and 2 and Gould's MSJ. For the reasons stated below, the
7 Court should certify as final its order (1) granting Gould's MSJ, (2) granting
8 Partial MSJ Nos. 1 and 2, and (3) dismissing defendants William Gould,
9 Douglas McEachern, Edward Kane, Judy Coddling, and Michael Wrotniak.
10 The Court should further stay the case pending Plaintiff's appeal. A
11 proposed order is attached as **Exhibit 1**.

12 **II. ARGUMENT**

13 **A. The Legal Basis for this Motion**

14 NRCP 54 (b) provides, in relevant part:

15 (b) Judgment Involving Multiple Parties. When multiple parties
16 are involved, the court may direct the entry of a final judgment
17 as to one or more but fewer than all of the parties only upon an
18 express determination that there is no just reason for delay and
 upon an express direction for the entry of judgment

19 When "asked to certify a judgment based on the elimination of a
20 party, [the district court] should first consider the prejudice to that party in
21 being forced to wait to bring its appeal." *Mallin v. Farmers Ins. Exch.*, 106
22 Nev. 606, 611, 797 P.2d 978, 981 (1990). "Second, the district court should
23 consider the prejudice to the parties remaining below if the judgment is
24 certified as final." *Id.* "[T]he fact that a decision by [the Nevada Supreme
25 Court] will affect the decision below cannot be the deciding issue" and
26 preclude a finding that there is no just reason to delay an appeal. *Id.* at 610,
27 797 P.2d at 981. "The district court should weigh the prejudice to the various
28 parties and should certify a judgment as final in a 'parties' case if the

1 prejudice to the eliminated party would be greater than the prejudice to the
2 parties remaining below." *Id.* at 611, 797 P.2d at 981.

3 **B. Plaintiff will be Severely Prejudiced If Required to Wait to**
4 **Appeal.**

5 Plaintiff will be severely prejudiced if required to wait to appeal,
6 for a number of reasons.

7 First, as the remaining defendants have made clear, they will
8 take the position that dismissal of this case as against the five individual
9 director defendants severely limits the matters on which Plaintiff can base
10 breach of fiduciary duty claims against the remaining defendants. In that
11 regard, defendants have indicated that they will take the position that, with
12 respect to any matter as to which a majority of the directors making or
13 approving a decision have been dismissed by the Court, those matters alone
14 may not serve as bases for breach of fiduciary duty claims against the
15 remaining defendants. Any doubt that that is the position defendants
16 intend to pursue is put to rest by Court Exhibit 1 to the December 28, 2018
17 hearing, which shows that the dismissed five director defendants intend to
18 take action to formally ratify prior conduct as to which the remaining
19 director defendants will not be able to show that a majority of the directors
20 who made or approved the decision were disinterested and independent.
21 For example, with respect to the 3-to-2 vote to terminate Plaintiff, the five
22 dismissed director defendants intend to ratify that vote, and then allow the
23 remaining defendants to argue that Adams' lack of independence does not
24 matter and that the termination vote cannot serve as a basis for liability on
25 his part. Thus, according to the remaining defendants, the Court's ruling
26 dismissing the five director defendants effectively guts Plaintiff's case.

27 Second, as the remaining director defendants have previewed,
28 they will take the position that dismissal of the case as against the five
dismissed director defendants affects which party bears the burden of proof.

1 With respect to matters as to which the Court has determined that the
2 remaining defendants lacked disinterestedness, independence or both and
3 therefore cannot invoke the statutory presumptions typically referred to as
4 the business judgment rule, the remaining defendants will argue that the
5 business judgment rule nevertheless applies because a majority of the
6 directors who made or approved the challenged decision were found by the
7 Court not to lack disinterestedness or independence and were dismissed.
8 As to matters with respect to which they cannot show that a majority of the
9 directors who made or approved the challenged decision were dismissed by
10 the Court, the remaining defendants clearly intend to rely on the
11 forthcoming ratification of those actions by the dismissed five director
12 defendants. One example that illustrates this point is the 3-to-2 termination
13 vote.

14 Third, and independent of the foregoing, Plaintiff is severely
15 prejudiced because the jury is certain to be confused about why the same
16 evidence showing breaches of fiduciary duty by a more than one director is
17 introduced when fewer than all of the directors who engaged in such
18 fiduciary breaches remained defendants. For example, as the Court has
19 seen, the evidence will show clearly that Adams, Kane and McEachern
20 threatened Plaintiff with termination if he did not resolve trust and estate
21 disputes with his sisters on terms satisfactory to them. In particular, the
22 evidence will show that at the board meeting adjourned in the early
23 afternoon on May 29, 2015, the three told Plaintiff that the meeting would
24 reconvene telephonically at 6:00 p.m. that evening and that they would vote
25 to terminate him as President and CEO of RDI if he had not resolved the
26 trust and estate disputes on terms satisfactory to his sisters. The likely and
27 reasonable inferences jurors will draw from the fact that only Adams of the
28 three remains a defendant is that extortionate conduct in furtherance of the

1 interests of the sisters, not the interests of RDI, is not a breach of fiduciary
2 duty.

3 Fourth, plaintiff's ability to present this case, which arises from
4 an ongoing course of breaches of loyalty by directors who consistently and
5 repeatedly deferred to the wishes of the controlling shareholders rather than
6 protecting only the interests of the Company, is severely impaired.

7 **C. The Remaining Defendants Will not be Prejudiced if the**
8 **Order Dismissing the Five is Certified.**

9 On the other hand, the remaining defendants will not be
10 prejudiced, much less severely prejudiced, if the Court grants the rule 54(b)
11 certification Plaintiff requests. Presumably they will complain about delay,
12 but delay does not compare to substantive prejudice and, as a practical
13 matter, they lack standing to complain, having effectively stayed this case
14 for approximately a year by their writ practice regarding discovery matters.
15 Indeed, the only "prejudice" to which the remaining defendants can cite is
16 the possible loss of the ability to defend the case against them based on the
17 Court's ruling dismissing the five, which will be lost only if this case is
18 stayed. In other words, the remaining defendants will suffer no actual
19 prejudice, much less severe prejudice, if the Court grants rule 54(b)
20 certification.

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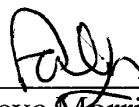
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III. CONCLUSION

For the reasons stated above, the Court should grant this Motion and certify under Rule 54(b) as final its order (1) granting Gould's MSJ, (2) granting Partial MSJ Nos. 1 and 2; and (3) dismissing defendants William Gould, Douglas McEachern, Edward Kane, Judy Coddington, and Michael Wrotniak, and stay the case pending Plaintiff's appeal.

MORRIS LAW GROUP

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1 Washington Mall, 11th Floor
Boston, MA 02108

Attorneys for Plaintiff
James J. Cotter, Jr.

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served on all interested parties, as registered with the Court's E-Filing and E-Service System:

MOTION FOR RULE 54(b) CERTIFICATION AND STAY AND APPLICATION FOR ORDER SHORTENING TIME. 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 29th day of December, 2017.

By: /s/ Linda P. Daniel

An employee of Morris Law Group

Exhibit 1

MORRIS LAW GROUP

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Attorneys for Plaintiff

James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

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

) Dept. No. XI

) Jointly Administered

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

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

) **Time of Hearing: __ a.m./P.M.**

1 THIS MATTER CAME BEFORE THE COURT on the Motion for
2 Rule 54(b) Certification and Stay of plaintiff James J. Cotter, Jr. ("Plaintiff").
3 The Court, having considered any papers filed and arguments made in
4 support of and in opposition to the Motion, and for good cause appearing,
5 IT IS HEREBY ORDERED THAT Plaintiff's Motion for Rule 54(b)
6 Certification is GRANTED because Plaintiff will be severely prejudiced if
7 required to wait to appeal and the remaining defendants will not be
8 prejudiced if the Court's December 28, 2017 order dismissing defendants
9 Edward Kane, Douglas McEachern, William Gould, Judy Coddington, and
10 Michael Wrotniak is certified.
11 The Court therefore finds and determines, under Nev. R. Civ. P.
12 54(b), that there is no just reason for delay and hereby directs entry of
13 judgment as to defendants Edward Kane, Douglas McEachern, William
14 Gould, Judy Coddington, and Michael Wrotniak on all of Plaintiff's claims
15 against them.
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1 IT IS FURTHER ORDERED THAT the case is stayed pending
2 Plaintiff's appeal.

3
4 DATED this ____ day of _____, 2017.
5

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

10 Submitted by:

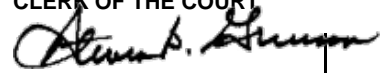
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13 By: /s/ Akke Levin

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON MOTION FOR RECONSIDERATION
AND MOTION FOR STAY**

THURSDAY, DECEMBER 28, 2017

COURT RECORDER:

TRANSCRIPTION BY:

JILL HAWKINS
District Court

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

FOR THE PLAINTIFF:

MARK G. KRUM, ESQ.
AKKE LEVIN, ESQ.

FOR THE DEFENDANTS:

H. STANLEY JOHNSON, ESQ.
MARSHALL M. SEARCY, ESQ.
MARK E. FERRARIO, ESQ.
SHOSHANNA BANNETT, ESQ.

1 LAS VEGAS, NEVADA, THURSDAY, DECEMBER 28, 2017, 9:02 A.M.

2 (Court was called to order)

3 THE COURT: Good morning.

4 Mr. Ferrario, so kind of you to join us.

5 MR. FERRARIO: Wouldn't miss it.

6 THE COURT: You can sit down.

7 Mr. Ferrario called my staff yesterday to see if he
8 could get out of coming to court.

9 MR. FERRARIO: I just hinted.

10 THE COURT: So I have a motion for stay that was
11 submitted on an OST, but it was submitted after 5:00 o'clock
12 on Tuesday, so we didn't get it in time to set it for this
13 morning. Does anyone have an objection to the motion for stay
14 being heard after I hear the motion for reconsideration?

15 MR. SEARCY: No objection.

16 THE COURT: Okay. So we'll hear that this morning.
17 I'll have Dulce take care of whatever that means. But come on
18 up and let's do the motion.

19 (Pause in the proceedings)

20 THE COURT: Ms. Levin, I don't know what happens
21 after this, but I'm now handing it to Dulce, and you and Dulce
22 talk after the hearing.

23 MS. LEVIN: The motion to stay?

24 THE COURT: Okay. You're up, Mr. Krum.

25 MR. KRUM: Thank you, Your Honor. Good morning.

1 The motion for reconsideration, as I trust you saw,
2 raises three arguments. And I'll speak to the two principal
3 arguments, the first of which is what we view as the error of
4 granting a dismissal of the case when it wasn't sought. The
5 second is what we view as the error of the application of the
6 business judgment rule. The motion -- excuse me. The
7 oppositions pretty much agree with us on how you handle this,
8 and we just disagree about how it should have been handled.

9 But before I speak to that, Your Honor, I note that
10 there was some complaint about there wasn't any new evidence.
11 I don't know if that's correct or not, but there is new
12 evidence that we were not in a position to include in our
13 motion because we just received it last night. And what it
14 is, Your Honor, is that the five individuals with respect to
15 whom you made a determination that there was no disputed issue
16 of material fact --

17 THE COURT: Coddington, Kane, Gould, Wrotniak, and
18 McEachern.

19 MR. KRUM: Correct. Yeah. Those five individuals
20 have apparently requested that the matter be added to a board
21 meeting agenda tomorrow. And what they propose to do is to
22 ratify the conduct of some of them and some of others as to
23 matters, Your Honor, with respect to which you denied motions
24 for summary judgment. So --

25 THE COURT: Mr. Krum, let me step back for a minute

1 just so we're clear. Because it may be that I communicated
2 poorly when we were all here. I made a determination that
3 there was no genuine issue of material fact as to the
4 interestedness of those five individuals. As a result, that
5 means the direct claims against those individuals for personal
6 liability was granted, because I did not make a finding that
7 there was an interestedness on their part. I understand you
8 may have issues with that from a factual standpoint, and we'll
9 talk about that in a minute.

10 The impact of that is that it doesn't affect the
11 claims that you're making against the company. Because while
12 you are arguing that there has been a breach of an agreement
13 and other things related to the conduct of those individuals,
14 as well, that doesn't preclude from making that argument. It
15 simply precludes under the business judgment rule from
16 obtaining personal liability against those five directors who
17 I made a determination there was insufficient evidence to go
18 forward given the business judgment rule.

19 So I'm just trying to make sure that we're clear on
20 what I did. Because when I was reading your briefing I wasn't
21 really sure that that came across.

22 MR. KRUM: Well, Your Honor, I think so. I think
23 that we just have a disagreement.

24 THE COURT: All right.

25 MR. KRUM: And disagreement, Your Honor, not with --

1 so much with respect to the facts, but rather with respect to
2 the law and the application of the business judgment rule.

3 But may I finish this new evidence?

4 THE COURT: Yes, please.

5 MR. KRUM: Because I think, Your Honor, this goes to
6 interestedness or --

7 THE COURT: Ratification?

8 MR. KRUM: -- independence. Indeed it does, Your
9 Honor, independence.

10 THE COURT: Okay.

11 MR. KRUM: So here's what we have. We have five
12 individuals who think they're out of the case now, and they're
13 prepared to take steps so that new evidence can be introduced
14 in the case against the other individual defendants. What
15 they're trying to do, Your Honor, is change the burden of
16 proof at trial we're supposed to commence on January 8th.
17 Because what they're going to say is that a majority of
18 disinterested and independent directors have ratified all
19 these actions and that Mr. Krum's argument that the remaining
20 directors bear the burden of proof and so forth and so on
21 doesn't play anymore. And so what they're doing, Your Honor,
22 is creating an entire new fact set so the lawyers can try to
23 argue different legal standards apply.

24 Now, if I may, because I don't want to speak to the
25 particulars, it's easy to look at them. May I give this to

1 you?

2 THE COURT: Is it okay if I mark it as Court's
3 Exhibit 1, since you're getting a copy?

4 MR. SEARCY: That's acceptable, Your Honor, now that
5 I've got a copy.

6 MR. KRUM: And it's stamped as confidential.

7 THE COURT: Court's Exhibit 1, please.

8 Okay. Since it's stamped as confidential because it
9 apparently includes commercially sensitive information, I am
10 going to not talk about it specifically, but only in
11 generalities. How's that?

12 MR. KRUM: Thank you, Your Honor.

13 THE CLERK: So you want this sealed, Your Honor?

14 THE COURT: It will be sealed.

15 THE CLERK: Thank you.

16 THE COURT: Thank you, Dulce.

17 MR. KRUM: So, Your Honor, the point of this action
18 to date and action that's anticipated is that it shows -- it
19 evidences further the lack of independence of these persons
20 who are undertaking to ratify conduct you have found to be
21 such that it raises a triable issue of fact. So on the issue
22 of independence with respect to which we disagree,
23 respectfully, as to how that can be rebutted -- I mean, I
24 think I understood what you said, and the opposition takes the
25 position that reflects my understanding of what you said, that

1 we didn't show disinterestedness, actually was what you said,
2 and therefore --

3 THE COURT: Lack of interestedness.

4 MR. KRUM: Yeah. And therefore the rule applies and
5 there's no liability. And I respectfully disagree. And
6 we've talked past each other at some length at the last
7 hearing where I kept talking about the evidence and you kept
8 telling me I was talking about evidence of breach of fiduciary
9 duty. And I don't intend to repeat that. But this, Your
10 Honor, is new evidence. It is new evidence of a lack of
11 independence. And that's without regard to the issue that
12 what do we do now. These five people who are witnesses, based
13 on your decision, are going to come in here and testify, we
14 ratified the actions set out in pages 3(a) and (b) of the
15 document that I handed to the Court. And these are matters
16 that -- as to which you denied summary judgment. They're
17 matters as to which equitable relief is sought, and they're
18 going to argue to you, Judge, based on the actions of these
19 five people you've found are independent the case is over, you
20 can't grant equitable relief no matter whether you could
21 before. So I --

22 THE COURT: Most people might say that's a little
23 late in the game.

24 MR. KRUM: Well, I think it is, Your Honor. And so
25 maybe I'm ahead of myself on the stay issue.

1 But -- so that's the new evidence that we learned --
2 I learned about 10:00 o'clock when I landed in LAX back on the
3 48 last night.

4 So on the first issue, Your Honor, that was in our
5 motion the Court granted summary judgment as to these five
6 individuals and dismissed the case as to the claims for breach
7 of the duty of care, breach of the duty of loyalty, and breach
8 of the duty of candor.

9 Now, the only motion that sought summary judgment
10 across the board was the one by Mr. Gould. And, of course,
11 you know our point on that, and we talked about it at the last
12 hearing. I'm not going to repeat myself.

13 The other ones were described as motions for partial
14 summary judgment, and they were directed at specific issues.
15 There wasn't a single one that said dismiss the case. And
16 with respect to partial -- Motion for Partial Summary Judgment
17 Number 2, which was the one -- that director interestedness,
18 that didn't request dismissal, either. All that did was
19 request a determination on that discrete issue. And, Your
20 Honor, the business judgment rule is a evidentiary
21 presumption, and we're entitled to rebut it, and we're
22 entitled to do so by showing that they breached their
23 fiduciary duties. I'm not going to go into that, because I'm
24 already repeating myself.

25 The other thing I'd say, Your Honor, is at the

1 hearing in October of 2016 we had some discussion about the
2 nature of these motions, and at page 83, line 8 to 12, you
3 said, "It's not summary judgment, but, yeah, I understand
4 you're asking for a pretrial ruling or a pretrial
5 determination. But it's not supposed to be summary judgment
6 on that kind of fact." And the fact that was raised by Mr.
7 Tayback to which you responded was independence. And so
8 that's why we understood we were supposed to provide these
9 details. And then we get to the question of what's jury
10 instruction going to be with respect to, for example, the
11 abort CEO search.

12 So, Your Honor, the last point on this independence
13 issue, independence isn't required. You know, their duty of
14 care claims can be made and brought regardless of whether
15 there's independence or interest and so forth. And the same,
16 by the way, is true for duty of candor claims. That issue
17 really ties in with the duty of loyalty. So now the last
18 comment on that is -- and this perhaps is why we seem to be
19 talking past one another or perhaps I wasn't listening well,
20 as the case may be -- breaches of the duty of loyalty are
21 evidence of a lack of independence. It's -- the loyalty is
22 supposed to be singular. It's supposed to be to the company.
23 It's not supposed to be divvied up between the company and the
24 controlling shareholders or any other party. And where it is
25 -- where there's evidence that it is, that's evidence of a

1 lack of independence.

2 So on the business judgment rule, Your Honor, I
3 think we've covered that. We have a different view of what it
4 means to have a director who is not -- does not lack
5 independence and who is disinterested. All that means in our
6 view is that the presumption applies, the three-part
7 presumption, and that we can rebut it by evidencing any one of
8 those three parts didn't happen. And the Shoen case talks
9 about that and the cases we cited in the briefing, and so I'm
10 not going to belabor that.

11 So I guess with that, unless you have questions,
12 I'll stop.

13 THE COURT: I don't have any questions. Thank you.

14 MR. SEARCY: Your Honor, I'll try to be brief. The
15 plaintiff's claim that we didn't move on all the causes of
16 action is a red herring here. We moved on all the specific
17 breaches that were supposedly put at issue by plaintiff in
18 their causes of action, and in fact at the Court's direction
19 plaintiff identified the breaches that are at issue in their
20 supplemental briefing, and we moved on all of those issues.
21 And those are set forth on page 6 of our opposition.

22 With respect to Motion Number 2 that we filed, which
23 went specifically to the issue of disinterestedness, that was
24 clearly dispositive on all claims with respect to those
25 directors, because it implicated the business judgment rule.

1 Issues in this case have been briefed extensively.
2 They've had every opportunity to submit evidence on these
3 issues, and they failed to come forward with any evidence that
4 would show a lack of disinterestedness with respect to the
5 directors on whom you've granted summary judgment,
6 specifically Mr. Kane, Mr. McEachern, Mr. Wrotniak, and Ms.
7 Coddling. They haven't come forward with any evidence showing
8 a beholdenness or some sort of self interest that is
9 implicated in any of the transactions that are at issue in
10 this case.

11 With respect to the new evidence that plaintiff has
12 now come forward with --

13 THE COURT: Court Exhibit 1.

14 MR. SEARCY: Court Exhibit 1. Thank you, Your
15 Honor.

16 -- this simply demonstrates the problem with the
17 reasoning of plaintiffs with respect to all of this.
18 Plaintiff disagrees with the decision of the board, therefore
19 that somehow is supposed to be an indication of lack of
20 disinterestedness. It doesn't work that way with the business
21 judgment rule. He's got to come forward with evidence that
22 shows that their reasoning, that their thought process was
23 somehow impacted. He's failed to do that.

24 Your Honor, the motion for reconsideration should be
25 denied.

1 THE COURT: Thank you.

2 Ms. Bannett.

3 MS. BANNETT: Mr. Krum didn't address Mr. Gould
4 specifically when he spoke, but, again, he did not point to
5 any evidence that shows that Mr. Gould had a financial
6 relationship with either of the Cotter sisters or that Mr.
7 Gould had a close personal relationship with either of the
8 Cotter sisters. And under the business judgment rule that is
9 what is needed in order to rebut the presumption and move on
10 to the next part of the case. It's not only what the Court
11 has said, it's also what plaintiff's own expert witness said.
12 That would be Chief Justice Steele from the Delaware Supreme
13 Court, former Chief Justice. He found that there was no
14 evidence that Mr. Gould was -- lacked independence or lacked
15 disinterested and, as a result, he found that there is no
16 basis for the claims against Mr. Gould to proceed. He did not
17 apply his opinions about breaches of fiduciary duty to Mr.
18 Gould, and he specifically excepted him from his opinions in
19 this case.

20 If the Court has any questions about Mr. Gould --

21 THE COURT: I don't have any questions. Thank you.

22 Mr. Ferrario, anything on behalf of the nominal
23 defendant?

24 MR. FERRARIO: No, Your Honor. Other than I think
25 your ruling initially was correct and I think it should stand.

1 And I suspect that coming out of the meeting Friday, depending
2 on what occurs, there may be some issues we may need to bring
3 to Your Honor's attention at the pretrial conference set for
4 next Friday. And I'm not saying this to be facetious. I have
5 gone through Mr. Krum's complaint, participated in one of the
6 calls, you know, dealing with the pretrial order, and I've
7 gone through the pretrial order. And I really think it would
8 be beneficial for the Court -- we're going to have a jury
9 impaneled -- that at that pretrial conference that plaintiff
10 articulate clearly what claims plaintiff believes he still has
11 left.

12 THE COURT: I'm not there.

13 MR. FERRARIO: Okay. I'm just --

14 THE COURT: That is technically part of what has to
15 be in the pretrial order, though.

16 MR. FERRARIO: And, Judge, the pretrial order, Ms.
17 Cowden and I have gotten into a number of arguments over the
18 last couple days about what I heard coming out of the call and
19 what's in the pretrial order. I think everybody was pressed
20 due to the holidays. We got this in. I'm just going to
21 encourage Your Honor at that pretrial conference, and it may
22 be a somewhat unusual pretrial conference, that we have some
23 delineation as to what the claims remaining actually are.
24 Because I don't think we -- my reading of it in light of the
25 Court's ruling, there's very little, if anything, left to be

1 tried. And, again, there may be something occurring, and Mr.
2 Krum assumes certain things are going to happen. There may be
3 something occurring on Friday that may provide some relief
4 under Nevada Revised Statutes, NRS 78.140 in particular, and
5 there may be something --

6 THE COURT: Little late for ratification. It's a
7 little late for ratification, Mr. Ferrario.

8 MR. FERRARIO: Well, Your Honor -- and I anticipated
9 you may say that. But keep in mind --

10 THE COURT: I've got a trial starting a week from
11 Monday.

12 MR. FERRARIO: Your Honor, I understand that. But
13 keep in mind because of how this unfolded and what happened
14 with the motions for summary judgment until the Court ruled,
15 any attempted ratification would have involved arguments by
16 them as to lack of independence, that type stuff. So there
17 has been a change in the tenor of the case. That's all I'm
18 telling the Court. I'm just giving you a heads up. Lots of
19 stuff going on. And looking forward to the pretrial
20 conference.

21 THE COURT: Okay. Oh, swell.

22 Mr. Krum.

23 MR. KRUM: Briefly, Your Honor. The assertion by
24 Mr. Searcy that they moved on everything is incorrect. First,
25 as we discussed last October, the manner in which the duty of

1 loyalty claim is pleaded, for example, is all this conduct
2 collectively evidences a breach of the duty of loyalty.
3 That's the same thing as moving for summary judgment of the
4 case, and they didn't do that, either.

5 Second, Your Honor, they didn't even move on all the
6 particular matters we identified as matters that we thought in
7 and of themselves, not just with others, constituted or gave
8 rise to breaches of fiduciary duty. And we've said this. And
9 the first example is the first one, which is threat, the
10 attempted extortion by Adams, Kane, and McEachern when they
11 threatened plaintiff with termination if he didn't resolve his
12 personal trust and estate disputes with his sisters on terms
13 satisfactory to them.

14 As to the comments by counsel for Mr. Gould -- and I
15 try to be descriptive, not disparaging -- reliefs a check-the-
16 box analysis to the question of independence. It's not are
17 they financially dependent and are they -- have thick-as-blood
18 relations, yes, no, end of analysis.

19 THE COURT: Do they sleep on an air mattress in the
20 Manhattan apartment and go visit.

21 MR. KRUM: I recall that conversation. And so the
22 point is particularly important with respect to Mr. Gould,
23 because we have, as we've described, an ongoing course of
24 conscious -- a conscious decision not to do his job and to
25 acquiesce to the wishes of the controlling shareholders.

1 And the last thing I want to say in reply is the
2 characterization of Chief Justice Steele is misleading and in
3 fact actually it's inaccurate. He answered a specific
4 question that was in the nature of a hypothetical question
5 that didn't go to anything beyond that. And because he didn't
6 need to get to that second step for the purpose of his
7 opinion, he didn't do it.

8 Unless you have questions, Your Honor, I have
9 nothing further.

10 THE COURT: I don't have any questions.

11 The motion for reconsideration is denied. I do not
12 see -- although I've reviewed Court's Exhibit 1, I do not see
13 any new information that would cause me to change my decision
14 from a factual standpoint, and I have not been provided with
15 any new legal analysis that would cause me to change my
16 decision.

17 That takes me to the motion to stay.

18 MR. KRUM: Your Honor, on the motion to stay we have
19 the same two principal issues, whether the Court committed
20 error when it granted summary judgment and dismissed the case
21 as to those individuals -- I'm not going to repeat that;
22 you've read it, you've heard it -- on the second issue the
23 question is one where I think we respectfully disagree with
24 the Court and the defendants as to what the consequence is of
25 a director being able to invoke the statute and the business

1 judgment rule. And in our view that's nothing more than the
2 -- than that the plaintiff bears the initial burden of proving
3 that the director didn't in fact do what he's presumed to do.

4 And those are -- those are questions, Your Honor,
5 along with a third one about viewing the evidence collectively
6 that we're going to make the subject of a writ.

7 In terms of a stay what we have is the prospect of,
8 in our view, Your Honor, trying substantially the same case
9 without these five people as defendants, having an appeal with
10 respect to them and whatever is appealed from the trial, and
11 then, if we're successful, looking at a do over. If we're
12 successful on any of these issues. And --

13 THE COURT: That's how it is on every time I grant
14 partial summary judgment, Mr. Krum.

15 MR. KRUM: Understood, Your Honor. Understood. I
16 think that -- we think, respectfully, these issues are
17 particularly apt for review, but we'll see.

18 The other issue is what we just talked about with
19 Exhibit 1. And, you know, we have people who are attempting
20 to move the target, so to speak, and that puts us in a
21 completely untenable position. As I explained earlier,
22 they're going to introduce evidence -- they're going to seek
23 to introduce evidence about something that happened -- actions
24 they took based on a decision you made; they're going to
25 argue, Your Honor, that that's a different --

1 THE COURT: After the pretrial order was submitted.

2 MR. KRUM: Well, they're going to argue, Your Honor,
3 that there are different burdens of proof as a result of that.
4 And if --

5 THE COURT: I understand, Mr. Krum.

6 MR. KRUM: If you don't let them do that, Your
7 Honor, then they're going to preserve that for appeal. And
8 so --

9 THE COURT: People preserve things for appeal every
10 day in Department -- well, every Monday in Department 11.

11 MR. KRUM: Yeah. So that's all I have, Your Honor.
12 Thank you.

13 THE COURT: Anything else?

14 MR. SEARCY: Nothing from me, Your Honor.

15 THE COURT: The motion for stay is denied.

16 MR. KRUM: Well, Your Honor, we've submitted an
17 order that I think we indicated in our cover letter was
18 acceptable to the defendants except in one respect, and that
19 single respect was that Mr. Gould's counsel initially
20 objected, and the other individuals have joined, that we
21 included once or twice in that order a sentence or phrase to
22 the effect that Mr. Gould's summary judgment motion was set
23 for January 8th. And our thinking was no more complicated
24 than this. You can either sign the order as we submitted it,
25 or you can interlineate that out and sign it. Because

1 otherwise it's a mutually acceptable order. And we'd like to
2 have that signed as quickly as possible.

3 THE COURT: If Cassandra was here, I would ask if we
4 had it. But she's not here.

5 MR. KRUM: We'll be happy to deliver another --

6 THE COURT: Did you submit a competing order in Word
7 format the way I require it?

8 MS. BANNETT: We didn't. We can do that if --

9 THE COURT: Well, see, that creates a problem with
10 me getting Mr. Krum an order if you intend to submit a
11 competing order in Word format.

12 MS. BANNETT: We can do that.

13 MR. SEARCY: We'll take care of that today.

14 MR. KRUM: Actually, let us be helpful. We'll
15 submit ours in Word, and we'll have one with and one without.
16 They objected to objectionable language.

17 MR. SEARCY: That's certainly acceptable, Your
18 Honor.

19 THE COURT: That's perfect, as well. Either way you
20 do it. Just so I have the two versions in Word so I can look
21 at them and make a decision which is the most appropriate.

22 MR. KRUM: Will do, Your Honor.

23 MS. LEVIN: And to who -- I'm sorry, Your Honor. To
24 who do we send it?

25 THE COURT: Send it to

1 kutinacd@clarkcountycourts.us. And
2 dept111lc@clarkcountycourts.us. That's for my JEA and my law
3 clerk.

4 All right. So just so everybody remembers, I don't
5 think Mr. Gould is going to be at issue given my ruling, so I
6 think he will only be involved as a witness, so I'm not
7 addressing these comments to Ms. Bannett.

8 Addressing them to you, Mr. Searcy. You know that
9 Nevada counsel has to be present at your side the entire
10 trial.

11 MR. SEARCY: Thank you, Your Honor.

12 THE COURT: So someone from the Cohen firm has to be
13 here sitting there with you doing whatever it is they have to
14 do. So if there becomes an issue on our quirky Eighth
15 Judicial District Court rules or other unusual procedures in
16 Nevada, you can turn to them and say, hey, really, and we can
17 deal with it then.

18 MR. SEARCY: He has been sending me notes throughout
19 the entire hearing, Your Honor.

20 THE COURT: I know he has. I know. Well, and
21 you've had Mr. Edwards some and you've had Mr. Johnson some,
22 and, you know, it's not like you haven't had one of them. I'm
23 just reminding you I'm not waiving it for the trial.

24 MR. SEARCY: Thank you, Your Honor. I understand.

25 THE COURT: All right. Anything else?

1 MR. KRUM: No, Your Honor.

2 THE COURT: Okay. When you meet with the IT folks
3 next week on Tuesday please make sure everything works. If
4 there are concerns, I would rather know about the problems
5 soon. We are still working with the facility across the
6 street.

7 MR. FERRARIO: Are we meeting over there?

8 THE COURT: Well, I'm not in charge of that. That's
9 Dulce.

10 THE CLERK: I think we're meeting in this courtroom,
11 but I want to confirm with Brandi. [Inaudible].

12 MR. FERRARIO: Whatever we do here will transfer
13 over there?

14 THE COURT: When Judge Bailess lets us. We are
15 serving at his pleasure. I don't have a courtroom.

16 MR. FERRARIO: If think if you say that like every
17 day on the record, some little --

18 THE COURT: I have a meeting with County Management
19 next week. All right. What else?

20 MR. FERRARIO: I thought we were getting the big one
21 upstairs when they refurb it.

22 THE COURT: And when's that going to be, Mr.
23 Ferrario? How long do you think that construction project's
24 going to last?

25 MR. FERRARIO: I agree. Okay. That I do know.

1 THE COURT: Okay. Anything else?

2 MR. KRUM: No, Your Honor.

3 THE COURT: All right. So, Mr. Krum, Ms. Levin,
4 you're sending me the versions. I'm going to review them, I'm
5 going to sign one. We'll let you know which one is signed,
6 and then you do what you've got to do with the Supreme Court
7 and ask them for the stay, because I've already denied it.

8 MR. KRUM: Understood.

9 THE COURT: And if they want to stay your trial,
10 they'll stay your trial.

11 MR. KRUM: Thanks, Your Honor.

12 MR. FERRARIO: Thank you, Your Honor.

13 MR. SEARCY: Thank you.

14 THE COURT: Otherwise I will have you guys visiting
15 with Dulce on the 2nd and visiting with me on the 5th.

16 THE PROCEEDINGS CONCLUDED AT 9:31 A.M.

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CERTIFICATION

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

AFFIRMATION

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

**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

12/28/17

DATE

NOT USED



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Judy Codding, and Michael Wrotniak

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

MARGARET COTTER, *et al.*,
Defendants.

AND

READING INTERNATIONAL, INC., a Nevada
corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

**THE INDIVIDUAL DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
MOTION FOR RULE 54(b)
CERTIFICATION AND STAY**

Judge: Hon. Elizabeth Gonzalez
Date of Hearing: January 4, 2018
Time of Hearing: 8:30 a.m.

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1 factor test governing stays pending appeal in Nevada. As set forth below, Plaintiff cannot meet
2 any—let alone all—of the elements required for such a stay. There is no basis for the Court to
3 revisit its earlier ruling. Plaintiff’s motion for a stay should be denied.

4 **ARGUMENT**

5 In Nevada, courts are to consider four factors when evaluating a request to stay trial
6 pending an appeal: (1) whether the object of the appeal or writ petition will be defeated if the
7 stay is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay
8 is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if
9 the stay is granted; and (4) whether appellant/petitioner is likely to prevail on the merits in the
10 appeal or writ petition. *See Hansen v. Eighth Judicial Dist. Ct. In and For the Cnty. of Clark*,
11 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); NRAP 8(c). As demonstrated below, Plaintiff
12 cannot meet any of these requirements.

13 **I. THE OBJECT OF PLAINTIFF’S APPEAL WILL NOT BE DEFEATED IF A** 14 **STAY IS DENIED**

15 The object of Plaintiff’s appeal is to seek the view of another court as to whether
16 Directors Wrotniak, Coddington, McEachern, Kane, and Gould are disinterested and independent as
17 a matter of law with respect to a series of RDI Board decisions that he has challenged. Plaintiff
18 has not waived his claims against these Individual Defendants, nor will he do so if this case
19 proceeds to trial in the near future. Indeed, after trial, Plaintiff will be able to combine his appeal
20 as to the Court’s independence ruling with any other issues that he may seek to contest. Absent
21 the “waiver” of an entire issue or defense, courts in Nevada do not consider the object of an
22 appeal to be defeated. *See Hansen*, 116 Nev. at 657-58, 6 P.3d at 986 (because party’s
23 jurisdictional challenge, rejected by the district court, was preserved and could eventually be
24 heard on appeal, no waiver existed and thus the object of appeal was not defeated); *cf. Mikohn*
25 *Gaming Corp. v. McCreary*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004) (granting stay because
26 allowing case to proceed in district court rather than in an arbitration would defeat the object of
27 appeal). Because the object of Plaintiff’s appeal will be preserved even if the parties proceed to
28 trial on January 8, 2018, the first factor suggests that a stay is not warranted.

1 **II. PLAINTIFF WILL NOT SUFFER IRREPARABLE OR SERIOUS INJURY IF**
2 **THE STAY IS DENIED**

3 In his motion, Plaintiff asserts that he will be “severely prejudiced” absent a stay pending
4 appeal because RDI and the Individual Defendants will likely use the Court’s summary judgment
5 ruling to make arguments at trial that are not favorable to his case, including that the business
6 judgment rule applies to certain transactions approved or ratified by a majority of disinterested,
7 independent directors or that the behavior of purportedly interested directors (such as Guy
8 Adams) was consistent with the behavior of other, legally-independent directors. (*See* Mot. at 7-
9 9.) Plaintiff further contends that costs and efficiency weighs in favor of a stay, as the possibility
10 of a second trial will be avoided. (*Id.*)

11 Neither argument has merit. As the Court recognized at the December 29, 2017 hearing,
12 Plaintiff’s substantive objections to proceeding to trial are no different from any plaintiff who
13 has lost on a partial summary judgment motion. Nevada does not provide disgruntled plaintiffs
14 with an automatic stay and right of immediate appeal simply because some of the original claims
15 or defendants are no longer in the case. That the Individual Defendants may take advantage of a
16 favorable summary judgment ruling to make arguments at trial plainly available based on the
17 record and under governing law is a fact of litigation, not irreparable or serious injury to
18 Plaintiff. *See Hansen*, 116 Nev. at 658, 6 P.3d at 987 (noting that “irreparable harm is harm for
19 which compensatory damages would be inadequate, such as the sale of a home at trustee’s sale,
20 because real property is unique”). For instance, while Plaintiff complains about the RDI Board’s
21 votes on December 29, 2017 to ratify both Plaintiff’s termination and the exercise of a share
22 purchase option held by the Estate of James J. Cotter, Sr. (*see* Mot. at 7), this is simply evidence
23 that the RDI Board and its directors continue to take action; indeed, the Board has held scores of
24 meetings and voted on numerous matters since the filing of Plaintiff’s lawsuit. That the Board
25 continues to move forward is not grounds for delay, rather it is a reason for moving on to trial.
26 The legal effect of the Board’s ratification decision, which is now accomplished, is clear under
27 NRS 78.140 and the Nevada Supreme Court’s decision in *Shoen v. SAC Holding Corp.*, 122 Nev.
28 621, 636, 137 P.3d 1171, 1181 (2006). Of course, there are other grounds for a defense verdict

1 separate and apart from independence and/or ratification, and the fact that the Court's
2 independence decision made Plaintiff's factually unsupportable case more difficult legally for
3 him is not the kind of irreparable or undue injury that supports delay.

4 Plaintiff's related contention that a second trial will be avoided is mere "speculation," and
5 courts have rejected the possibility that a "do over" may result following an appeal as a valid
6 basis to stay a case. *See Busey v. Richland Sch. Dist.*, No. 2:13-CV-5022-TOR, 2016 WL
7 8938423, at *4 (E.D. Wash. Apr. 13, 2016) (denying certification and stay pending appeal
8 because plaintiff's argument that a second trial would be avoided was "speculative"); *Hansen*,
9 116 Nev. at 658, 6 P.3d at 986-87 (noting that appellant's argument that, absent a stay, it would
10 be "required to participate 'needlessly' in the expense of . . . trial" is "neither irreparable nor
11 serious" injury). Indeed, *every appeal*, whether before or after trial, raises the specter of a
12 potential second trial. Accordingly, Plaintiff cannot satisfy the second factor required for a stay
13 pending appeal.

14 **III. THE INDIVIDUAL DEFENDANTS WILL SUFFER SERIOUS INJURY IF A**
15 **STAY IS GRANTED**

16 Admittedly, "a mere delay in pursuing . . . litigation" does not normally constitute
17 irreparable injury or serious harm. *Mikohn*, 120 Nev. at 253, 89 P.3d at 39. However, the
18 Nevada Supreme Court has recognized that, "in certain cases," it may, and that possibility
19 "should be considered in the stay analysis." *Id.* In this case, where the parties are two-and-a-half
20 years removed from Plaintiff's termination that started it all, the Individual Defendants are
21 rightfully concerned that they may suffer irreparable or serious injury if a stay is granted and the
22 case stalls on the very eve of trial.

23 Since June 2015, the Individual Defendants have been repeatedly smeared in the press by
24 a series of wild, unsupportable accusations made entirely out of vindictiveness by a divisive,
25 poorly-performing CEO who threatened to "ruin them financially" even before they terminated
26 him. Others (such as the T2 plaintiffs) have brought follow-on suits against the Individual
27 Defendants based solely on Plaintiff's claims only to discover that they are without merit, and
28 have exited the litigation by settling on favorable terms. Not only have Plaintiff's baseless

1 allegations threatened the professional reputations and livelihood of the Individual Defendants,
2 they have seriously affected the business operations of RDI as it seeks to move beyond the
3 turmoil fostered by Plaintiff. Indeed, given Plaintiff's (untenable) reinstatement demand, RDI
4 continues to face great uncertainty regarding its permanent leadership.

5 In any lengthy litigation where delays have occurred, important witnesses may forget
6 relevant facts or become unavailable. However, here, where the business operations of a
7 company and the lives of its directors continue to be harmed because the board made an
8 informed business judgment to do what it thought was best for the company and its stockholders,
9 it makes sense to avoid further injury and proceed to the planned trial. This is also true because
10 there are dispositive issues—other than directorial independence—to be tried that may moot any
11 appeal by Plaintiff. For example, if Plaintiff cannot prove at trial that he would be a suitable
12 CEO, then the injunctive relief he seeks is moot; if Plaintiff cannot establish damages to RDI at
13 trial, then his entire case fails. There is no valid reason to delay resolution of these issues just to
14 allow Plaintiff another chance to revisit the Court's independence determination, which may be
15 mooted by what happens at trial.

16 **IV. PLAINTIFF IS UNLIKELY TO PREVAIL ON THE MERITS OF HIS APPEAL**

17 In his motion, Plaintiff has not argued, let alone established, that he is likely to prevail on
18 the merits of his appeal. The Court's decision to award summary judgment in favor of Directors
19 Wrotniak, Coddington, McEachern, Kane, and Gould followed multiple rounds of summary
20 judgment briefing and a year of additional discovery pursuant to Nevada Rule of Civil Procedure
21 56(f), which the Court allowed to ensure that Plaintiff had been given a full and fair opportunity
22 to try to prove his claims. The Court held multiple oral arguments on Plaintiff's claims prior to
23 its decision, and repeatedly asked whether there were any additional facts that Plaintiff wanted
24 the Court to consider in determining the independence/disinterestedness issue. Moreover, the
25 Court considered—and rejected—Plaintiff's Motion for Reconsideration in which he attempted
26 to reargue the issues on which he lost. Absent any indication that Plaintiff is likely to prevail on
27 his appeal of the Court's considered ruling (which he is not), a stay pending appeal is entirely
28 unwarranted.

1 **CONCLUSION**

2 For the reasons set forth above, the Individual Defendants respectfully request that the
3 Court deny Plaintiff's Motion to Stay this case pending appeal. The Individual Defendants take
4 no position on Plaintiff's request for certification under Nevada Rule of Civil Procedure 54(b).

5 Dated: January 2, 2018
6

7 **COHENJOHNSONPARKEREDWARDS**

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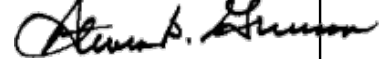
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CERTIFICATE OF SERVICE

I hereby certify that, on January 2, 2018, I caused a true and correct copy of the foregoing
**THE INDIVIDUAL DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR
RULE 54(b) CERTIFICATION AND STAY** 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



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17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

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

22 Plaintiff,

23 v.

24 MARGARET COTTER, et al,

25 Defendants.

26 In the Matter of the Estate of

27 JAMES J. COTTER,

28 Deceased.

JAMES J. COTTER, JR.,

Plaintiff,

v.

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

Defendants.

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

Coordinated with:

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

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

**READING INTERNATIONAL,
INC.'S JOINDER TO THE
INDIVIDUAL DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
MOTION FOR RULE 54(B)
CERTIFICATION AND STAY**

HEARING

DATE: January 4, 2018
TIME: 8:30 A.M.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
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1 Nominal Defendant Reading International, Inc. ("RDI"), a Nevada corporation, by and
2 through undersigned counsel of record, hereby submits its Joinder to *The Individual Defendants'*
3 *Opposition To Plaintiff's Motion For Rule 54(B) Certification And Stay*. RDI joins in the
4 arguments advanced on behalf of the Individual Defendants in their Motion. Additionally, RDI
5 opposes the certification on the basis of the issues set forth in the attached memorandum of
6 points and authorities.

7 DATED this 3rd day of January, 2018

8 GREENBERG TRAURIG, LLP

9
10 By: /s/ Mark E. Ferrario

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MEMORANDUM OF POINTS AND AUTHORITIES

17 This Court should deny the Motion for Rule 54(b) certification. This Court recently
18 determined that, as a matter of law, Directors Judy Coddington, William Gould, Edward Kane,
19 Douglas McEachern, and Michael Wrotniak were independent of the influence of Ellen Cotter
20 and Margaret Cotter. Thus, the ruling is a determination that acknowledges that a majority of
21 RDI's Board of Directors is independent, and therefore, disinterested, as to nearly all of the
22 decisions challenged by Cotter, Jr., This ruling has an inevitable effect on the rest of the
23 litigation, presenting multiple grounds for ending this litigation in its entirety. Accordingly, it is
24 reasonable to anticipate that there will be only a short time before there is a final judgment in this
25 matter, mooted any need for a Rule 54(b) certification. Accordingly, the Motion should be
26 denied.

27
28
FACTS RELEVANT TO THIS MOTION

27 As this Court is aware, Plaintiff filed this action after he was terminated from his position
28 as President and CEO of RDI in June 2015. His original complaint alleged derivative claims

1 against every other member of RDI's Board of Directors at the time, and also individual claims
2 against both certain defendants and RDI. The primary relief sought by Plaintiff was his own
3 reinstatement. Following motion practice, Plaintiff was required to file an amended complaint,
4 which removed all individual claims, and left only the derivative claims. By the time the first
5 amended complaint was filed, the composition of RDI's board of directors had changed, and
6 Plaintiff included the new members of the Board of Directors as defendants in the derivative
7 claims. However, the claims against a former board member, Timothy Storey, were dismissed.
8 In mid-2016, Plaintiff was permitted to amend his complaint again, in the Second Amended
9 Complaint, the derivative claims were again alleged against all other members of RDI's Board of
10 Directors.

11 Based on the Second Amended Complaint, Plaintiffs claims include four causes of
12 action: 1) Breach of Fiduciary Duty of Care; 2) Breach of Fiduciary Duty of Loyalty; 3) Breach
13 of Fiduciary Duty of Candor; and 4) Aiding and Abetting Breach of Fiduciary Duty. The first
14 three causes of action were alleged against all of the individual director defendants: Guy Adams,
15 Judy Coddington, Ellen Cotter, Margaret Cotter, William Gould, Edward Kane, Douglas
16 McEachern, and Michael Wrotniak. The fourth cause of action was alleged only against Ellen
17 Cotter and Margaret Cotter.

18 On December 28, 2017, this Court entered an Order which granted summary judgment to
19 Defendants Coddington, Gould, Kane, McEachern, and Wrotniak, having determined that Plaintiff
20 had failed to present evidence to show that there was 1) a material issue of fact as to the
21 independence of these directors with respect to any Board decision made by them, and 2) a
22 material issue of fact as to whether the presumption created by the business judgment rule had
23 been rebutted. As a result of this ruling, there are only three remaining defendants: Guy Adams,
24 Ellen Cotter, and Margaret Cotter. While RDI is a nominal defendant; Cotter, Jr. has not alleged
25 any claims against the Company.

26 **Facts Underlying the Claims**

27 In the Pre-trial memorandum, Plaintiff recited the actions he claims constituted the
28

breaches of fiduciary duty.¹ See Pre-Trial Memorandum, pp. 3-9. Those actions consisted of the following:

1. The Termination of Cotter, Jr, and the related process and events (claimed relevant as to breach of the duty of care, duty of loyalty, and aiding and abetting).

2. Use of an Executive Committee (claimed relevant as to breach of they duty of care and duty of loyalty – however, no specific acts by the Executive Committee are cited).

3. Selection of Ellen Cotter as President and CEO of RDI, along with the process of the CEO search (claimed relevant as to breach of the duty of care, duty of loyalty, and aiding and abetting).

4. Making erroneous or materially misleading statements in board materials, such as agendas and minutes, and in public disclosures - the alleged misleading statements in public disclosures are all based on Plaintiff's claims that relevant facts were not included or misdescribed by not including motives that Plaintiff imputes to the Directors (claimed relevant as to breach of the duty of care, duty of loyalty, duty of candor)

5. Appointment of Directors Coddington and Wrotniak (claimed relevant to breach of they duty of loyalty and aiding and abetting by Ellen Cotter and Margaret Cotter).

6. Appointment of Margaret Cotter as Vice President of Real Estate Development, and award of compensation to her (claimed relevant to the breach of the duty of loyalty, duty of care, aiding and abetting) .

7. Awarding special compensation to Guy Adams (claimed relevant to the breach of they duty of loyalty, duty of care, aiding and abetting).

8. The authorization of the exercise of the 100,000 share option by the Estate of Cotter, Sr. (claimed relevant to breach of duty of loyalty, aiding and abetting)

Plaintiff had claimed the above actions had been taken by interested directors, based on the theory that all of the directors were beholden to Ellen Cotter and Margaret Cotter.

Effect of Court's Ruling as to Independent Directors

¹ In addition to the actions listed here, Plaintiff had also asserted that the treatment of the expression of interest from Patton Vision supported his claims; however, this Court determined that RDI suffered no harm from such treatment.

1 The Defendants have always maintained that all of the above actions were taken by a
2 majority of disinterested directors. With respect to the majority of the actions, this Court's
3 December 28, 2017 order has confirmed Defendants' assertions. Specifically, the evidence
4 shows the following actions were originally approved by a majority of Independent Directors:

- 5 • *Selection of Ellen Cotter as President and CEO* - On January 8, 2016, the Board of
6 Directors appointed Ellen Cotter President and CEO of RDI. This vote to select Ellen
7 Cotter necessarily included acceptance of the Search Committee's recommendation, and
8 thus, changes in the prior determination of criteria for selection and the cessation of a
9 search for an outside CEO. Votes in favor: Adams, **Codding, M. Cotter, Gould, Kane,**
10 **McEachern, Wrotniak**. Votes Opposed: J. Cotter. Abstention: E. Cotter. Discounting
11 the purportedly interested votes of Adams and Margaret Cotter, the vote was 5-1 in favor.
12 [Defendants Proposed Tr. Ex. 417].
- 13 • *Appointment of Margaret Cotter as Vice President of Real Estate Development*- On
14 March 10, 2016, the Board of Directors voted on the appointment of Margaret Cotter to
15 the position of Executive Vice President of Real Estate Development. The Votes in favor
16 of such appointment included Adams, **Codding, Gould, Kane, McEachern, Wrotniak**.
17 Ellen Cotter and Margaret Cotter did not participate in the Vote. James Cotter, Jr.
18 abstained. Discounting the purported interested vote of Adams, the vote was 5-0 in
19 favor. [Defendants Proposed Tr. Ex. 452]
- 20 • *Appointment of Director Codding*- On October 5, 2015, the Board of Directors met and
21 voted on the appointment of Judy Codding to fill an open seat on the Board of Directors.
22 The votes in favor of such appointment included Adams, Ellen Cotter, Margaret Cotter,
23 **Gould, Kane, and McEachern**. James J. Cotter, Jr. voted against the appointment.
24 Timothy Storey abstained. Discounting the votes of purportedly interested directors, the
25 vote was 3-1-1 in favor. [Defendants Proposed Tr. Ex. 361]
- 26 • *Appointment of Director Wrotniak*-On October 12, 2015, the Board of Directors met and
27 voted on the appointment of Michael Wrotniak to fill the seat vacated by the resignation
28 of Tim Storey. The votes in favor of such appointment included Adams, **Codding, Ellen**

1 Cotter, Margaret Cotter, **Gould, Kane, and McEachern**. James J. Cotter, Jr. voted
2 against the appointment. Discounting the votes of purportedly interested directors, the
3 vote was 4-1 in favor. [Defendants Proposed Tr. Ex. 372]

- 4 • ***Awarding special compensation to Adams-*** On March 10, 2016, the Board of Directors
5 voted on the award of special compensation in the amount of \$50,000 to Guy Adams.
6 The Votes in favor of such an award included **Coddington**, Ellen Cotter, Margaret Cotter
7 **Gould, Kane, McEachern, Wrotniak**. James Cotter, Jr. voted against the award.
8 Discounting the purported interested vote of Ellen and Margaret Cotter, the vote was 5-1
9 in favor. [Defendants Proposed Tr. Ex. 452].

- 10 • ***The authorization of the exercise of the 100,000 share option using Class A nonvoting***
11 ***stock by Cotter, Sr.'s Estate-***The September 21, 2015 meeting of the Compensation and
12 Stock Options Committee was attended by Committee members Edward Kane and Guy
13 Adams. The James Cotter, Sr. Estate had requested permission to use Class A nonvoting
14 common stock in the exercise of the Estate's option to purchase 100,000 shares of Class
15 B voting common stock. Section 6.1.6.b. of the 1999 stock option plan gives discretion
16 to the administrator of the plan to accept shares of common stock already owned by the
17 optionee in payment of the option price. The Vote in favor of permitting the use of the
18 Class A stock was made by **Kane** and Adams. There were no opposing votes.
19 Discounting the purportedly "interested" vote by Adams, the vote was 1-0 in favor.
20 [Defendants Proposed Tr. Ex. 356]

- 21 • ***Use of the Executive Committee-*** Plaintiff has not identified any specific action taken by
22 RDI's Executive Committee which he claims is indicative of a breach of fiduciary duty.
23 However, each action taken by the Executive Committee was taken with the approval of
24 Edward Kane, who was a member of the Executive Committee, and whom this Court has
25 determined to have been independent.
- 26 • ***SEC filings and press releases*** – to the extent that Plaintiff claims SEC filings or press
27 releases reporting the above actions were misleading based on failures to disclose
28 purported interest of members of the board of directors (*see* SAC ¶¶ 101(d), (f), (g)),

1 because the actions in question were approved by a majority of disinterested directors, a
2 failure to disclose purported interests cannot be misleading.

3
4 Significantly, even without the votes of Guy Adams, Ellen Cotter and Margaret Cotter,
5 each of the above actions passed by a majority vote and thus are not issues that should be
6 considered by the jury. Moreover, each of the above actions by the RDI board of directors
7 occurred subsequent to the filing of the initial complaint in this matter, in which Cotter, Jr.
8 alleged, *inter alia*, that Directors Ellen Cotter, Margaret Cotter, and Guy Adams were motivated
9 by interests other than the best interests of RDI in making their decisions. Accordingly, each of
10 the above actions were undertaken with full knowledge of the lack of independence and the self-
11 interest that Cotter, Jr. attributed to Ellen Cotter, Margaret Cotter, and Guy Adams.

12 In addition to the above actions *originally* approved by a majority of independent
13 directors, on December 29, 2017, the RDI Board of Directors met in a duly noticed meeting, and
14 voted to ratify certain actions challenged by Cotter, Jr. Specifically, the RDI Board of Directors,
15 of which a majority consists of Directors **Coddington, Gould, Kane, McEachern, and Wrotniak**,
16 voted to ratify the June 12, 2015 termination of Cotter, Jr. as President and CEO of RDI, as well
17 as other actions approved by the board of directors related to such termination, as outlined in the
18 Minutes of the Meetings of the Board of Directors for May 21, 2015, May 28, 2015 and June 12,
19 2015. Additionally, lest there be any doubt with respect to the approval of the exercise of the
20 100,000 stock option by Cotter, Sr.'s estate using Class A nonvoting stock by the Compensation
21 Committee, the Board of Directors ratified that action as well. [See Ex. 1, Draft Minutes of
22 December 29, 2017 RDI Board of Directors Meeting. Directors **Coddington, Gould, Kane,**
23 **McEachern, and Wrotniak** voted in favor of each of the actions. Director James Cotter, Jr.
24 voted against. Directors Guy Adams, Ellen Cotter, and Margaret Cotter abstained. The votes in
25 favor of each of these actions were 5-1-3.
26
27
28

LEGAL ARGUMENT

I. DUE TO THIS COURT’S DECEMBER 28, 2017 ORDER, AND DUE TO THE RATIFICATION OF ACTIONS TAKEN ON DECEMBER 29, 2017, THE REMAINING ISSUES IN THE CASE ARE SIGNIFICANTLY REDUCED IF NOT ENTIRELY ELIMINATED, AND THEREFORE, THERE IS JUST CAUSE TO DENY CERTIFICATION UNDER RULE 54.

The bulk of Plaintiff’s claims were premised on the theory that all of RDI’s directors (other than himself) were beholden to Ellen Cotter and Margaret Cotter, and therefore, unable to exercise their own independent judgment with respect to decision making on behalf of RDI. However, Cotter, Jr. was unable to present sufficient evidence from which a jury could reasonably find that five of the Directors – Coddington, Gould, Kane, McEachern and Wrotniak – actually lacked such independence. This Court’s ruling as to the independence of these five directors has significant impact on the remaining issues in the case. Indeed, as shown below, the case should be dismissed for a lack of standing, or failing, that, summary judgment granted on all remaining issues. In either case, there is unlikely to be any significant delay prior to a final order being entered in this matter. Accordingly, the Motion for Rule 54(b) certification should be denied.

A. This Court’s Determination that a Majority of the Directors are Disinterested Requires Dismissal of the Suit for Failure of Demand.

This Court’s determination that Directors Coddington, Gould, Kane, McEachern, and Wrotniak are disinterested with respect to the decisions cited in the Second Amended Complaint establishes that such complaint must be dismissed for failure of demand. The futility of demand must be determined based on the board at the time an amended complaint has been filed. *Braddock v. Zimmerman*, 906 A.2d 776, 786 (Del. 2006). When a court determines that the allegations of purported interest are sufficient to withstand a motion to dismiss for failure to make demand, the Court must “later conduct an evidentiary hearing to determine, as a matter of law, whether the demand requirement nevertheless deprives the shareholder of his or her standing to sue.” *Shoen* at 645, 137 P.3d at 1187, quoted by *In re Amerco Derivative Litig.*, 127 Nev. 196, 222, 252 P.3d 681, 700 (2011). This Court’s ruling on summary judgment has taken

1 the place of such evidentiary hearing; Cotter, Jr. was unable to show that demand was futile.
2 Accordingly, this Court's ruling establishes that Cotter, Jr. has no standing to proceed.

3 **B. The Approval and/or or Ratification by a Majority of Disinterested**
4 **Directors of Decisions Challenged By Cotter, Jr.'s Renders Such**
5 **Decisions Immune From Scrutiny For Interest.**

6 Pursuant to NRS 78.140(2)(a), any decision approved by a majority of disinterested
7 directors who have knowledge of the facts that would create an interest in the decision by
8 another director is not subject to being found void or voidable on the basis of the purported
9 interest held by the director. Here, Plaintiff seeks to undo two decisions that have been ratified
10 by the a majority of disinterested directors: the decision to terminate him from his position as
11 President and CEO and the approval of the use of Class A stock in the exercise of an option for
12 Blass B stock, based on his claim that Guy Adams was unable to exercise his independent
13 judgment in voting in favor of both of these decisions. However, because of the ratification, any
14 purported lack of independence of Mr. Adams is no longer relevant, and cannot justify voiding
15 the actions.

16 **C. The Approval and/or or Ratification by a Majority of Disinterested Directors**
17 **of Decisions Challenged By Cotter, Jr. Entitles the Purported Interested**
18 **Directors to the Protections of the Business Judgment Rule as to Such**
19 **Decisions.**

20 In *Shoen v. SAC Holding Corp.*, the Nevada Supreme court held that Nevada's business
21 judgment rule applies to "valid interested director action." 122 Nev. 621, 636, 137 P.3d 1171,
22 1181 (2006). In so stating, the *Shoen* Court cited to NRS 78.140. Accordingly, if a transaction
23 satisfies the requirements of that statute, it constitutes a "valid interested director action." As
24 relevant here, that statute provides that a board action cannot be voided when:

25 The fact of the common directorship, office or financial interest is known to the
26 board of directors or committee, and the directors or members of the committee,
27 other than any common or interested directors or members of the committee,
28 approve or ratify the contract or transaction in good faith.

NRS 78.140(2)(a).

Here, all members of the RDI Board of Directors have long been aware of Cotter, Jr.'s
claims that the decisions of Ellen Cotter, Margaret Cotter, and Guy Adams are influenced by
their own financial interests. Allegations of facts from which Cotter, Jr. infers self-interest were

1 not only made at the time of Cotter, Jr.'s termination, but have also been included in every
2 iteration of Cotter's Jr.'s complaints. *See, e.g.*, SAC ¶¶ 1, 6, 21, 33,35,37, 48, 49, 64-71.
3 Additionally, in the course of the ratification actions taken on December 29, 2017, the specific
4 claims of self-interest made by Cotter, Jr. were noted by the Board.

5 With knowledge of such facts, and the inferences that Cotter, Jr. has drawn from them,
6 Directors that this Court has determined are disinterested nevertheless voted to ratify decisions
7 relating to the termination and the exercise of the 100,000 share option. As a result, pursuant to
8 *Shoen*, the Remaining Defendants are entitled to the protections of the business judgment rule as
9 to such transaction.

10 Significantly, nothing in NRS 78.140 places any deadline or time limitation upon
11 ratification. The potential dispositive effect of such ratification occurring years after the
12 challenged conduct has been acknowledged by the Nevada Supreme Court. *See In re Amerco*
13 *Derivative Litig.*, 127 Nev. at 217, 252 P.3d at 697, ns. 6 (to majority opinion) and 4(to dissent)
14 (noting that a ratification that had apparently occurred in 2007, which date was after the remand
15 of the *Shoen* decision, the precursor to the *In re Amerco* opinion, yet could still have a dispositive
16 effect). Here, the ratification occurred *one day* after this Court executed the order finding the five
17 Directors Independent. Since the effect of such ratification would not be acknowledged without
18 a determination of the independence of those who ratified the conduct, any protests based on
19 timing are defy logic.

20 Furthermore, as noted above, many of the actions claimed by Cotter, Jr. to indicate
21 breaches of fiduciary duty were *originally* approved by directors that this Court has determined
22 are disinterested. All such actions were taken subsequent to the filing of this action, and
23 accordingly, with knowledge of the allegations of self-interest made against Defendants Ellen
24 Cotter, Margaret Cotter, and Guy Adams. Accordingly, Defendants Ellen Cotter, Margaret
25 Cotter, and Guy Adams are each entitled to the protections of the business judgment rule as to
26 such actions as well.

27 As this Court has already determined the evidence proffered by Cotter, Jr. to overcome
28 the presumption created by the business judgment rule was insufficient, judgment should be

1 entered in favor of the Remaining Defendants on all claims.

2 **D. Cotter, Jr. Cannot, as a Matter of Law, Prevail on a Claim**
3 **of Breach of Fiduciary Duty Against the Remaining Defendants**
4 **As Cotter, Jr. Cannot Establish Causation.**

5 Even if, despite their clear entitlement, the remaining Defendants are not granted the
6 protection of Nevada's business judgment rule, it would still be impossible for Cotter, Jr. to
7 prevail on his claims for fiduciary duty. This is because Cotter, Jr. cannot show that any loss to
8 RDI was proximately caused by any of the remaining Defendants. In Nevada, an essential
9 element for a claim for breach of fiduciary duty is that the beneficiary of the duty suffer damages
10 as a result of the purported breach. *Foster v. Dingwall*, 126 Nev. 56, 69, 227 P.3d 1042, 1051
11 (2010), citing *Stalk v. Mushkin*, 125 Nev. 21, 28, 199 P.3d 838, 843 (2009) ("fiduciary duty
12 claim seeks damages for injuries that result from the tortious conduct of one who owes a duty to
13 another by virtue of the fiduciary relationship"); see also, *Fin. Am. Group, LLC v. CH Montrose,*
14 *LLC*, 127 Nev. 1133, 373 P.3d 913 (2011) (finding that causation is a required element for
15 several causes of actions, including breach of fiduciary duty); see also Principles of Corp.
16 Governance § 7.18 (1994); Restatement (Second) of Torts, § 431. Here, because a majority of
17 disinterested directors voted in favor of the board actions cited by Cotter, Jr., the votes of the
18 remaining Defendants were actually irrelevant to the passage of the actions. Accordingly,
19 Cotter, Jr. cannot show that any action by the Remaining Defendants was the cause of any
20 purported injury to RDI.

21 **E. Cotter, Jr. Cannot Prevail on A Claim of Aiding and Abetting a Breach of**
22 **Fiduciary Duty, as He Cannot Prevail on Any Claim for Breach against any**
23 **Defendant.**

24 Cotter, Jr. is unable to satisfy the elements for a claim of aiding and abetting a breach of
25 fiduciary duty against Ellen or Margaret Cotter, as he cannot establish that any other Defendant
26 is liable for a breach of fiduciary duty. In order to prevail on a claim for aiding and abetting a
27 breach of fiduciary duty, Cotter, Jr. would have to show that (1) a fiduciary relationship exists,
28 (2) the fiduciary breached the fiduciary relationship, (3) the third party knowingly participated in
the breach, and (4) the breach of the fiduciary relationship resulted in damages. *In re Amerco*
Derivative Litig., 127 Nev. 196, 225, 252 P.3d 681, 702 (2011). As shown above, Cotter, Jr.

1 cannot prevail on a claim of breach of fiduciary duty against any director. Accordingly, he
2 cannot prevail on a claim for aiding and abetting such a fiduciary breach.

3 **CONCLUSION**

4 As shown above, this Court's determination that a majority of RDI's directors were
5 independent with respect to a majority of the decisions challenged by Cotter, Jr., coupled with
6 the subsequent ratification of the remaining decisions challenged by Cotter, Jr., results in the
7 negation of both Cotter, Jr.'s standing, and his substantive claims. Accordingly, there is unlikely
8 to be any significant delay in the grant of a final judgment in this matter. Granting the motion
9 for Rule 54(b) certification would result in piecemeal appellate review, which would be a waste
10 of judicial resources.

11 For this reason, as well as those set forth in the Opposition presented by the Individual
12 Director Defendants, the Motion for Rule 454(b) certification and for a stay should be denied.

13 DATED this 3rd day of January, 2018

14 GREENBERG TRAURIG, LLP

15
16 By: /s/ Mark E. Ferrario

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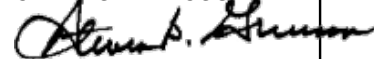
CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing ***RDI's Joinder to the Individual Defendants' Opposition to Plaintiff's Motion for Rule 54(b) Certification and Stay*** 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 January, 2018.

/s/ Andrea Lee Rosehill

An employee of GREENBERG TRAURIG, LLP



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17 **DISTRICT COURT**
18 **CLARK COUNTY, NEVADA**

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

22 Plaintiff,

23 v.

24 MARGARET COTTER, et al,

25 Defendants.

26 In the Matter of the Estate of

27 JAMES J. COTTER,

28 Deceased.

JAMES J. COTTER, JR.,

Plaintiff,

v.

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

Defendants.

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

Coordinated with:

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

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

**ERRATA TO READING
INTERNATIONAL, INC.'S
JOINDER TO THE INDIVIDUAL
DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR RULE
54(B) CERTIFICATION AND STAY**

HEARING
DATE: January 4, 2018
TIME: 8:30 A.M.

GREENBERG TRAUIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
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1 Nominal Defendant Reading International, Inc. (“**RDI**”), a Nevada corporation, by and
2 through undersigned counsel of record, respectfully submits the following errata to RDI’s Joinder
3 to the Individual Defendants’ Opposition to Plaintiff’s Motion for Rule 54(b) Certification and
4 Stay (“**Joinder**”). The Joinder, submitted for filing on January 3, 2018, inadvertently omitted
5 Exhibit 1 referenced therein. Attached to this Errata is Exhibit 1 to the Joinder.

6 DATED this 3rd day of January, 2018

7 GREENBERG TRAURIG, LLP

8
9 By: /s/ Mark E. Ferrario

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing *Errata to RDI's Joinder to the Individual Defendants' Opposition to Plaintiff's Motion for Rule 54(b) Certification and Stay* 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 January, 2018.

/s/ Andrea Lee Rosehill

An employee of GREENBERG TRAURIG, LLP

Reading International, Inc.

Minutes of the Board of Directors Meeting

December 29, 2017

A duly noticed and called special telephonic meeting of the Board of Directors (“Board”) of Reading International, Inc. (the “Company”), was held on December 29, 2017. Participating by telephone conference were Chair, Chief Executive Officer and President Ellen Cotter; Vice-Chair and Executive Vice President-Real Estate Management and Development – NYC, Margaret Cotter, and Directors Guy Adams, Judy Coddling, William Gould, Edward L. Kane, Douglas McEachern, Michael Wrotniak and James Cotter, Jr.

Participating at the invitation of the Chair were S. Craig Tompkins, Esq., General Counsel, who served as recording secretary for the meeting, and Michael J. Bonner, Esq., and Mark E. Ferrario, Esq., of Greenberg Traurig LLP, outside legal counsel to the company.

The notice of meeting and materials provided to each member of the Board (“Board Materials”) are attached to these minutes as Exhibit A.

Call to Order

Chair Cotter, having taken a roll-call vote and verified that all of the participants could hear one another, called the meeting to order at approximately 9:35 a.m. (Pacific Time). Chair Cotter thanked the directors for accommodating the request for the special meeting. Chair Cotter reminded the directors that the Board’s proceedings were confidential, and that the information shared should not be disclosed or traded upon. Chair Cotter next verified with the participants that the meeting was not being recorded by any of the participants and that there were no participants other than the individuals identified above participating on the call. Chair Cotter also confirmed with the participants that no additional participants would be added to the meeting without being introduced to the meeting.

2017 Cash Compensation Expense – U.S. Based Personnel (including Ellen Cotter and Margaret Cotter)

Chair Cotter gave a brief overview and directed the Board’s attention to the Board Materials, including the report prepared by management for the Compensation and Stock Options Committee (the “Compensation Committee”) and considered by the Compensation Committee at its meeting on December 28, 2017. Chair Cotter reported that the Compensation Committee had, following such consideration and discussion, during which various questions were asked of management, approved a bonus accrual in the amount of \$1.1 million, as set forth in the resolution adopted by the Compensation Committee that day and provided to the Board. The action is expected to save more than \$135,000 in taxes. Compensation Committee Chair Ed Kane verified the Compensation Committee’s approval, and recommended to the full Board that the action by the Compensation Committee be ratified by the Board. Chair Kane expressed his thanks for the work done by the Reading staff and by Chair Cotter and other executives in putting together detailed data and information to prepare the Compensation Committee, especially in light of the fact that the Compensation Committee’s approval was instigated by the

new tax reform bill just recently signed on December 22, 2017. Chair Cotter echoed Mr. Kane's comments regarding the work done by the Reading staff. It was further noted that Ellen Cotter and Margaret Cotter are likely recipients of the bonuses to be paid in 2018 pursuant to the accrual, but that the accrual was a general accrual and did not constitute an award to any given executive or employee.

Director James Cotter, Jr. objected on the basis that the Board's materials were only received one evening before the Board Meeting. Mr. Cotter stated that the volume of material sent made it unreasonable for him to adequately prepare for today's meeting. Chair Cotter responded that while she apologized for the timing, the tax reform bill had only been signed into law on December 22, 2017, which necessitated extensive work to prepare materials for the Compensation Committee on December 27, 2017. She noted that the Compensation Committee met in the late afternoon of December 28, 2017, and she believed that distribution of the materials prior to affording the Compensation Committee to review and comment upon such materials and to take action would not have been appropriate. No other director joined in Mr. Cotter's complaint.

Compensation Committee member Michael Wrotniak stated that the bonus accrual approved by the Compensation Committee was, in his view, on the conservative side. Director Codding also stated her similar view that the accrual was on the conservative side, and – as she understood it – was not intended to put a cap on the bonuses ultimately determined and paid in 2018.

After further discussion and upon motion made by Mr. Kane and seconded by Mr. Adams, the following resolution was adopted on a vote of eight directors in favor, one Director (Director James Cotter, Jr.) against (with Directors Ellen Cotter and Margaret Cotter voting in favor of the motion, based on the understanding that the setting of the accrual did not establish any entitlement on their part to receive any particular bonus payment):

WHEREAS, the Board having reviewed the Compensation's Committee approval of bonus accruals for US Personnel for 2017 Cash Compensation and the form of its resolution approved on December 28, 2017 ("Compensation Committee Resolution") and noting that such compensation may include bonus compensation to Ellen Cotter and Margaret Cotter in 2018, but did not constitute an award of any bonus amount to any executive of employee at this time;

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Compensation Committee Resolution is approved and ratified..

2017 Cash Compensation for Members of Special Independent Committee

Chair Kane reported that the Compensation Committee recommended at its December 28, 2017 meeting compensation for the members of the Special Independent Committee. Chair Kane asked Mr. Bonner to summarize the information considered. Mr. Bonner advised the Board that the Special Independent Committee was formed in early August 2017, had already held eight meetings, (in person and by telephone); that Chair Bill Gould had

met with certain potential advisors; and that certain of the meetings required the review of extensive materials by committee members.

Chair Kane reported that, to save consultant expenses, he had determined not to engage a compensation consultant for Special Independent Committee compensation, but had instead relied on information he had obtained, information obtained by Mr. Bonner from Willis Towers Watson, consideration of current fees paid to directors serving on other Board Committees, and information derived from the "Reading International, Inc. Director Pay Assessment, dated January 27, 2016" which contained compensation data for certain special committees. Mr. Bonner advised that Willis Towers Watson had confirmed informally that the proposed fees were within the range of reasonable compensation for such committee members. Chair Cotter explained that the compensation was only with respect to services rendered in 2017, and was not intended to set a precedent for future compensation to be paid to the Special Independent Committee, as the Special Independent Committee was a limited purpose committee and not a standing committee of the Board.

The Compensation Committee's recommendation was discussed, and, upon motion made by Mr. Kane and seconded by Mr. Wrotniak (and abstentions from Mr. Gould, Mr. McEachern and Ms. Coddington), the following resolution was adopted on a vote of five yes, and one no (Mr. Cotter, Jr. voting no):

BE IT HEREBY RESOLVED that recommendation of the Compensation Committee is accepted to pay 2017 compensation to the Special Committee as follows: William Gould, Chairman: \$20,000; Douglas McEachern and Judy Coddington, members: \$15,000.

Request by a Majority of the Directors (Judy Coddington, William Gould, Edward Kane, Douglas McEachern and Michael Wrotniak) for the Calling for a Special Meeting Pursuant to Reading International, Inc. Bylaws Section Article 2, Section 7

Chair Cotter turned the meeting over to Lead Independent Director William Gould. Mr. Gould explained that while the five directors who had made the request for the special meeting did not include Guy Adams, the five named directors continued to be of the belief that Director Adams is in fact an independent and disinterested director, and by not including him in their deliberations or their request were neither conceding nor waiving any argument that Director Adams is not, in fact, an independent director and a "disinterested director" for any purpose related to the matters being considered today for ratification. Mr. Gould asked Mr. Bonner and Mr. Ferrario to make introductory comments. The five named directors expressed their high level of respect for Director Adams, and their confidence that he has acted in the best interests of the Company and not out of any personal self interest.

Mr. Bonner summarized the request for a special meeting at the behest of the five named Directors (Coddington, Gould, Kane, McEachern and Wrotniak) pursuant to a letter dated December 27, 2017 delivered to the Chair, pursuant to the Company's Bylaws, Article 2, Section 7. Mr. Bonner also stated that the five requesting directors were the directors found to have been independent and disinterested and who were each dismissed as defendants by the December 11, 2017 ruling of the Nevada District Court in the derivative litigation.

Mr. Bonner stated that the agenda items to be considered were brought under Nevada Revised Statute Section 78.140, a copy of which is attached as Exhibit B to these minutes. Mr. Bonner quoted from section 2(a) of NRS 78.140 for the record of the meeting.

Mr. Bonner briefed the Board of their fiduciary duties under Nevada law, including the duty of due care and the duty of loyalty.

In order to put the proposed ratification into perspective, Mr. Ferrario summarized the nature of the allegations by the plaintiff in the derivative action (specifically reading into the record the allegations relating to lack of independence of Director Adams) and referred the Directors to the Board Materials.

- (a) Ratification of actions taken by Board members relating to the termination of James J. Cotter, Jr. as President and CEO, as such actions are outlined in the minutes of the Board Meetings held on May 21, 2015; May 29, 2015; and June 12, 2015.

Mr. Gould generally summarized the first issue for consideration, being ratification of the actions taken by Board members related to the termination of James J. Cotter, Jr. as President and CEO, as such actions are outlined in the minutes of the Board meetings held on May 21, 2015, May 29, 2015 and June 12, 2015. Mr. Gould stated that all members of the Board had been provided with copies of the referenced meeting minutes and other materials in the Board Materials. In addition, Mr. Gould stated that all directors, those who were members of the Board at the time of the termination of Mr. Cotter, and the two new directors who joined the Board after such termination (directors Coddington and Wrotniak) through their involvement in the litigation, Board meetings and otherwise been privy to detailed information regarding the termination and the Board's reasons therefor. Mr. Gould inquired whether any Directors had any questions or comments based on the Board Materials or other information they had.

Director Judy Coddington stated that she had thoroughly reviewed the Board Materials and had extensive knowledge about the Board's reasons for the termination of Mr. Cotter, Jr. She further stated that she had had ample opportunity to observe Mr. Cotter Jr.'s behavior and demeanor in Board meetings since she had joined the Board. Ms. Coddington stated that in her view, Mr. Cotter, Jr. did not possess the knowledge, experience, ability, temperament or demeanor to be the chief executive officer of the Company, and believed that the actions taken by the Board to terminate him as CEO and President were appropriate.

Mr. Wrotniak also expressed his views that he had understood and appreciated the information provided in the Board Materials and concurred with Ms. Coddington's comments. He stated that in his view, the Board had attempted to work with Mr. Cotter, Jr., but ultimately, in his view, had no alternative but to take the action that it did – termination of Mr. Cotter, Jr., as CEO and President.

There was a brief discussion of the Board Materials, including the fact that the "Highpoint Associates contract and invoice" had been included in the materials. Mr. Ferrario stated that this was to assist the Board in understanding information that had not been disclosed by Mr. Cotter, Jr. at the time of the May and June 2015 Board meetings, but which were subsequently learned in litigation discovery and that Board members might consider to be

relevant when considering whether or not to ratify the Board's decision to terminate Mr. Cotter, Jr., as CEO and President.

Mr. Gould inquired whether there were any other questions. Mr. McEachern made a motion, seconded by Ms. Coddling, as follows:

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

Mr. Gould asked whether there was further discussion and invited Director Cotter, Jr. to provide his thoughts to the Board. Mr. Cotter, Jr. thanked Mr. Gould and expressed his view that the ratification items were solely designed for a litigation purpose and, accordingly, that there was no need for him to comment, although he objected fully and completely to any of the statements made in connection with the ratification vote and the substance thereunder. He stated that he felt there was no purpose to be served in going into an extensive discussion given what he believed to be the true purpose of today's ratification actions: to support the position of the Company and the Board in the ongoing Derivative Litigation.

The resolution was adopted by the following vote: In favor: Directors Coddling, Gould, Kane, McEachern and Wrotniak; "Objecting"/no: James Cotter, Jr. ; Abstaining: Directors Ellen Cotter, Margaret Cotter and Guy Adams.

- (b) Ratification of the decision of the Compensation Committee, as outlined in the minutes of September 21, 2015 meeting of the Compensation Committee, to permit the Estate of James J. Cotter, Sr. to use Class A non-voting stock as the means of payment for the exercise of an option to purchase 100,000 shares of Class B voting stock of RDI

Mr. Gould introduced this agenda item and referred to the Board Materials and inquired whether there were any questions. Mr. Bonner briefly summarized certain of the information regarding the matter considered by the Compensation Committee in 2015, at which time the Compensation Committee had authorized the acceptance of Class A non-voting stock owned by the James J. Cotter, Sr. Estate to pay for exercise of an option to purchase 100,000 shares of the Company's Class B voting stock owned by the Estate. Mr. Bonner referred to the extensive record made by the Compensation Committee in 2015, and the fact that the acceptance of stock was within the discretion of the Compensation Committee as Administrators of the 1999 Stock Option Plan under which the stock option was granted.

Mr. Gould inquired whether there were any questions. Board members generally expressed their awareness of the information as well as their review of the Board Materials.

Mr. Cotter, Jr. once again expressed his continuing objection to any vote stating that he did not feel it necessary to go into any detail for his objections given his prior comments that these actions were being taken merely as a litigation device. Mr. Cotter stated that he did not agree with some of the "inaccurate" and "incorrect" statements made. To this, Director McEachern interjected that he believed that "no inaccurate or incorrect statements had been made." Director McEachern also noted his view that the allegations made by Mr. Cotter in this

regard had caused a waste of Company resources, as it was perfectly clear that neither the Cotter Estate nor Ellen and Margaret Cotter had gained any advantage from the transaction, given that the Cotter Estate could have sold Class A shares in the market and used the cash to exercise the option in question. He stated that he saw no harm to the Company nor any advantage to the Cotter Estate, Ellen Cotter or Margaret Cotter resulting from the action of the Compensation Committee of which Mr. Cotter, Jr., complained. Mr. Cotter responded that there was no sense in engaging in a debate, but that he did not agree with accuracy of a number of the statements made.

Upon motion duly made by Director McEachern and seconded by Director Wrotniak, the following resolution was adopted:

BE IT HEREBY RESOLVED that the Board ratifies the decision of the Compensation Committee of the Company, as outlined in the minutes of its September 21, 2015 meeting, to permit the Estate of James J. Cotter, Sr. to use Class A non-voting stock as the means of payment for the exercise of an option to purchase 100,000 shares of Class B voting stock of the Company.

The motion was approved as follows: In favor: Directors Coddington, Gould, Kane, McEachern and Wrotniak; "Objecting"/no: James Cotter, Jr.; Abstaining: Ellen Cotter, Margaret Cotter and Guy Adams.

Next, it was noted without objection that the foregoing approved resolutions included authorization to take such other actions as may be necessary to accomplish the matters approved therein.

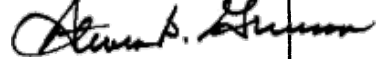
Lead Independent Director Gould returned the chair to Chair Cotter. Directors Judy Coddington and Douglas McEachern each echoed comments made earlier by Director Kane and thanked Ellen Cotter in particular and the entire Reading staff who had sacrificed their personal time, vacation/ Christmas time to prepare the materials necessary for consideration of the compensation matters considered at the meeting. Chair Cotter thanked the Board members and joined in the comments thanking the staff.

Adjournment

Chair Cotter thanked all for participating in today's meeting. There was no further business, and the meeting was adjourned at approximately 10:25 a.m., Pacific Time.

Ellen M. Cotter, Chairman

S. Craig Tompkins, Recording Secretary



1 **MDSM**
2 MARK E. FERRARIO, ESQ.
3 (NV Bar No. 1625)
4 KARA B. HENDRICKS, ESQ.
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18 *Counsel for Reading International, Inc.*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

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

16 Plaintiff,

17 v.

18 MARGARET COTTER, et al,

19 Defendants.

20 In the Matter of the Estate of

21 JAMES J. COTTER,

22 Deceased.

23 JAMES J. COTTER, JR.,

24 Plaintiff,

25 v.

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

Defendants.

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

Coordinated with:

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

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

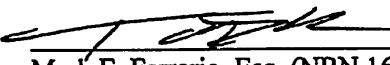
**MOTION TO DISMISS
FOR FAILURE TO SHOW
DEMAND FUTILITY**

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

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

6 DATED this 3rd day of January, 2018.

7 GREENBERG TRAURIG, LLP

8
9 
10 Mark E. Ferrario, Esq. (NBN 1625)
11 Kara B. Hendricks, Esq. (NBN 7743)
12 Tami D. Cowden, Esq. (NBN 8994)
13 3773 Howard Hughes Parkway, Suite 400N
14 Las Vegas, Nevada 89169
15 Counsel for Reading International, Inc.

DECLARATION OF TAMI D. COWDEN, ESQ.

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

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

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

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

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

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

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

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

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

///

///

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

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


Tami D. Cowden, Esq.

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ORDER SHORTENING TIME

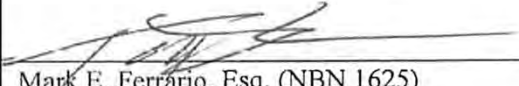
GOOD CAUSE APPEARING, it is hereby ordered that the foregoing *Reading International, Inc.'s Motion to Dismiss for Failure to Show Demand Futility* shall be heard on shortened time on the 8th day of January, 2018, at the hour of 8:30 A.m.in Department XI.

DATED this 3rd day of January, 2018.


DISTRICT COURT JUDGE

Respectfully submitted by:

GREENBERG TRAURIG, LLP


Mark E. Ferrario, Esq. (NBN 1625)
Kara B. Hendricks, Esq. (NBN 7743)
Tami D. Cowden, Esq. (NBN 8994)
3773 Howard Hughes Parkway, Suite 400N
Las Vegas, Nevada 89169
Counsel for Reading International, Inc.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

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

7 **FACTS RELEVANT TO THIS MOTION TO DISMISS**

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

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

26 ///

27
28 ¹ Defendants William Gould and Timothy Storey filed such motion separately from the other defendants.

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

8 **LEGAL ARGUMENT**

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

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

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

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

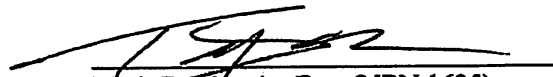
1 the RDI Directors included William Gould, Edward Kane, Douglas McEachern, and Timothy
2 Storey, or if the Court considers the time of the filings of the First or Second Amended
3 Complaints, wherein the majority of RDI's Board was comprised of Judy Coddington, William
4 Gould, Edward Kane, Douglas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

7 CONCLUSION

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

13 DATED this 3rd day of January, 2018.

14 GREENBERG TRAURIG, LLP

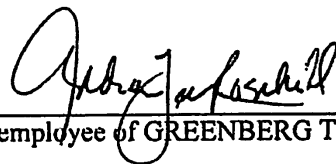
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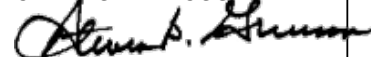
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21 Counsel for Reading International, Inc.
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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing *Motion to Dismiss for Failure to Show Demand Futility* to be filed and served via the Court's Odyssey eFileNV Electronic Service 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 January, 2018.


An employee of GREENBERG TRAURIG, LLP



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Attorneys for Plaintiff

James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

And

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

) Case No. A-15-719860-B

) Dept. No. XI

)

) Coordinated with:

)

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

) Dept. No. XI

)

) Jointly Administered

)

) **REPLY IN SUPPORT OF
MOTION FOR RULE 54(b)
CERTIFICATION AND STAY**

)

) **DATE: 1/4/2018**

) **TIME: 8:30 a.m.**

)

)

)

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1 **I. INTRODUCTION**

2 By his "Motion for Rule 54(b) Certification and Stay..." (the
3 "Motion"), plaintiff James J Cotter, Jr. ("Plaintiff") sought a rule 54 (b)
4 certification of the Court's rulings that included dismissing five director
5 defendants from the case, and sought a stay of the case before the Court
6 pending disposition by the Nevada Supreme Court of issues arising from
7 the Court's rulings dismissing the five director defendants.

8 The three remaining individual defendants filed an opposition
9 (the "Opposition") which took no position on the certification request and
10 argued against the request for a stay, making two principal arguments. The
11 first was that, notwithstanding their position that the Court's rulings "made
12 Plaintiff's ... case [against them] more difficult legally," requiring Plaintiff to
13 proceed to trial against them does not cause Plaintiff serious injury or defeat
14 an object of Plaintiff's appeal. The second is that the remaining defendants
15 are entitled to defend the case against them at trial by using newly created
16 evidence, namely, the December 29, 2017 "ratification" by the five dismissed
17 director defendants of the only issues the three contend remain, namely,
18 Plaintiff's termination and the authorization of the 100,000 share option,
19 because (they contend) that "ratification" was merely an ordinary course of
20 business action by the (other five) RDI directors. In truth, the purported
21 ratification is nothing less than an effort to change the evidence and burden
22 of proof at trial and, ultimately, the results of the trial against the remaining
23 three defendants. This too creates obvious prejudice of Plaintiff and, in the
24 process, undermines at least one object of Plaintiff's appeal. In taking these
25 positions, the Opposition shows that the Motion should be granted, both as
26 to the certification sought and as to the stay sought, for the reasons
27 described below.
28

1 **A. An Object of Plaintiff's Appeal Will be Defeated, and Plaintiff**
2 **Will Suffer Serious Prejudice and Harm, if a Stay is Denied.**

3 As Plaintiff demonstrated in the Motion, because of (i) what
4 defendants maintain are the legal consequences of the Court's dismissal of
5 the five director defendants on the case against the remaining three
6 defendants and, separately, (ii) actions the five dismissed defendants took
7 on December 29 to attempt to ratify conduct of the three remaining
8 defendants which indisputably remains a subject of the trial, one of the
9 objects of the relief Plaintiff seeks and will seek from the Nevada Supreme
10 Court, to avert changes in the applicable legal standards and possibly the
11 evidence that may be fatal to his case against the three defendants, will be
12 defeated if a stay is denied. As Plaintiff also demonstrated, he will be
13 severely prejudiced if a stay is denied.

14 For example, Plaintiff in the Motion first argued as follows:

15 "First, as the remaining defendants have made clear,
16 they will take the position that dismissal of this case
17 as against the five individual director defendants
18 severely limits the matters on which Plaintiff can
19 base breach of fiduciary duty claims against the
20 remaining defendants. In that regard, defendants
21 have indicated that they will take the position that,
22 with respect to any matter as to which a majority of
the directors making or approving a decision have
been dismissed by the Court, those matters alone
may not serve as bases for breach of fiduciary duty
claims against the remaining defendants."

23 (Motion at 7:7–15.)

24 In the Motion. Plaintiff also argued as follows:

25 Second, as the remaining director defendants have
26 previewed, they will take the position that dismissal
27 of the case as against the five dismissed director
28 defendants affects which party bears the burden of
proof. With respect to matters as to which the Court
has determined that the remaining defendants lacked
disinterestedness, independence or both and

1 therefore cannot invoke the statutory presumptions
2 typically referred to as the business judgment rule,
3 the remaining defendants will argue that the
4 business judgment rule nevertheless applies because
5 a majority of the directors who made or approved
6 the challenged decision were found by the Court not
7 to lack disinterestedness or independence and were
8 dismissed.

9 (Motion at 7:27–8:7.)

10 In their Opposition, the remaining three defendants do not
11 dispute the foregoing. On the contrary, they tacitly admit it, stating:

12 "[T]he fact that the Court's independence decision
13 made Plaintiff's ... case more difficult legally for him
14 is not the kind of irreparable or undue injury that
15 supports delay."

16 (Opposition at 4:1–2.)

17 The Opposition's conclusion of no irreparable or undue injury
18 does not follow from the admission of their position regarding the legal and
19 practical consequence of the Court's rulings. Instead, the erroneous
20 conclusion of no irreparable or undue injury is predicated on the erroneous
21 premise that the sole object of Plaintiff's writ and appeal is limited to
22 "seek[ing] review of another court as to whether [the dismissed five] are
23 disinterested and independent as a matter of law..." (Opposition at 2:14–17)
24 and that "Plaintiff's substantive objections to proceeding to trial [therefore]
25 are no different from any plaintiff who has lost a partial summary judgment
26 motion" (Opposition at 3:10–13). The individual defendants are mistaken,
27 as the Motion shows.

28 The legal and practical consequences of the relief Plaintiff seeks
and will seek from the Nevada Supreme Court are not limited to the
dismissed five. It also concerns the remaining three defendants, as the
Motion demonstrates and as the Opposition tacitly acknowledges. Simply
put, the statement in the Opposition "that the Court's independence decision

1 makes Plaintiff's ... case more difficult legally" is a backhanded way of
2 admitting the individual defendants' position that the Court's ruling
3 dismissing the five director defendants eliminates as to the remaining three
4 defendants every issue in the case (except for the two with respect to which
5 those defendants on December 29 took actions to change the evidence and
6 legal standard at the trial of the remaining three defendants, which is
7 discussed below). As the Opposition acknowledges (Opposition at 2:20–22),
8 that is exactly what Nevada courts hold amounts to defeating the object of
9 an appeal.

10 Separately, Plaintiff in the Motion also argued as follows:

11 As to matters with respect to which they cannot
12 show that a majority of the directors who made or
13 approved the challenged decision were dismissed by
14 the Court, the remaining defendants clearly intend to
15 rely on the forthcoming ratification of those actions
16 by the dismissed five director defendants. One
17 example that illustrates this point is the 3 to 2
18 termination vote.

19 (Motion at 8:8–13.)

20 Not only does the Opposition not dispute the foregoing, it
21 affirmatively and boldly embraces it and previews the argument the three
22 remaining defendants intend to make at trial, stating as follows:

23 "[] Plaintiff complains about the RDI Board's
24 votes [meaning the vote of the five dismissed
25 directors] on December 29, 2017 to ratify both
26 Plaintiff's termination and the exercise of a share
27 purchase option held by the Estate of James J Cotter,
28 Sr.... The legal effect of the Board's ratification
decision, which is now accomplished, is clear under
NRS 78.140 and the Nevada Supreme Court's
decision in *Shoen v. SAC Holding Corp.*, 122 Nev. 621,
636, 137 P.3d 1171, 1181 (2006)."

(Opposition at 3:19–28.)

1 The foregoing is nothing less than an admission that the three
2 remaining defendants, with the intervening assistance of the five dismissed
3 defendants, intend to take advantage of the Court's rulings which are and
4 will be the subject of review by the Nevada Supreme Court to alter the
5 evidence proffered, to change the burden of proof applied and, ultimately,
6 to change the results of the trial against the remaining three defendants. In
7 taking that position, expressly in the Opposition, the three remaining
8 defendants have made the case that proceeding with trial against them prior
9 to resolution of the issues raised by the Court's rulings dismissing the five
10 director defendants necessarily will require rulings by the Court at and/or
11 before trial that will serve as additional bases for appeal by one side or both.
12 Moreover, whether the recently created evidence should be admitted, and
13 what it shows, are issues as to which Plaintiff will be required to take
14 different positions than if the matters to be resolved by the Nevada Supreme
15 Court were resolved first. As the foregoing illustrates, proceeding with trial
16 under the circumstances puts the parties, Plaintiff in particular and the
17 Court in some respects as well, in the position of "shooting at a moving
18 target" and, in the process, severely prejudicing Plaintiff and undermining
19 one of the objects of Plaintiff's writ and appeal.

20 **II. CONCLUSION**

21 For the foregoing reasons, Plaintiff respectfully submits that the
22 Motion should be granted in all respects.

23 MORRIS LAW GROUP

24
25 By: /s/ AKKE LEVIN
26 Steve Morris, Bar No. 1543
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Attorneys for Plaintiff
James J. Cotter, Jr.

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **REPLY IN SUPPORT OF MOTION FOR RULE 54(b) CERTIFICATION AND STAY**, to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 3rd day of January, 2018.

By: /s/ PATRICIA FERRUGIA

Steven D. Grierson

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ORDER

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Attorneys for Plaintiff
James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

And

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

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

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

) Dept. No. XI

) Jointly Administered

) **ORDER GRANTING PLAINTIFF'S**

) **MOTION FOR RULE 54(b)**

) **CERTIFICATION AND STAY**

) **Date of Hearing: January 4, 2017**

) **Time of Hearing: 8:30 a.m.**

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

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

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

2 [] stayed;

3 ~~[X]~~ not stayed pending Plaintiff's appeal.

4
5 DATED this ____ day of January, 2018.

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

11 Submitted by:

12 MORRIS LAW GROUP

13
14 By: /s/ Akke Levin

15 Steve Morris, Bar No. 1543

16 Akke Levin, Bar No. 9102

17 411 E. Bonneville Ave., Ste. 360

18 Las Vegas, Nevada 89101

19 Mark G. Krum, Bar No. 10913

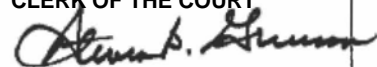
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24 James J. Cotter, Jr.



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18 Attorneys for Plaintiff

19 James J. Cotter, Jr.

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

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

25 Plaintiff,

26 v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

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

) Dept. No. XI

) Jointly Administered

) **NOTICE OF ENTRY OF ORDER**

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

A copy of the Order is attached as Exhibit 1.

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CERTIFICATE OF SERVICE

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

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Attorneys for Nominal Defendant
Reading International, Inc.

DATED this 4th day of January, 2018.

By: 

EXHIBIT 1

EXHIBIT 1

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ORDR

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Attorneys for Plaintiff
James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

And

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

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

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

) Dept. No. XI

) Jointly Administered

) **ORDER GRANTING PLAINTIFF'S**

) **MOTION FOR RULE 54(b)**

) **CERTIFICATION AND STAY**

) **Date of Hearing: January 4, 2017**

) **Time of Hearing: 8:30 a.m.**

Electronically Filed
1/4/2018 10:35 AM
Steven D. Grierson
CLERK OF THE COURT



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

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

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

2 ☐ stayed;

3 ☒ not stayed pending Plaintiff's appeal.

4
5 DATED this ____ day of January, 2018.

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

11 Submitted by:

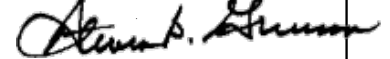
12 MORRIS LAW GROUP

13
14 By: /s/ Akke Levin

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24 Attorneys for Plaintiff
25 James J. Cotter, Jr.
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18 Attorneys for Plaintiff

19 James J. Cotter, Jr.

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

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

25 Plaintiff,

26 v.

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

Defendants.

And

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

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

) Dept. No. XI

) Jointly Administered

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

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

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

MORRIS LAW GROUP

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

11 The Court, having considered the papers filed in support of and
12 in opposition to the Motion for Reconsideration and Motion to Stay, having
13 heard oral argument of the parties, having considered (sealed) Court Exhibit
14 1, and for good cause appearing:

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

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

23 DATED this 4 day of Jan, 2018.

24
25 
26 THE HONORABLE ELIZABETH
27 GONZALEZ,
28 DISTRICT COURT JUDGE

1 Submitted by:

2 MORRIS LAW GROUP

3

4 By: /s/ Akke Levin

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15 Attorneys for Plaintiff

16 James J. Cotter, Jr.

17

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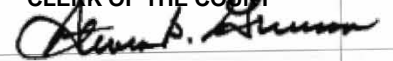
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Attorneys for Defendants Margaret Cotter,
Ellen Cotter, and Guy Adams

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

MARGARET COTTER, *et al.*,
Defendants.

AND

READING INTERNATIONAL, INC., a Nevada
corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

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

**APPLICATION FOR ORDER
SHORTENING TIME**

Judge: Hon. Elizabeth Gonzalez
Date of Hearing:
Time of Hearing:

01-03-18P05:00 RC


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

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

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

10
11 Dated: January 3, 2018

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

13
14 By: /s/ H. Stan Johnson 

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

ORDER SHORTENING TIME

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

Dated this _____ day of January, 2018


DISTRICT COURT JUDGE

CR

PREPARED AND SUBMITTED BY:

COHEN|JOHNSON|PARKER|EDWARDS

By: 
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DECLARATION OF COUNSEL NOAH HELPERN

I. Noah Helpern, state and declare as follows:

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

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

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

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

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

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

1 Kane, Coddington, and Wrotniak) reconsidered and ratified the Board's actions relating to
2 Plaintiff's termination and the stock option exercise. The Remaining Defendant Directors Guy
3 Adams, Ellen Cotter, and Margaret Cotter did not vote on the resolutions adopted by the Board.

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

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

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

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

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

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

26
27 /s/ Noah Helpern
Noah Helpern



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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

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

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

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

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

11 **FACTUAL BACKGROUND**

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

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

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

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

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

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

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

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

2 *Pogo.com, Inc.*, No. Civ. A. 18532-NC, 2002 WL 1358760, at *2 (Del. Ch. June 14, 2002)
3 (“Only upon a showing by a challenger that raises a reasonable doubt as to the independence
4 and/or disinterestedness of a majority of a company’s directors who approved the challenged
5 transaction will the presumption of director fealty which lies at the core of the business judgment
6 rule be rebutted.”) (citation omitted).

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

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

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

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

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

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

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

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

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

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

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

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

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

25 A motion was made and seconded, as follows:

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

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

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

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

13 ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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


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

10 CONCLUSION

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

13 Dated: January 3, 2018

14 **COHENJOHNSONPARKEREDWARDS**

15
16 By: /s/ H. Stan Johnson 

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

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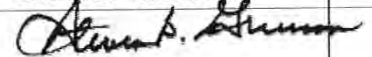
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Cotter, and Guy Adams*

EXHIBIT A

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

23 Plaintiff,

24 v.

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

Defendants.

and

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

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

) Dept. No. XI

) Jointly Administered

) **NOTICE OF ENTRY OF ORDER**

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PLEASE TAKE NOTICE that an Order Regarding Defendants'

Motions for Partial Summary Judgment and Plaintiff's and Defendants'

Motions *in Limine* was entered by this Honorable Court on the 28th day of

December, 2017. A copy of the Order is attached hereto as Exhibit A.

MORRIS LAW GROUP

By: /s/ Akke Levin

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CERTIFICATE OF SERVICE

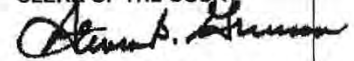
Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served on all interested parties as registered with the Court's E-Filing/E-Service System: **NOTICE OF ENTRY OF ORDER**. The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

DATED this 29th day of December, 2017.

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

EXHIBIT A

JA6215



ORDER
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Judy Coddington, and Michael Wrotniak

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

MARGARET COTTER, *et al.*,
Defendants.

AND

READING INTERNATIONAL, INC., a Nevada
corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

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

Judge: Hon. Elizabeth Gonzalez

Date of Hearing: December 11, 2017

Time of Hearing: 8:30 a.m.

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

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

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

- Defendant Gould's Motion for Summary Judgment;
- Individual Defendants' Renewed Motion *in Limine* to Exclude Expert Testimony of Myron Steele Based on Supplemental Authority;
- Individual Defendants' Motion *in Limine* to Exclude Evidence That Is More Prejudicial Than Probative;
- Defendant Gould's Motion *in Limine* to Exclude Irrelevant Speculative Evidence;
- RDI's Motion to Redact Opposition to Plaintiff James J. Cotter, Jr.'s Motion *in Limine* No. 1 re: Advice of Counsel and File Exhibit "E" Under Seal;
- Plaintiff's Motion *in Limine* No. 1 re: Advice of Counsel;
- Plaintiff's Motion *in Limine* No. 2 re: the Submission of Merits-Related Evidence by Nominal Defendant Reading International, Inc.;
- Plaintiff's Motion *in Limine* No. 3 re: After-Acquired Evidence;
- Plaintiff's Motion to Seal Exhibit 2 to Plaintiff James J. Cotter's Opposition to Motion *in Limine* to Exclude Evidence That Is More Prejudicial Than Probative;
- Plaintiff's Motion to Seal Exhibits 3-6, 8-9, 11-2 and to Redact Portions of Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 3 and Gould Summary Judgment Motion;

- Plaintiff's Motion to Seal Exhibits 7-11, and 15-17 to Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 5 and Gould Summary Judgment Motion; and
- Plaintiff's Motion to Seal Exhibits 4 Through 11 to Plaintiff's Supplemental Opposition to Motion for Summary Judgment Nos. 2 and 6 and Gould Summary Judgment Motion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 
22 DISTRICT COURT JUDGE
23
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25
26
27
28

1
2 PREPARED AND SUBMITTED BY:

3 COHEN|JOHNSON|PARKER|EDWARDS
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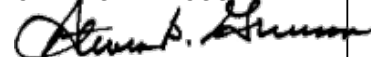
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EXHIBIT B

FILED UNDER SEAL



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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

derivatively on behalf of Reading) Dept. No. XI

International, Inc.,)

) Coordinated with:

Plaintiff,)

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

) Dept. No. XI

MARGARET COTTER, ELLEN)

COTTER, GUY ADAMS,) Jointly Administered

EDWARD KANE, DOUGLAS)

McEACHERN, WILLIAM) **PLAINTIFF JAMES COTTER,**

GOULD, JUDY CODDING,) **JR.'S OPPOSITION TO**

MICHAEL WROTNIAK,) **READING INTERNATIONAL**

) **INC.'S MOTION TO DISMISS**

Defendants.) **FOR FAILURE TO SHOW**

And) **DEMAND FUTILITY**

READING INTERNATIONAL,)

INC., a Nevada corporation,) **HEARING DATE: January 8, 2018**

Nominal Defendant.) **HEARING TIME: 8:30 a.m.**

1 Plaintiff James Cotter, Jr. respectfully submits this opposition to
2 the "Motion to Dismiss for Failure to Show Demand Futility" (the "Motion")
3 filed by nominal defendant Reading International, Inc. ("RDI") on or about
4 January 3, 2018.

5 RDI's Motion argues that the Court's recent ruling that five RDI
6 directors were not interested in certain matters that were the subject of
7 motions for partial summary judgment and the dismissal of those directors
8 from this action "establishes that the making of a demand to file an action
9 against the remaining defendants would not have been futile [at the time it
10 was made]." Motion at 6:2–5. The Motion is predicated on substantially the
11 same legal error that Plaintiff respectfully submits the Court made in
12 dismissing this action as against the five defendant directors and in denying
13 Plaintiff's Motion for Reconsideration, and is deficient on its face as a matter
14 of law.

15 Contrary to what the Motion assumes, the demand futility
16 analysis does not begin and end with interestedness and/or independence.
17 In *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d 1171 (2006), the
18 Nevada Supreme Court adopted the two-prong test, originally established
19 by the Delaware Supreme Court in *Aronson v. Lewis*, 473 A.2d 805, 812 (Del.
20 1984), for assessing whether demand in a derivative action is excused on the
21 ground of futility. If there is a reasonable doubt as to either the
22 disinterestedness or independence of the directors or as to whether the
23 challenged transaction was the product of a valid exercise of business
24 judgment, demand should be excused. *Shoen*, 137 P.3d at 637-38 and n.43.
25 See Plaintiff James J. Cotter Jr.'s *Opposition to Defendants' Motion to Dismiss*
26 *Complaint*, filed on August 27, 2015, at p. 10; Plaintiff James J. Cotter Jr.'s
27 *Opposition to the Motion to Dismiss First Amended Complaint Filed by Margaret*
28 *Cotter, Ellen Cotter, Guy Adams, Edward Kane and Douglas McEachern*, filed on

1 December 7, 2015, at p. 27. The Motion does not raise or argue, much less
2 make a *prima facie* showing, that the second prong of the analysis is not met
3 here.

4 In sum, contrary to the erroneous premise on which the Motion
5 is based, the Court's determination that the five directors were disinterested
6 is not sufficient to warrant dismissal on the grounds of demand futility (or
7 otherwise). Because the Motion is based solely on the Court's determination
8 that the five dismissed directors were disinterested, it should be denied.

9
10 **CONCLUSION**

11 For all the foregoing reasons, as well as the reasons stated in
12 Plaintiff's prior briefs and evidence referenced herein, Plaintiff respectfully
13 submits that the Motion should be denied.

14
15 MORRIS LAW GROUP

16
17 By: /s/ STEVE MORRIS

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28

CERTIFICATE OF SERVICE

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

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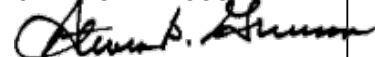
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DATED this 5th day of January, 2018.

By: /s/ PATRICIA FERRUGIA



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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

derivatively on behalf of Reading) Dept. No. XI

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MARGARET COTTER, ELLEN)

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EDWARD KANE, DOUGLAS)

McEACHERN, WILLIAM) **PLAINTIFF JAMES J. COTTER,**

GOULD, JUDY CODDING,) **JR.'S OPPOSITION TO**

MICHAEL WROTNIAK,) **DEFENDANTS' MOTION FOR**

) **JUDGMENT AS A MATTER OF**

Defendants.) **LAW**

And)

READING INTERNATIONAL,) **DATE: JANUARY 8, 2018**

INC., a Nevada corporation,) **TIME: 8:30 a.m.**

Nominal Defendant.)

I. INTRODUCTION

On the eve of trial, more than three weeks after the Court ruled on Defendants' motions for partial summary judgment, and long after the deadline to file dispositive motions passed, Defendants filed their "Motion for Judgment as a Matter of Law ("Motion for JMOL"). Defendants' Motion for JMOL should be denied because it is: (1) a disguised motion for summary judgment that should have been filed 45 days before the start of trial to give Plaintiff a fair opportunity to meaningfully respond; (2) based on new self-serving evidence raising questions as to which Plaintiff is entitled to discovery under Nev. R. Civ. P. 56(f); and (3) improper under Nev. R. Civ. P. 50(a)(2), because it seeks judgment before Plaintiff has presented his case in chief, all while cutting off Plaintiff's right to gather evidence about the ratification to present in his case in chief in the first place.

Alternatively, if the Court is inclined to allow Defendants' ratification evidence, deny Plaintiff's request for Rule 56(f) discovery, and grant the Motion for JMOL after Plaintiff's case in chief, Plaintiff respectfully submits that the Court should dispose of the Motion for JMOL before empanelling a jury and commencing trial to avoid burdening prospective jurors and to avoid wasting the time and resources of the Court, the empanelled jurors, the parties, and their counsel in proceeding to trial on predisposed matters.

II. ARGUMENT

A. The Motion for JMOL is a Belated Motion for Summary Judgment.

Under Rule 50, a party may file a motion for judgment as a matter of law "during a trial by jury" and do so either "at the close of the evidence offered by the nonmoving party or at the close of the case." Nev. R. Civ. P. 50(a)(1)-(2). Under Rule 56, a party may move for summary

1 judgment if "there is no genuine issue as to any material fact and that the
2 moving party is entitled to a judgment as a matter of law." Nev. R. Civ. P.
3 56(c). Summary judgment motions must be filed at least 10 days before the
4 hearing. *Id.*

5 Although styled as a Motion for JMOL, and devoid of any
6 reference to Rule 56, defendants seek judgment on all claims *before* trial
7 starts and *before* Plaintiff has presented his case in chief: Defendants argue
8 that "[n]o trial is necessary" on Plaintiff's breach of fiduciary duty claims
9 because "all challenged actions have either been approved or ratified. . . ."
10 Motion for JMOL at 2:8-10 ("No trial is necessary: all challenged actions have
11 either been approved or ratified. . . ."); *id.* at 10:25 ("No trial on [Plaintiff's
12 breach of fiduciary duty claims] is necessary"). The remaining defendants
13 base their Motion on new evidence—the Board of Directors' December 29,
14 2017 meeting minutes—and argue that under the business judgment rule,
15 the recent ratification by a majority of disinterested directors is dispositive
16 on all of Plaintiff's remaining claims against them. *See id.* at 7–12 and Ex. B
17 thereto.

18 This is just another way of saying that "there is no genuine issue
19 as to any material fact and that the [defendants are] entitled to a judgment as
20 a matter of law" *now*. Nev. R. Civ. P. 56(c). But motions for summary
21 judgment were due to be filed no later than 45 days before trial. *See* Sept. 11,
22 2015 Business Court Order (§ II.B.). Defendants filed their Motion for JMOL
23 less than two business days before trial.¹ And because the Court granted
24 Defendants' application for an order shortening time and set the Motion for
25 hearing on January 8, 2018, Plaintiff is given less than two judicial days to
26 respond. This deprives Plaintiff of his right to 10 days notice and a

27
28 ¹ Defendants knew the Court's rulings on their motions for partial summary
judgment by December 11, 2017.

1 meaningful opportunity to oppose the Motion. Nev. R. Civ. P. 56(c)
2 (requiring motions for summary judgment to be served "at least 10 days
3 before the time fixed for the hearing").

4 **B. Plaintiff Is Entitled to Discovery Under Rule 56(f).**

5 The Motion for JMOL introduces new alleged facts and evidence
6 not disclosed until now—ratification during a special December 29, 2017
7 Board of Directors' meeting of decisions made in 2015. The Motion is based
8 on unsigned board meeting minutes that remain to be approved by the
9 Board. See Motion for JMOL, Ex. B at 6; Declaration of Noah Helpern, ¶ 3.
10 The Motion argues—without support—that the December 29, 2017 special
11 meeting was convened "at the request of the five disinterested, independent
12 directors. . . ." Motion for JMOL at 1. Although the unsigned meeting
13 minutes reference an alleged December 27, 2017 letter "delivered to the
14 Chair" on behalf of these five directors, the letter is not attached to
15 Mr. Helpern's declaration or to the draft meeting minutes.

16 Plaintiff is entitled to test these allegations and discover how
17 this meeting and the alleged request by the "five disinterested, independent
18 directors" came about. Rather than confirming these directors'
19 disinterestedness and independence, the ratification, the timing of the
20 ratification, and the manner in which it occurred raise issues of material fact
21 as to the motivations of these five dismissed director defendants: Did they
22 act in the best interest of the company or did they simply acquiesce in the
23 desire of the Cotter sisters to further their position in this case? The alleged
24 comments made by the five directors expressing "their high level of respect
25 for Director [Guy] Adams and their confidence that he has acted in the best
26 interests of the Company and not out of any personal self interest," Ex. B at
27 3, are self-serving and specious.
28

1 **C. The Motion For JMOL is Procedurally Improper and Seeks to**
2 **Deprive Plaintiff of His Right to a Fair Trial.**

3 Motions for judgment as a matter of law "during a trial by jury"
4 can be made at "the close of the evidence offered by the nonmoving party . . .
5 ." Nev. R. Civ. P. 50(a)(1)–(2). It is reversible error to grant judgment as a
6 matter of law under Rule 50(a) before completion of Plaintiff's case. *See Taft*
7 *v. Steinberg*, 637 P.2d 533, 534 (Nev. 1981) (reversing dismissal under former
8 Nev. R. Civ. P. 41(b) "before the completion of the plaintiffs' case in chief").²

9 Here, Defendants not only seek a judgment before Plaintiff's
10 presentation of his case in chief, but they seek to introduce new evidence
11 and a new ratification issue into the case after the filing of the parties'
12 pretrial order—all to the detriment of Plaintiff's right to a fair trial. As the
13 Court already observed on December 28, when the Company's counsel told
14 the Court that ratification may occur the next day:

15 THE COURT: Little late for ratification. It's a little late for
16 ratification, Mr. Ferrario.

17 MR. FERRARIO: Well, Your Honor -- and I anticipated you may
18 say that. But keep in mind --

19 THE COURT: I've got a trial starting a week from Monday.
20 Dec. 28, 2017 Hearing Tr. at 16:10–15.

21 At the time this opposition is submitted—less than a full day
22 before trial starts—Plaintiff does not even know if Defendants will be
23 allowed to introduce evidence about ratification.³ If such evidence is
24 allowed and trial proceeds on January 8, Plaintiff will have to present his
25 case in chief based only on the self-serving "evidence" submitted to the

26 ² Rule 50(a), Nev. R. Civ. P., replaced the part of former Rule 41(b) which
27 provided that a case could be dismissed for a plaintiff's failure "to prove a
28 sufficient case for. . . the jury." *See* Editor's Note to Nev. R. Civ. P. 50.

³ Any evidence regarding the December 29 2017 ratification should be
excluded.

1 Court at the eleventh hour. No doubt, Defendants would then renew their
2 Motion for JMOL after the close of Plaintiff's curtailed case.

3 **D. Defendants' Argument Under NRS 78.140 is Flawed.**

4 **1. NRS 78.140 Does Not Serve as a Basis for "Ratification"**
5 **of the Matters at Issue in This Case.**

6 Defendants argue that "the business judgment rule applies to all
7 decisions complained of by plaintiff," based on the premise that NRS 78.140
8 applies to all such matters and that that statutory provision (not NRS 78.138)
9 embodies Nevada's business judgment rule. They are mistaken as a matter
10 of law. NRS 78.140 provides in relevant part as follows:

11 NRS 78.140 Restrictions on transactions involving interested
12 directors or officers; compensation of directors.

13 1. *A contract or other transaction is not void or voidable solely*
14 *because:*

15 (a) *The contract or transaction is between a corporation and:*

16 (1) *One or more of its directors or officers; or*

17 (2) *Another corporation, firm or association in which one*
18 *or more of its directors or officers are directors or officers or are*
19 *financially interested;*

20 (b) *A common or interested director or officer:*

21 (1) *Is present at the meeting of the board of directors or a*
22 *committee thereof which authorizes or approves the contract or*
23 *transaction; or*

24 (2) *Joins in the signing of a written consent which*
25 *authorizes or approves the contract or transaction pursuant to*
26 *subsection 2 of NRS 78.315; or*

27 (c) *The vote or votes of a common or interested director are*
28 *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:

(a) *The fact of the common directorship, office or financial interest*
is known to the board of directors or committee, and the directors or

1 *members of the committee, other than any common or interested*
2 *directors or members of the committee, approve or ratify the contract or*
3 *transaction in good faith.*

4 NRS.78.140 (emphasis supplied).

5 NRS 78.140 is merely Nevada's version of the standard statutory
6 modification of the common law rule that all interested director transactions
7 are void. "A general common law presumption is that a director's or
8 officer's conflict of interest can result in the voiding of a transaction." Keith
9 Paul Bishop & Jeffrey P. Zucker, *Bishop and Zucker on Nevada Corporations and*
10 *Limited Liability Companies*, § 8.16, 8-44-47 (2013). Nevada, like other states,
11 has enacted a statutory safe harbor that protects certain conflict-of-interest
12 transactions from being voided when certain protective measures have been
13 taken, such as approval of the interested transaction by a disinterested
14 majority of the board of directors. Nevada's statutory safe harbor is
15 NRS 78.140. *Id.*

16 Contrary to what defendants argue, NRS 78.140 has no
17 application here, by its terms, as the language of the statute on which they
18 rely (italicized above), shows. First, the matters defendants attempt to
19 transmogrify into classic interested director transactions of the type subject
20 to NRS 78.140 are not a "contract or other transaction" between the
21 Company and any director defendant. The actions of Adams, Kane and
22 McEachern to threaten Plaintiff and, subsequently, to terminate him, do not
23 entail the creation of any kind of "contract or transaction." The same is true
24 with respect to the actions of Adams and Kane in authorizing the exercise of
25 the 100,000 share option; that matter concerns their actionable conduct
26 threatening plaintiff, not the creation of an option agreement. Thus,
27 NRS 78.140 by its plain terms does not apply to the matters defendants
28 argue have been "ratified."

1 Moreover, even if NRS 78.140 was applicable to those matters
2 and its requirements met, which is not the case, the only possible
3 consequence would be that the "contract or other transaction is not void or
4 voidable." As the foregoing reflects, NRS 78.140 is irrelevant to the question
5 of whether the business judgment rule applies here, much less to whether
6 one or more of the directors breached their fiduciary duties under
7 NRS 78.138 in acting or failing to act with respect to the supposedly
8 "ratified" matters.

9 **2. Defendants' Arguments Referencing the Business**
10 **Judgment Rule Are Question-Begging Reconsideration**
11 **Requests Based on False Premises.**

12 Defendants' second argument is little if anything more than a
13 motion for reconsideration of the Court's denials of various motions for
14 partial summary judgment. It is predicated on a straw-man argument based
15 on demonstrably false premises. Defendants assert that "Plaintiff has never
16 contested that if the business judgment rule were to apply, his fiduciary
17 duty claims would fail a matter of law; instead, his entire argument has been
18 that the business judgment rule does not apply." Motion at 9:20–22. Based
19 on this straw man, defendants then posit that the business judgment rule
20 applies and skip to the *non sequitur* that Plaintiff's "breach of fiduciary duty
21 claims are legally untenable." *Id.* at 10:25. This is low-level sophistry.

22 As the countless legal briefs Plaintiff has filed in this case
23 demonstrate, not only has Plaintiff contended that the business judgment
24 rule does not apply, Plaintiff also has contended that were it to be apply,
25 Plaintiff has rebutted it by showing breaches of fiduciary duty (that also
26 entailed intentional misconduct). The legal platitudes that follow the straw
27 man add nothing to this particular argument, which is nothing more than an
28 exercise in question-begging.

1 **III. CONCLUSION**

2 For the reasons set out above, the Court should deny
3 Defendants' Motion for JMOL as premature and procedurally improper.
4 Alternatively, if the Court allows Defendants' ratification evidence, denies
5 Plaintiff's request for Rule 56(f) discovery, and is inclined to grant the
6 Motion for JMOL after Plaintiff's presentation of his case in chief, the Court
7 should decide the Motion now to avoid putting the parties, the jurors, and
8 the Court through the inconvenience and expense of jury selection and a
9 partial trial.

10 MORRIS LAW GROUP

11 By: /s/STEVE MORRIS

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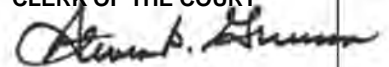
20 Attorneys for Plaintiff
21 James J. Cotter, Jr.
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **PLAINTIFF JAMES J. COTTER, JR.'S OPPOSITION TO MOTION FOR JUDGMENT AS A MATTER OF LAW.** 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 30th day of November, 2017.

By: /s/ PATRICIA FERRUGIA



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Attorneys for Plaintiff
James J. Cotter, Jr.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

And

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

) Case No. A-15-719860-B
) Dept. No. XI
)
) Coordinated with:
)
) Case No. P-14-0824-42-E
) Dept. No. XI
)
) Jointly Administered
)
) **DECLARATION OF MARK**
) **KRUM IN SUPPORT OF**
) **PLAINTIFF JAMES J. COTTER,**
) **JR.'S OPPOSITION TO**
) **DEFENDANTS' MOTION FOR**
) **JUDGMENT AS A MATTER OF**
) **LAW**
)
) **DATE: JANUARY 8, 2018**
) **TIME: 8:30 a.m.**

1 I, Mark Krum, declare:

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

8 2. The Motion for Judgment as a Matter of Law is predicated
9 on the assumption that, because the Court found 5 directors to be
10 disinterested for the purposes of the matters raised in partial summary
11 judgment motions, that those 5 directors therefore are disinterested and
12 independent for all purposes, or at least for the purposes of the purported
13 ratifications supposedly provided at a December 29, 2017 Board of Directors
14 meeting. Because that is a question of fact, and because the circumstances,
15 including as evidenced in the so-called agenda and the draft minutes,
16 neither of which have been authenticated, these activities on their face raise
17 the question of whether some or all of those 5 individuals were in fact
18 disinterested and were in fact independent with respect to their supposed
19 activities that serve as the basis for the Motion, including the purported
20 ratification of two prior activities that had not been approved by a majority
21 of disinterested and independent directors.

22 3. The agenda recites that those 5 requested a special meeting
23 to perform the supposed ratifications. The agenda on its face therefore
24 shows that this was not ordinary course of activity by the 5 directors, but
25 instead was extraordinary activity undertaken for some particular purpose
26 at the time and in the manner it was undertaken. Plaintiff is entitled to
27 discover what actually happened, because those facts will bear out or
28 undermine the contention that a majority of the 5 were independent for the

1 purposes of the supposed ratifications. For example, did any of the 5
2 actually individually request a special meeting to ratify certain conduct? Or
3 were the 5 told by litigation counsel that a ratification was needed on an
4 expedited basis for use in this case, for the benefit of the remaining 3
5 director defendants? The facts and circumstances of how this came to pass
6 will provide evidence bearing upon the question of whether the activity in
7 question was undertaken by a disinterested and independent majority
8 acting, as their counsel repeatedly has said in the course of this litigation,
9 with respect to ordinary course of business matters, or whether as former
10 litigants they had personal interests, sentiments and/or agendas they were
11 pursuing or, equally likely, that they acted hurriedly if not precipitously in
12 an effort to enable defense counsel in this case to use their actions for
13 litigation purposes in furtherance of the personal interests of the remaining
14 3 defendants.

15 4. The latter regard, it is noteworthy that first item in the
16 draft minutes was a hurried decision, with respect to which board materials
17 had been provided to directors only the day before, to approve a bonus
18 accrual in the amount of \$1.1 million with respect to which "Ellen Cotter
19 and Margaret Cotter are likely recipients of the bonuses to be paid in 2018."

20 5. The draft minutes that have not been authenticated but
21 which supposedly evidence the purported ratification on which the Motion
22 is based recite that the ratification was of actions "outlined in the minutes of
23 the Board meetings held on May 21, 2015, May 29, 2015 and June 12, 2015."
24 The draft minutes also recite that director Judy Coddling "stated that she had
25 thoroughly reviewed the Board Materials and had extensive knowledge
26 about the board's reasons for the termination of [Plaintiff]." Both plaintiff
27 and former director Timothy Storey have testified in this case that the board
28 minutes in question contained inaccuracies. The defendants have testified

1 that those board minutes, unlike other board minutes, were reviewed and
2 revised by outside counsel. Directors Coddington and Wrotniak were not
3 members of the Board at the time and can only have become informed after
4 the fact. If they relied simply on the so-called Board Materials, which
5 consists principally of inaccurate, litigation oriented minutes, they could not
6 have made an informed decision, and may well not have made one in good
7 faith. Plaintiff is entitled to discovery to ascertain what they did and did not
8 do and what they understood and did not understand. This information will
9 bear upon the question of whether a disinterested majority approve the
10 purported ratification.

11 6. The draft minutes contain countless statements that raise
12 the questions of whether, if not on their face evidence the fact that, some or
13 all of the 5 simply were acting to assist in the defense of the remaining 3
14 directors, rather than acting in the interest of the Company. For example, the
15 board materials also contained documents from Highpoint Associates. As
16 the Court will recall, these materials were unknown to the directors in May
17 and June 2015 at the time Plaintiff was threatened with termination and then
18 terminated. As the Court also will recall, defense counsel intends to misuse
19 those documents to develop an argument that Plaintiff was unqualified and
20 understood himself to be unqualified. So why were they in the board
21 materials package for ratification purposes? Is that because one or more of
22 the 5 independently knew about those documents and wanted to review
23 them to make an informed decision? Or was it because they were provided
24 by litigation counsel in furtherance of what was merely a litigation oriented
25 exercise, in which some or all of the 5 were willing participants in an activity
26 the primary if not sole purpose of which was to assist in the defense of this
27 action as against the remaining 3 defendants?
28

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8. The foregoing is merely an illustrative description of specific facts Plaintiff anticipates discovering that will call into question whether the 5 were disinterested and independent for the purposes of the purported ratifications. For such reasons, Plaintiff requires and is entitled to document discovery and depositions of at least each of the 5 and, depending upon what the documents and the deposition testimony show, perhaps others.

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

Executed this 5th day of January, 2018.


Mark G. Krum

MORRIS LAW GROUP

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CERTIFICATE OF SERVICE

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

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Attorneys for Defendant William
Gould

Attorneys for Nominal Defendant
Reading International, Inc.

DATED this 5th day of January, 2018.

By: 

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

• • • • •

Transcript of Proceedings

JA6245

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

SHOSHANA E. BANNETT, ESQ.
MARSHALL M. SEARCY, ESQ.
JAMES L. EDWARDS, ESQ.
MARK E. FERRARIO, ESQ.

1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 4, 2018, 8:31 A.M.

2 (Court was called to order)

3 THE COURT: That takes me to Cotter.

4 MR. SEARCY: Good morning, Your Honor. It doesn't
5 appear that Mr. Ferrario's here yet.

6 THE COURT: Oh. So I'm not ready on Cotter, either,
7 huh?

8 MR. KRUM: We're ready, yes, Your Honor.

9 THE COURT: So I'm not ready yet, either. Then I
10 guess I'll just here patiently waiting for all sides of any
11 case to be available.

12 (Pause in the proceedings)

13 THE COURT: Good morning. Counsel, I was given an
14 order this morning denying plaintiff's motion to stay and
15 motion for reconsideration that appears to have been agreed to
16 by all parties. Is that accurate?

17 MR. SEARCY: That's accurate, Your Honor.

18 THE COURT: Then I'm going to go ahead and sign.
19 Ms. Levin, you can pick it up up here, if you'd like.

20 So we've finished one item of business. That takes
21 me to my second item of business, which relates to our trial
22 schedule. Dan has arranged for a courtroom here in the RJC
23 for jury selection because of the logistics related to getting
24 jurors across the street to the Phoenix Building. So Judge
25 Denton is out of town for a couple of days next week, so we're

1 going to borrow his courtroom for those couple of days, but
2 only to pick the jury. So just be aware of that. And I
3 cannot start until 1:00, because I have a Business Court
4 settlement conference.

5 MR. KRUM: Monday?

6 THE COURT: On Monday.

7 Okay. So let's go to the pending motion.

8 MR. FERRARIO: Your Honor, if we're on the
9 administrative stuff, I was asked to ask you if we need to
10 submit original depositions to the Court tomorrow --

11 THE COURT: You do.

12 MR. FERRARIO: -- or should we do it on Day 1 of the
13 trial due to the courtroom uncertainty.

14 MR. KRUM: Your Honor, we may have an issue with
15 that on account of the blizzard on the East Coast. Either we
16 will or we won't.

17 THE COURT: We're here in Las Vegas. There's not an
18 issue with a blizzard here.

19 MR. KRUM: Well, some of our originals need to come
20 out of my office.

21 THE COURT: Okay. I only need the originals of
22 depositions you intend to use in lieu of live testimony, not
23 those you intend to use for impeachment purposes.

24 MR. KRUM: Understood.

25 THE COURT: Okay.

1 MR. FERRARIO: And where do you want us to deliver
2 them tomorrow?

3 THE COURT: You're going to meet us at 2:00 o'clock
4 for the final pretrial conference.

5 MR. FERRARIO: Oh. That's right. Okay. And where
6 will be meeting?

7 THE COURT: We'll be in 10C, Judge Togliatti's
8 courtroom. I don't have a courtroom of my own. I have a
9 meeting at 11:00 o'clock about that. I'm not hopeful that
10 that will result in any changes to my current situation, but,
11 as you know, I don't have a courtroom. Since 2013 we've been
12 down a courtroom.

13 MR. FERRARIO: Can you spread that on the record? I
14 have one --

15 THE COURT: Just in case nobody knows.

16 MR. FERRARIO: I have one final question. Do you
17 want us -- if a witness is unavailable and let's say Mr. Krum
18 is going to present that witness through deposition, do you
19 want to run the depo consistently and have ours just flow, or
20 how do you want to deal with it?

21 THE COURT: It is my opinion, and I can be persuaded
22 related to this, that it is easier for the jury to understand
23 if all of that witness's testimony is presented at one time.

24 MR. FERRARIO: And I would agree with that.

25 THE COURT: But I am open to discussion with counsel

1 about that if it is a problem, and those are part of the items
2 that are on my list to talk about with you tomorrow afternoon.

3 MR. KRUM: Is it 2:00 o'clock, Your Honor, or 3:00
4 o'clock?

5 THE CLERK: 3:00 o'clock.

6 THE COURT: It's 3:00 o'clock.

7 MR. KRUM: Thank you.

8 THE COURT: In Department 10 and 10C, where we are
9 borrowing a courtroom tomorrow.

10 MR. FERRARIO: Thank you.

11 THE COURT: All right. Anything else before I go to
12 the motion?

13 Mr. Krum, it's your motion. Mr. Morris.

14 MR. MORRIS: I do have one thing that's not on
15 calendar.

16 THE COURT: Okay.

17 MR. MORRIS: We were in the Supreme Court yesterday
18 on the writ, we argued the writ.

19 THE COURT: Which writ?

20 MR. MORRIS: The one that arises out of the motion
21 to compel the production of emails between Mr. Krum and
22 Alexander Robertson that you decided --

23 THE COURT: Many years ago.

24 MR. MORRIS: -- on September the 8th, 2016.

25 THE COURT: Yes.

1 MR. MORRIS: The court pointed out to us when we
2 were arguing that they didn't have a written order on the
3 motion to compel. What they have is what we have, and that is
4 the minute order and the transcript. And Justice Gibbons
5 discussed the absence of that order. Mr. Searcy didn't know
6 that it was not in the record, and neither did I. But it
7 turns out it isn't.

8 THE COURT: There isn't an order from that?

9 MR. MORRIS: No.

10 THE COURT: There's no order that was submitted from
11 that?

12 MR. KRUM: I think, Your Honor, there was an order
13 submitted, but not signed.

14 MR. MORRIS: In any event, we don't have that order.
15 And Justice Gibbons said we could supplement the record after
16 the argument, so I prepared an order that tracks your minute
17 order and the transcript, denies the motion to compel for the
18 reason you gave, I gave it to Mr. Searcy, and he now -- he's
19 now saying that he wants some time to think about this and --

20 THE COURT: I don't get much time when the Supreme
21 Court asks me to supplement the record. I usually get a
22 couple of hours.

23 MR. SEARCY: Understood, Your Honor.

24 THE COURT: Occasionally they give me 30 days if
25 it's a really big job.

1 MR. SEARCY: This situation is somewhat odd, though,
2 Your Honor, in that we've had -- my recollection was certainly
3 that there was a written order already submitted by the Court.
4 And here what we're looking at is a written order
5 approximately almost two years after the fact for the Court to
6 sign.

7 THE COURT: Yes. That's a problem.

8 MR. SEARCY: And it is a problem, Your Honor.

9 THE COURT: But it's a problem for a number of
10 reasons, and I just don't know which one it is, because it's
11 been two years -- or a year and a half, year and a half.

12 MR. MORRIS: It was on September the 8th, 2016, not
13 quite two years, a year and a half.

14 MR. SEARCY: So what I've said to Mr. Morris is I
15 want to take a look at this, I want to take a look at the
16 issue before we agree one way or the other on the order.

17 THE COURT: So let me ask you the question. Do you
18 recall there being competing orders that were submitted on
19 that issue?

20 MR. SEARCY: Your Honor, my recollection -- and
21 apparently it's wrong, because I have looked at the record and
22 I have not seen a written order.

23 THE COURT: So you think there's a written order,
24 you just can't find it.

25 MR. SEARCY: I thought that there was one. But I

1 haven't found it. And I will note that in the appeal that was
2 taken by the plaintiff in the case that it says in the first
3 line that he is taking it from your oral order compelling
4 documents. Again, though, it was my recollection that there
5 was a written order. So we're looking for that. That's what
6 the court asked us to supplement the record with, is the
7 written order from [inaudible]. They're not asking for a new
8 order.

9 THE COURT: Oh. An existing written order.

10 MR. SEARCY: Exactly.

11 THE COURT: Okay.

12 MR. SEARCY: They're not asking that -- they're not
13 directing that the Court enter an order on this, because that
14 raises its own set of issues. Certainly we would want to go
15 back in the benefit of hindsight and the benefit of just
16 having had an argument in front of the Supreme Court to add
17 all sorts of things to the order to reflect the record.

18 THE COURT: If we enter an order, it's going to be
19 based on what happened then, a year and a half ago. It's not
20 going to be updated with what you think it should have now.

21 Mr. Morris, I'll take the order. I'm also going to
22 research if we think we logged it out and perhaps it got lost.
23 Because frequently after I sign an order it gets picked by a
24 runner from a different law firm, and we never know what
25 happens to it, and we have people a couple times a week that

1 have to resubmit orders because other runners picked up their
2 orders.

3 MR. MORRIS: The order we submitted is accompanied
4 by a copy of your minute order from that day, as well as the
5 transcript.

6 THE COURT: I'll look at it as soon as we get out of
7 here.

8 MR. MORRIS: Thank you.

9 THE COURT: Or after the bond calendar.

10 MR. SEARCY: Thank you, Your Honor.

11 THE COURT: So any other items that aren't on my
12 calendar this morning that you want to talk to me about?

13 MR. KRUM: One item of clarification about what
14 we're supposed to do tomorrow, I guess, or Monday. Hard
15 copies of the exhibits --

16 THE COURT: You do not need to bring hard copies of
17 the exhibits. Dulce's email said you don't need to worry
18 about the exhibit part because of your electronic exhibits
19 that you're using.

20 Right?

21 MR. KRUM: Thank you.

22 THE COURT: Anything else? Mr. Edwards.

23 MR. EDWARDS: We brought over a motion to stay, and
24 I don't know whether it was --

25 THE COURT: I signed it. I set it for Monday at

1 8:30.

2 (Pause in the proceedings)

3 MR. EDWARDS: We did serve it [inaudible].

4 THE COURT: Here you go, Mr. Edwards.

5 MR. EDWARDS: Thank you, Your Honor.

6 THE COURT: Apparently I was holding onto it.

7 Next? Any other issues before I get to what's
8 actually on calendar this morning?

9 If we could go to our motion for Rule 54(b)
10 certification and renewed motion for stay.

11 MR. KRUM: Thank you, Your Honor. So the
12 oppositions with respect to certification -- there was no
13 opposition from the individual defendants. They took no
14 position. The opposition from the company made a compelling
15 case, in our view, as to why both an order of certification
16 should issue, as well as a stay.

17 Let me ask. Did you receive and have an opportunity
18 to review the brief reply we submitted?

19 THE COURT: I did.

20 MR. KRUM: Okay.

21 THE COURT: And I have notes on it that I'm going to
22 say at the end that will make Mr. Searcy curious.

23 MR. KRUM: So, Your Honor, according to the
24 defendants, our case is dead on arrival based on the rulings
25 that you previously made.

1 THE COURT: I understand that's what your brief
2 said.

3 MR. KRUM: Yes.

4 THE COURT: And I understand their brief sort of
5 says that, too.

6 MR. KRUM: And to the point for the motions today,
7 Your Honor, the individual defendants acknowledge that those
8 rulings make our case against the remaining three defendants
9 more difficult legally. Those are the words they used.

10 THE COURT: So can I cut to the chase. The
11 defendants are not correct by indicating that they believe
12 that the conduct of the disinterested directors will not be
13 the subject of evidence before the jury for breach of
14 fiduciary duty claims as to the remaining defendants. If you
15 thought that, that was not what I said.

16 Okay. Next, Mr. Krum?

17 MR. KRUM: Yeah. Well, that's helpful, Your Honor.
18 It leads me to another point I have, which is I think legally
19 we're looking at potentially different standards. Assuming
20 based on what you said we're not looking at different
21 evidence, we nonetheless from the plaintiff's perspective are
22 going to be required to make a different showing on account of
23 your prior rulings. And this is why. There's no way to
24 explain to a jury how it is that three people, two or three or
25 more, as the case may be, but say, for example, with respect

1 to the 100,000 share option two people, Adams and Kane, with
2 respect to what I succinctly characterize as extortion, in
3 other words, the threat to terminate unless you settle. That
4 would be three people, Adams, Kane, and McEachern. So we put
5 on the evidence as you just described that all three of them
6 breached their fiduciary duties. There's no --

7 THE COURT: Mr. Krum, we deal with that in every
8 case, and we never explain to the jury while they're answering
9 questions on the questionnaire or interrogatories as to only
10 certain defendants. We just don't explain it. It's you don't
11 explain it. You present the evidence, you give them the
12 interrogatories, they answer them. That's part of the jury
13 instructions.

14 MR. KRUM: Well, I'm getting there. The jury
15 instruction is where I'm going on this. Bear with me. So how
16 do we explain from plaintiff's perspective that three people
17 who engaged in the same conduct, two of them are not
18 defendants here?

19 THE COURT: You don't explain it. It's not your
20 job.

21 MR. KRUM: No. And the jury instruction they're
22 going to propose is effectively going to tell the jury that,
23 well, those two people are the majority and therefore you
24 can't rule against the remaining one. And so what we're going
25 to do, Your Honor, is try a case where there is basically an

1 irrebuttable misimpression with which the jury will start.

2 And so on the stay issue what the defendants, all of
3 them, really said, Your Honor, it was made pretty clear I
4 think in the company -- so-called company opposition, they
5 don't want a stay because they want this motion that they
6 delivered yesterday, half of which is for reconsideration and
7 issues they should take up with the Nevada Supreme Court and
8 the other half of which is for summary judgment predicated on
9 evidence they created six days ago, they want that --

10 THE COURT: That's not set till Monday at 8:30.

11 MR. KRUM: Monday at 8:30. Right. And so they want
12 that to go forward, but they don't want -- they really don't
13 want the case to go forward. And I understand why they say
14 that, Your Honor. So we don't know, really, what the target
15 is, except for it's moving. It's moved since the last ruling,
16 and it may move again on Monday.

17 THE COURT: That's how litigation is, especially
18 when you're right before trial.

19 MR. KRUM: Your Honor, I think that the point of
20 that is two things.

21 THE COURT: Do you really want certification if I'm
22 not going to grant a stay?

23 MR. KRUM: Yes.

24 THE COURT: Okay. Do you object to certification?

25 MR. SEARCY: No objection, Your Honor.

1 THE COURT: The certification is granted because of
2 all the claims related to the what I've determined to be
3 disinterested directors have been resolved. That does not
4 preclude from presenting evidence related to the conduct or
5 activities of those as it relates to other issues in your
6 case. All right.

7 MR. KRUM: Your Honor, we had an order that
8 anticipated --

9 THE COURT: Granted in part?

10 MR. KRUM: -- granted in part. I thought we
11 distributed these, but perhaps not. What we did, Your Honor,
12 was it granted the certification motion --

13 THE COURT: And denied the stay?

14 MR. KRUM: Then it had check the box, grant the stay
15 or deny the stay.

16 THE COURT: Okay.

17 MR. KRUM: We were prepared for both eventualities.

18 THE COURT: This one's not that.

19 MR. SEARCY: This appears to be the wrong order, Mr.
20 Krum.

21 THE COURT: This isn't that order.

22 MR. KRUM: I have the wrong order. Well, that's --
23 my paralegal skills, and I once was one, have deteriorated.
24 So bear with me, Your Honor. I apologize.

25 Okay. The one that says what it should say.

1 THE COURT: Mr. Edwards, I did say the other day
2 that you or someone from your firm is required to be here for
3 the entire trial.

4 MR. EDWARDS: Okay. We're prepared.

5 THE COURT: It doesn't have to be you. You can send
6 [unintelligible].

7 MR. EDWARDS: I've got a trial coming up
8 [inaudible].

9 THE COURT: I just need local issue so if there is
10 an issue about the District Court Rules of the Eighth Judicial
11 Court or any of our unusual -- I will be able to turn Mr.
12 Searcy to a local Nevada attorney who can answer his questions
13 before I yell at him.

14 MR. SEARCY: I appreciate the [inaudible], Your
15 Honor.

16 THE COURT: Okay, Mr. Krum. Here's your order.

17 All right. Next? 'Bye. See you tomorrow at 3:00.

18 MR. FERRARIO: So I take it you did not want to hear
19 the points we raised and you'll hear them Monday?

20 THE COURT: What?

21 MR. FERRARIO: In our opposition.

22 THE COURT: I heard your opposition. Your
23 opposition primarily is there's nothing left to try, Judge.

24 MR. FERRARIO: And the math.

25 THE COURT: So we'll hear that Monday at 8:30. I

1 was not going to set it on less than 36 hours' notice.

2 MR. FERRARIO: No. I think that's good.

3 THE COURT: I know that we need one judicial day,
4 but some issues are a little more important.

5 MR. FERRARIO: Do we have a status check on Wynn on
6 Monday?

7 THE COURT: Okay. You're coming tomorrow at 3:00.

8 MR. FERRARIO: No. I know. Do we have a status
9 check --

10 THE COURT: And then you're coming Monday at 8:30.

11 MR. FERRARIO: What about Monday --

12 THE COURT: And then we're starting trial at 1:00
13 Monday.

14 MR. FERRARIO: I know.

15 THE COURT: I have 60 jurors coming.

16 MR. FERRARIO: I said the Wynn case.

17 THE COURT: Oh. Yes. I have an 8:00 o'clock
18 hearing on Monday on Wynn.

19 (Pause in the proceedings)

20 THE COURT: Dulce says there's nothing on Wynn. So
21 sleep in, Mr. Ferrario. I'll see you at 8:30 instead of 8:00.

22 Okay. Goodbye.

23 MR. FERRARIO: Thank you, Your Honor.

24 MR. MORRIS: Thank you, Your Honor. Monday at 8:30?

25 MR. KRUM: We're here Monday at 8:30, as well?

1 THE COURT: Monday at 3:00 [sic] -- Monday at 8:30
2 two motions. They're both about the same issue of the
3 ratification issue, and then we'll deal with it. Goodbye.

4 MR. MORRIS: Thank you, Your Honor.

5 THE PROCEEDINGS CONCLUDED AT 8:59 A.M.

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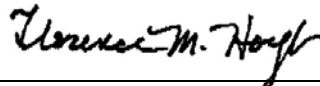
CERTIFICATION

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

AFFIRMATION

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

**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

1/4/18

DATE

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

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

1 LAS VEGAS, NEVADA, MONDAY, JANUARY 8, 2018, 10:07 A.M.

2 (Proceedings 8:28 a.m. to 8:42 a.m. and 10:00 a.m. to 10:07
3 filed under seal. Hearing continued in open court as follows)

4 THE COURT: I have 10 minutes for your arguments.

5 MR. KRUM: So I'll talk with counsel about this
6 matter after we do what we need to in the arguments so that we
7 can take care of that and get out of the courtroom. Thank
8 you.

9 THE COURT: Okay. I have a motion to dismiss for
10 failure to show demand futility, and I have a motion for
11 judgment as a matter of law --

12 Let everybody in now.

13 -- both which appear to be summary judgment motions,
14 because they are asking me to look outside of the pleadings.
15 Can someone explain why these motions were not filed in the
16 time required for summary judgment motions under my scheduling
17 order?

18 MR. FERRARIO: Who do you want to go first?

19 THE COURT: It doesn't matter. They both have the
20 same procedural issue.

21 MR. FERRARIO: Well, Your Honor, I addressed this
22 briefly the other day. And I don't think there's any dispute
23 as to this. Your ruling on the motions for summary judgment
24 relating to the five now disinterested directors had what I
25 would call a ripple effect. And so I don't think that we

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

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

15 MR. FERRARIO: Exactly.

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

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

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

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

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

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

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

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

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

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

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

11 THE COURT: Thank you.

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

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

25 With respect to two other transactions, specifically

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

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

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

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

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

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

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

21 THE COURT: Thank you, Mr. Searcy.

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

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

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

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

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

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

15 MR. KRUM: Which one, Your Honor?

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

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

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

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

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

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

7 MR. KRUM: Footnote 3, Your Honor.

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

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

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

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

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

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

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

21 MR. FERRARIO: Shoen. Okay.

22 THE COURT: And it's not Amerco, it's Shoen II.
23 I know the Supreme Court wants to give it a new name, but
24 it's --

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

1 it, Shoen and Shoen II?

2 THE COURT: It's Shoen.

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

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

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

8 THE COURT: Yeah, she's wrong.

9 MR. FERRARIO: All right.

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

11 MR. FERRARIO: Right.

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

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

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

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

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

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

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

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

4 MR. FERRARIO: Let me --

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

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

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

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

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

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

12 THE COURT: Okay.

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

18 THE COURT: At the time.

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

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

25 MR. FERRARIO: Right.

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

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

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

10 MR. FERRARIO: Exactly.

11 THE COURT: -- that was well founded.

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

17 THE COURT: That can be had in Shoen.

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

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

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

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

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

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

8 THE COURT: Absolutely.

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

22 THE COURT: I understand.

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

25 THE COURT: Sure. I appreciate you --

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

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

10 MR. FERRARIO: Thank you.

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

14 MR. FERRARIO: Understand. Thank you.

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

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

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

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

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

25 * * * * *

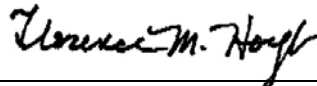
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**FLORENCE HOYT
Las Vegas, Nevada 89146**



FLORENCE M. HOYT, TRANSCRIBER

1/9/18

DATE

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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Transcript of Proceedings

JA6281

APPEARANCES:

FOR THE PLAINTIFF:

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

FOR THE DEFENDANTS:

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

1 LAS VEGAS, NEVADA, MONDAY, JANUARY 8, 2018, 1:58 P.M.

2 (Proceedings 1:00 p.m. to 1:58 filed under separate cover)

3 (Prospective jurors are present)

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

6 You can be seated.

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

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

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

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

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

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

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

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

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

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

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

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

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

4 THE COURT: Mr. Krum.

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

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

14 THE COURT: What schedule?

15 MR. KRUM: Yes. Exactly.

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

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

1 going to settle on Friday.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 THE COURT: Hold on.

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

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

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

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

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

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

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

23 MR. FERRARIO: All right.

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

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

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

4 THE COURT: Blaming me for your situation --

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

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

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

8 THE COURT: Anything else?

9 MR. KRUM: No, Your Honor.

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

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

17 Anything else?

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

21 THE COURT: Okay. Anything else?

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

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

1 done.

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

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

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

10 THE COURT: It is.

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

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

15 Dulce wants you to take away --

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

19 MR. FERRARIO: Yes.

20 MR. MORRIS: Yes.

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

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

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

4 MR. TAYBACK: Hope so.

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

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

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

15 THE COURT: Okay.

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

17 THE COURT: Better.

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

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

22 MR. KRUM: Thank you.

23 MR. MORRIS: Thank you, Your Honor.

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

25 * * * * *

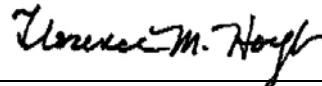
CERTIFICATION

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

AFFIRMATION

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

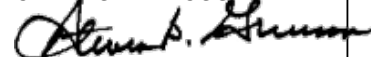
**FLORENCE HOYT
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FLORENCE M. HOYT, TRANSCRIBER

1/9/18

DATE



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

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

25 Plaintiff,

26 v.

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

Defendants.

and

READING INTERNATIONAL,
INC., a Nevada corporation,

Nominal Defendant.

) Case No. A-15-719860-B

) Dept. No. XI

) Coordinated with:

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

) Dept. No. XI

) Jointly Administered

) **NOTICE OF APPEAL**

1 Please take notice that Plaintiff James J. Cotter, Jr. hereby appeals
2 to the Supreme Court of Nevada and/or the Appeals Court of the State of
3 Nevada from:

4 1. The District Court's December 28, 2017 Order granting
5 summary judgment in favor of defendants Edward Kane, Douglas
6 McEachern, William Gould, Judy Coddington, and Michael Wrotniak on all of
7 Plaintiff's claims against them.

8 By Order dated January 4, 2018, the District Court certified its
9 Order dismissing these five defendants as final under Nev. R. Civ. P. 54(b)
10 and entered judgment in favor of them.

11 MORRIS LAW GROUP

12 By: /s/ Akke Levin

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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 hereby certify that I am an employee of MORRIS LAW GROUP and that on the date below, I cause the following document(s) to be served via the Court's Odyssey E-Filing System: **NOTICE OF APPEAL**, to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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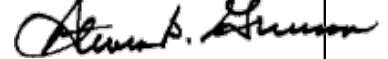
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DATED this 1st day of February, 2018.

By: /s/ Linda P. Daniel

An employee of Morris Law Group



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James J. Cotter, Jr.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

And

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

CASE NO.: A-15-719860-B
DEPT. NO. XI

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

Jointly Administered

**JAMES J. COTTER, JR.'S MOTION
TO COMPEL PRODUCTION OF
DOCUMENTS AND PRIVILEGE LOG
AND
APPLICATION FOR ORDER
SHORTENING TIME**


04-18-18P02:09 RCVD

1 Pursuant to N.R.C.P. 45 and EDCR 2.34, plaintiff James J. Cotter ("Plaintiff") hereby
2 moves to compel William Gould ("Gould") to produce all nonprivileged documents responsive to
3 the document requests in the subpoena served to Gould on behalf of Plaintiff, to log any and all
4 responsive documents withheld based on claims of privilege, work product or both, to provide a
5 written explanation of what happened to Gould's electronically stored information including
6 emails ("ESI") (including for his assistant), which explanation must include, at a minimum, what
7 ESI was lost, when the ESI was lost, how it was lost, what steps have been taken to recover it,
8 what the results of recovery efforts have been and such other information as is necessary to enable
9 Plaintiff to confer with an ESI specialist about the matters. Additionally, Plaintiff asks that the
10 Court order Gould to appear for further deposition, should Plaintiff choose to depose him further
11 after these matters are resolved.

12 Plaintiff further moves the court, under EDCR 2.26, for an order shortening the time for
13 hearing this motion. This Motion is based upon the pleadings and papers on file, the declaration
14 of Mark G. Krum, the exhibits attached hereto, the following memorandum of points and
15 authorities, and any oral argument the Court may allow.

16 DATED this 18th day of April, 2018

17 Morris Law Group

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Attorneys for Plaintiff
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1
2 **ORDER SHORTENING TIME**

3 It appearing to the satisfaction of the Court and good cause appearing therefor,


4 IT IS HEREBY ORDERED, that the hearing on "James J. Cotter, Jr.'s Motion to Compel
5 Production of Documents and Privilege Log on Order Shortening Time" shall be heard before the
6 above-entitled Court in Department XI, before Judge Elizabeth Gonzalez on the 30 day of
7 April, 2018, at 8³⁰ a.m./p.m., or as soon thereafter as counsel may be heard, at
8 the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.

9 DATED this 18th day of April, 2018

10
11 
12 DISTRICT COURT JUDGE
13

14 Respectfully submitted:

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25 Attorneys for Plaintiff
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28

1 **DECLARATION OF MARK G. KRUM IN SUPPORT OF ORDER SHORTENING TIME**
2 **ON JAMES J. COTTER, JR.'S MOTION TO COMPEL PRODUCTION OF**
3 **DOCUMENTS OR PRIVILEGE LOG**

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

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

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

11 **Reason for Order Shortening Time**

12 3. This motion to compel (the "Motion") is brought because William Gould, a
13 member of the Reading International, Inc. ("RDI") board of directors and previously a defendant
14 in this action, has failed to produce documents responsive to the subpoena served on him through
15 his counsel, has failed to log documents withheld based on claims of privilege, has provided a
16 privilege log that is inadequate on its face because it fails to show that, much less why, certain
17 documents are claimed privileged and, finally, has failed to explain or substantiate the belated,
18 cursory oral assertion of his counsel that his emails have been lost and not recovered.

19 4. Plaintiff respectfully submits that good cause exists to shorten time to hear this
20 Motion because unless and until Plaintiff obtains the documents and information Gould is
21 obligated to provide but has not provided, Plaintiff will not be able to timely complete the
22 discovery on ratification, which—depending on Gould's supplemental production and log—may
23 require Plaintiff to re-depose Gould.

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

25 **Discovery Disputes and EDCR 2.34 Conference**

26 6. On January 12, Plaintiff served Gould's counsel with a subpoena calling for the
27 production of documents. (See Ex. 1 hereto.)

28 7. On January 25, Gould provided written responses to the document requests,
standing on objections to only a single request based on stated confusion about what was