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After receiving responses from Tompkins and possibly Ellen Cotter regarding the draft of what came to be Gould's December 27, 2017 email, GT attorney Bonner on December 27, 2017 sent Gould an email, with a copy to GT attorney Ferrario, the "re" line of which read "**FW**: for Bill Gould to sign," which RDI's privilege log also describes as "communication regarding draft letter re Special Board Meeting." (*See id.*, entries ending in 59792 and 59937.) (Emphasis supplied.)

At his deposition, Gould identified the December 27, 2017 email[3] which was sent shortly before 8:00 p.m. Pacific by Marcia Wizelman, Gould's assistant, to Ellen Cotter, as the notice ("call") by the five dismissed directors for "ratification" be raised and approved at the next regularly scheduled board meeting. (*See* **Ex. 5** hereto, at 530:2-10.) Gould testified that he did not draft or edit the December 27, 2017 email, but rather that it was drafted by GT attorneys Bonner and Ferrario. (*Id.* at 530:18-25.)

However, none of the five other than Gould saw the December 27, 2017 email (Dep. Ex. 527) prior to their depositions. McEachern testified with respect to Dep. Ex. 527 that "I don't recall having seen this before, but I do recall speaking in our [December 21, 2017] special committee [meeting] with Bill Gould and Judy Codding about asking to have this done." (*See* **Ex. 7** hereto, at 544:3-8.) Codding's testimony was to the same effect. (See Ex. 4 hereto, at 231:7-232-5.) Wrotniak testified that he did not recall seeing Dep. Ex. 527 prior to preparing for his deposition. (*See* **Ex. 10** hereto, at 91:17-92:4.) Kane also testified that he had no recollection of seeing Dep. Ex. 527 prior to his deposition. (*See* **Ex. 11** hereto, at 681:14-19.)

G. The December 27 Email was the Source of the "Ratification" Agenda for the December 29, 2017 Board Meeting.

The text of December 27, 2017 email was used to prepare the corresponding portion of the agenda for the December 29, 2017 board meeting. (*See* 5/2/18 hearing tr. at 56:25-57:5; Ex. 9 to JJC 6/8/18 Motion, Ellen Cotter dep. tr. at 485:9-486:3.) The February

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[3] Ex. 6 to JJC 6/8/18 Motion, marked as Dep. Ex. 527 and as Ex. P-1 from the 5/2/18 evidentiary hearing.

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22, 2018 privilege log also identified an email exchange between Bonner with Tompkins, Ellen Cotter, Gould, and GT litigators regarding "Draft for your review," which was described as a "Communication regarding notice and agenda for upcoming board meeting," (*See* Ex. 1 to JJC 6/8/18 Motion, entries ending in 60777 and 60780); *see also id.*, entry ending in 60273, described as "[c]ommunication re draft board meeting materials.")

That agenda[4] was distributed at approximately 5:30 p.m. Pacific on December 27, 2017. The draft minutes of the December 29, 2017 meeting[5] reflect that they were prepared in part by copying from the agenda, which was prepared in relevant part based upon the December 27, 2017 email.

H. "Independent" Directors Approved "Ratification" to Terminate this Action.

1. Gould

Gould testified that the key factor in his vote to ratify the termination of Plaintiff as President and CEO of RDI was that this derivative litigation already had occurred. (**Ex. 5** hereto, at 544:10-545:17.) He explained that he had voted against the termination of Plaintiff because the directors had given Plaintiff "a period of time to have his performance monitored, and then there would be an evaluation by the board. The actual termination occurred maybe a month before that. I viewed that as a mistake...[a]nd secondly, at the time I was worried... that would lead to extensive, expensive litigation, which turned out to be the case." He concluded that "the litigation has occurred, so I can take that factor out of my equation..." (*Id.*) Thus, Gould voted to "ratify" for reasons unrelated to the merits of the subjects of "ratification," and instead did so in furtherance of what he admitted was a "litigation strategy" for dealing with this derivative action. (*Id.* at 541:15-18.) Gould testified that "[m]y vote would be to terminate, to terminate the derivative action." (*Id.* at 547:17-19, 548:19-23.) He acknowledged that the reason he would vote to terminate this derivative action is that he was a defendant. (*Id.* at 548:24-549:4.)

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[4] The agenda was marked as Dep. Ex. 525, and is attached as Ex. 7 to JJC 6/8/18 Motion.

[5] The draft minutes were marked as Dep. Ex. 526, and are attached as **Ex. 21** hereto.

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2. McEachern

With respect to his support for "ratification," McEachern testified as follows:

> "And I believe we had -- I think we had a [Special Independent Committee] call [on December 21, 2017] to talk about a couple of issues that were still existing in this -- in this derivative case by Jim Cotter, Jr., and *we were trying to address them in a fashion to resolve them.*"

(**Ex. 7** hereto, McEachern 2/28/18 dep. tr. at 506:23-507:12.) (Emphasis supplied.)

When asked how the "ratification" vote would "resolve" issues remaining in this derivative action, McEachern acknowledged that the "ratification" vote was to "cure any issue anybody might think existed." (*Id.* at 507:13-508:2.) McEachern likewise testified that he would "vote to dismiss the [derivative] lawsuit. (*Id.* at 526:14-21.)

3. Codding

Codding testified that the first time she learned of "ratification" was the (telephonic) SIC meeting (of December 21, 2017). (**Ex. 4** hereto, at 206:16-207:4.) When asked if there was any discussion bearing upon the merits of the ratification decision as distinct from the fact of ratification, Codding testified there was no distinction in her mind. (*Id.* at 205:8-207:14.)

Codding identified Bonner and Ferrario and Quinn lawyers Tayback and Searcy as lawyers who have spoken to the SIC. (*Id.* at 217:24-215:3.) She testified that the SIC has never discussed engaging its own independent counsel. (*Id.*)

With respect to "ratification" of the decision to terminate Plaintiff as President and CEO of RDI, Codding admits that she does not know if the (May 21 and 29, 2015 and June 12, 2015) minutes included as part of Exhibit 525, the Board package for the December 29, 2017 meeting, are accurate. (*Id.* at 222:14-25.) She admitted that she was not present and therefore does not know when Adams, Kane and McEachern determined to vote to terminate Plaintiff as President and CEO. (*Id.*) Codding also admitted that she had never heard that Plaintiff was told at the May 29, 2015 meeting that the meeting would reconvene telephonically at 6 p.m. and that, if he had not resolved his differences

with his sisters, they would proceed with the termination vote. (*Id.* at 229:20-230:2.)[6] Codding's understanding of what exactly she voted to ratify with respect to the termination of Plaintiff was that RDI would not hire him as the CEO; and to ratify the vote that was taken to not have him as the CEO. (*Id.* at 230:10-21.)

Prior to voting in favor of "ratification" with respect to the 100,000 share option, Codding had no discussions with Kane or Adams about what they did or did not do as Compensation Committee members in determining to authorize the exercise of the 100,000 share option. (*Id.* at 258:6 – 15.)

As to her efforts generally to make an informed decision about the matters to be "ratified," Codding admitted she has not read any deposition transcript in this case other than her own *and has not looked at any deposition exhibits other than from her own deposition. (Id.* at 230:3-9.)

In response to the question of whether she would vote to allow the derivative lawsuit to proceed, she answered "I don't think it should go forward." (*Id.* at 234:12-17.) She explained that she did not see the purpose of it or understand it. (*Id.*) *When asked if her decision to vote in favor of "ratification" reflected her view of this derivative action, Codding testified that she could not answer the question without disclosing an attorney client communication.* (*Id.* at 232:19-233:1.)

4. Wrotniak

Wrotniak first learned that "ratification" would be taken up at the December 29, 2017 Board meeting from a telephone call he and Codding had with Ferrario and Bonner. Wrotniak described the subject matter of the call as the agenda for the December 29 meeting and *"protection for Reading."* (**Ex. 10** hereto, Wrotniak 3/6/18 dep. tr. at 41:2-42:25.)

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[6] Prior to May 19, 2015, Adams and Kane (and McEachern) communicated to EC and/or between or among themselves their respective agreement to terminate Plaintiff as President and CEO. (**Ex. 13**, Ellen Cotter 6/16/16 Dep. Tr. 175:17-176:8; **Ex. 8**, Storey 2/12/16 Dep. Tr. at 96:5-97:4; 98:21-100:8, 100:14-101:11; **Ex. 2**, Adams 4/28/16 Dep. Tr. at 98:7-17, 98:18-99:22, **Ex. 3**, Adams 4/29/16 Dep. Tr. 368:15-370:5; **Ex. 9**, Storey 8/03/16 Dep. Tr. at 66:22-67:20; and **Ex. 19** hereto, Dep. Ex. 131). Kane emailed Adams in which Kane agreed to second a motion for Plaintiff's termination, if necessary. (**Ex. 16**, Dep. Ex. 81.) Meanwhile, Gould and Storey objected that the directors had not undertaken an appropriate process regarding any decision to terminate Plaintiff as President and CEO, and requested that the directors meet prior to the May 21, 2015 meeting. (**Ex. 20**, Dep. Ex. 318, and **Ex. 17** hereto, Dep Ex. 116.) Kane replied that there was no need to meet as "the die is cast." (**Ex. 18**, Dep. Ex. 117) The May 21, 2015 meeting was adjourned until May 29, 2015 at 11:00am. That meeting was then adjourned until 6:00pm that evening, and Plaintiff was told that he needed to resolve his disputes with his sister by then or he would be terminated. (**Ex. 14** hereto, JJC Decl. ¶15).

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The call lasted less than an hour and occurred in the days before the December 29 Board meeting. (*Id.* at 44:3-22.) The May 31, 2018 privilege log includes entries that appear to indicate that the call occurred on December 28, 2018. (Ex. 3 to JJC 6/8/18 Motion, at entries RDI 76466 and 76469.) Wrotniak testified that "[i]t was agreed" in that call that the December 29 Board meeting would include "ratification." (*See* **Ex. 10** hereto, at 87:7-22.)

Wrotniak received Dep. Ex. 525, the Board package for the December 29, 2017 (telephonic) Board meeting, at or about 8:30 p.m. Eastern on December 27, 2015. (**Ex. 10**, at 39:17-40:19.) That was the first time he had seen the agenda. (*Id.*)

In explaining why he voted to ratify the termination of Plaintiff as President and CEO of RDI, Wrotniak testified that he relied on the May 21 and 29, 2015 and June 12, 2015 Board minutes included in the Board package. (*Id.* at 71:18 – 72:6.) With respect to the board minutes, he testified that he recalled noting "that approximately a week had passed, giving everybody time to pause and to think[,]" but he admitted that he had no information regarding whether anyone did so. (*Id.* at 62:20 – 63:20.)

As for what actually happened in connection with the termination of Plaintiff, Wrotniak does not know. He does not recall ever learning that Adams, Kane, McEachern and Ellen Cotter had agreed prior to the May 21, 2015 meeting to vote to terminate Plaintiff. (*Id.* at 49:16 – 15:18.) For example, he testified he had never seen Dep. Ex. 81 (**Ex. 16** hereto), the Kane May 18, 2015 email to Adams that memorializes their (prior) agreement to vote to terminate Plaintiff. (**Ex. 10**, at 50:19-51:2.)

As to the May 21 and 29, 2015 and June 12, 2015 Board minutes that were the stated basis for his "ratification" vote, Wrotniak admitted that he has no basis upon which to determine whether those minutes are accurate or fairly depict what transpired. (*Id.* at 74:8–22.) (In fact, those minutes are rife with inaccuracies, as former director Tim Storey confirmed.)[7]

[7] (**Ex. 9** hereto, Storey 8/03/16 Dep. Tr. at 81:22 – 82:6; *see also* **Ex. 15** hereto, Dep. Ex. 17 (Storey Handwritten notes from meeting))

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Likewise, Wrotniak never heard or learned that, when the May 29 meeting recessed to be reconvened telephonically at 6:00 p.m., Plaintiff was told that he needed to resolve his disputes with his sisters, failing which the termination vote would proceed when the meeting reconvened. (**Ex. 10**, at 65:10 – 18.)[8] Wrotniak saw that the May 29 minutes referenced an agreement in principle, but he has never communicated with anyone about that. (*Id.* at 66:3 – 13). Wrotniak does not know whether a vote to terminate Plaintiff would have occurred had Plaintiff resolved his disputes with his sisters. (*Id.* at 67:3–13.) Wrotniak likewise has no understanding how the June 12 meeting came to be scheduled. (*Id.* at 66:20–24.) Wrotniak does not recall ever talking to Gould about what happened at the May 21 and 29, 2015 and June 12, 2015 meetings. (*Id.* at 65:19–66:2.)

With respect to his "ratification"of the use of RDI Class A nonvoting stock as consideration for the exercise of the 100,000 share option, Wrotniak did not recall taking any steps to inform himself other than reading Exhibit 525, the board package. (*Id.* at 79:3-7.) Wrotniak does not recall having heard anything about a pour over will or trust, including whether it caused the 100,000 share option to be held or owned by the Trust rather than the Estate. (*Id.*, at 82:2–17.) Wrotniak testified that "that would have impacted my investigation and thought process." (*Id.* at 82:18 – 83:10.) Wrotniak had no communications with Kane or Adams about what they did in 2015 in response to the request to exercise the 100,000 share option. (*Id.* at 83:11–1.)

As for his efforts generally to make an informed decision about the matters "ratified," Wrotniak testified that he has not read any of the deposition transcripts in this derivative case and has not talked with anyone about their deposition testimony. (*Id.* at 51:17-22)

Finally, Wrotniak testified that he has no understanding of the import or significance of the two ratification votes that occurred on December 29, 2017 beyond what he was told by GT lawyers Ferrario and Bonner. (*Id.* at 88:12–23.)

[8] *See* evidence cited at footnote 3, *supra.*

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5. Kane

Kane voted to "ratify" both matters raised at the December 29, 2017 board meeting. (**Ex. 11** hereto, Kane 4/20/18 dep. tr. at 686:11-13.) In doing in doing so, he voted in favor of decisions he had made previously. (*Id.* at 686:14-16.) In voting to "ratify," Kane acknowledged that he thought he was correct when he made the original decisions and that he therefore voted for "ratification." (*Id.* 686:14-16.) With respect to how he would vote on whether this derivative lawsuit should proceed or be terminated, Kane answered "terminate it tomorrow, please sir." (*Id.*, at 686:14-16.)

I. What Was Not "Ratified" Regarding the 100,000 Share Option.

1. Ownership of the 100,000 Share Option Remains an Issue in the Case.

Plaintiff contends Kane and Adams, in breach of their fiduciary duties, authorized Ellen Cotter as an executor of the estate of James J. Cotter, Sr. (the "Estate") to exercise a supposed option to acquire 100,000 shares of RDI class B voting stock (the "100,000 share option") so that EC and MC could prevail in the event non-Cotter shareholders challenged them at RDI's 2015 Annual Stockholder Meeting ("ASM"). (*See* Second Amended Complaint ("SAC"), ¶¶ 10, 102 – 108.) More particularly for present purposes, Plaintiff claims that Kane and Adams breached their fiduciary duties by failing to take proper steps to determine ownership of that option. (SAC ¶¶10, 107.) As the Court knows from prior motion practice, Kane and Adams failed to obtain independent advice, failed to obtain a judicial decision authorizing the exercise, and failed to obtain answers to the questions Kane posed regarding whether the Estate owned the 100,000 share option.[9] Plaintiff claims that these failures constitute breaches of fiduciary duty, independent of the use of RDI class A nonvoting stock as consideration for the exercise of the 100,000 share option. (SAC ¶¶10, 102-108; Plaintiff's May 18, 2018 Pre-Trial Memo Section II.B.2)

As explained by Kane, both in emails produced in this case by defendants and in his deposition testimony, the issue(s) the compensation committee members needed resolved to authorize (or not authorize) the exercise of the 100,000 share option included

[9] *See* **Ex. 2** hereto, Adams 4/28/18 Dep. Tr. at 215:24-216:22, 218:3-219:2, 220:9-20; **Ex. 6** hereto, Kane 5/2/16 Dep. Tr. at 94:19-95:20, 100:23-102:21, 104:13-23.

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the threshold issue of whether that option was the property of the James J. Cotter, Sr. Trust (the "Trust"), as RDI's Proxy Statement in 2014 and years prior had stated and as Plaintiff contended, or whether it was the property of the Estate, as Ellen Cotter contended. In an April 17, 2015 email, Kane summarized the issue(s) as whether there was "any legal reason why Ellen [Cotter], as executor, could not exercise" the share option. (*See* E-mail from Kane to Tompkins, Ellen Cotter, Margaret Cotter, Tim Storey, and Guy Adams, Apr. 17, 2015, 22:44, Exhibit 16 to James Cotter Jr's Reply in support of Motion to Reconsider Order, at 186.) In another email, Kane identified a particular legal issue as whether, by operation of the Trust documents of James J. Cotter, Sr. (under California law), the 100,000 share option had poured over into his Trust upon his death. (*See* E-mail from Kane to Storey, Apr. 18, 2015, 12:26, Exhibit 19 to James Cotter Jr's Reply in support of Motion to Reconsider Order, at 194.)

As Plaintiff previously demonstrated and the Court found, Adams and Kane testified that the sole basis upon which they concluded that the Estate owned the 100,000 share option was the substance of the advice of counsel, including attorney Craig Tompkins ("Tompkins"), at the time a Company "consultant" (and former officer), and the law firm of GT (collectively, "Company Counsel"). (**Ex. 2** hereto, at 215:24-216:9 and 220:9-221:2); **Ex. 6** hereto, at 94:19-95:20, 100:23-102:21 & 104:13-23)

2. Only the Use of RDI Class A Nonvoting Stock as Consideration for the Exercise of the 100,000 Share Option Was "Ratified."

The December 27, 2017 email prepared by GT lawyers (and reviewed if not edited by Tompkins and Ellen Cotter) and sent by Gould's assistant on behalf of the five "independent" directors (Dep. Ex. 527), the agenda for the December 29, 2017 RDI board meeting (Dep. Ex. 525), and the minutes from that meeting (Dep. Ex. 526) each describe the "ratification" of the exercise of the 100,000 share option as concerning only the use of RDI class A nonvoting stock as a consideration. Each reads as follows:

> "The ratification of the decision of the Compensation Committee, as outlined in the Minutes of the September 21, 2015 Meeting of the Compensation Committee, to permit the estate of James J. Cotter, Sr.

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> to use Class A nonvoting stock as a means of payment for the exercise of the option to purchase 100,000 shares of Class B voting stock of RDI."

III. ARGUMENT

A. The Ratification MSJ Is Untimely.

As described above, the Court previously denied the Ratification MSJ because the failure to file it in a timely manner was not shown to be excused. Nothing in the Motion provides an excuse for the failure to timely file the Ratification MSJ. The Motion does not even contend, much less show, that the very same choreography, and the same purported ratifications, could not have occurred in time to have been the subject of a timely summary judgment motion.

On the contrary, it now is clear from McEachern's testimony described above that defendants chose not to pursue "ratification" when doing so would have enabled them to file a summary judgement motion based thereon in a timely manner, but instead "tabled" it. The Motion therefore should be denied.

B. NRS 78.140 Does Not Apply to the Matters Purportedly "Ratified."

The Ratification MSJ argues that "independent" members of the RDI board "ratified" prior conduct of certain of them in terminating Plaintiff as President and CEO of RDI in 2015 and later in 2015 in authorizing the acceptance of RDI class A nonvoting stock as consideration for the exercise of the 100,000 option. NRS 78.140 is the sole authority upon which they rely.

However, under the plain meeting of NRS 78.140, it applies solely to ***transactions between*** the ***corporation and interested directors and/or officers***. NRS 78.140 provides in relevant part as follows:

> **Restrictions on transactions involving interested directors or officers; compensation of directors.**
>
> 1. *A contract or other transaction is not void or voidable solely because*:
> (a) *The contract or transaction is between a corporation and*:
>
> (1) *One or more of its directors or officers*; or

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

(b) A common or interested director or officer:

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

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

(c) The vote or votes of a common or interested director are counted for the purpose of authorizing or approving the contract or transaction, if one of the circumstances specified in subsection 2 exists.

2. The circumstances in which a contract or other transaction is not void or voidable pursuant to subsection 1 are:

(a) The fact of the common directorship, office or financial interest is known to the board of directors or committee, and the directors or members of the committee, approve or ratify the contract or transaction in good faith.

NRS.78.140 (emphasis supplied).

NRS 78.140 has no application here, as the plain language of the statute, italicized above, shows. Clearly, the purpose of NRS 78.140 is to create a path for the approval of director or officer self-interested transactions ***with the corporation*** that might otherwise be void or voidable. The specific language of subsection (1)(a) makes clear that, for the statute to apply, there must be a contract or transaction between a corporation and one or more of its directors or officers (or corporations with which they are affiliated in certain ways). Only that situation triggers the remaining provisions of Section 1, which are qualified by section (1)(a) and must be read in conjunction with section (1)(a). The "contract or transaction" in subsections (1)(b) and (1) (c) indisputably refers to the contract or transaction described in (1)(a), which is a contract or transaction between a

corporation and one or more of its directors or officers. Such a transaction is not void or voidable, and the participation of the interested directors or officers as contemplated by subsections (1)(b) and (1)(c) is permitted, if the board or committee ratifies the contract or transaction in good faith as set forth in subsection (2).

Delaware's substantially similar counterpart, DGCL §144, likewise is limited to contracts or transactions between a corporation and its directors and officers (or other corporations in which its directors or officers have a financial interest):

> (a) **No contract or transaction between a corporation and 1 or more of its directors or officers, or between a corporation and any other corporation . . . in which 1 or more of its directors or officers, are directors or officers, or have a financial interest**, shall be void or voidable [a] solely for this reason, or [b] solely because the director or officer is present at or participates in the meeting of the board or committee which authorizes the contract or transaction, or [c] solely because any such director's or officer's votes are counted for such purpose, if:
>
> > (1) The material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the board of directors or the committee, and the board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or
> >
> > . . . .
> >
> > (3) The contract or transaction is fair as to the corporation as of the time it is authorized, approved or ratified, by the board of directors, a committee or the stockholders.

See, e.g., Cinerama, Inc. v. Technicolor, Inc., 663 A.2d 1156, 1169 (Del. 1995) (§ 144 "deals with the related problem of the conditions under which a corporate contract can be rendered 'un-voidable' solely by reason of a director interest"). There is no basis under either NRS 78.140 or the parallel Delaware statute for applying the statute other than to a contract or transaction between the corporation and one or more directors or officers.

As the Ratification MSJ itself asserts, the purported ratifications were not of a contract or transaction between RDI and the Cotter sisters (or defendant Guy Adams). The first subject of "ratification" was the 2015 board vote to terminate Plaintiff as CEO of RDI. While, of course, the Cotter sisters and therefore Guy Adams were interested in the

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outcome of the termination vote, the matter "ratified" did not involve a contract or transaction between any of them and RDI.

The same is true with respect to the purported ratification of the 2015 decision by Kane and Adams to authorize acceptance of Class A non-voting stock as consideration for the exercise of the 100,000 share option. By its terms, the "ratification" was not of the underlying option agreement (between the Company and James J Cotter, Sr.). Nor did "ratification" concern the validity (or ownership) of that assumed contractual right. Rather, the "ratification" addressed only the subject of the consideration for the exercise.

Thus, the subject of the "ratifications" was not a contract or transaction between RDI and its directors or officers. NRS 78.140 therefore is inapplicable.

Even if, *arguendo*, NRS 78.140 were to apply, that does not mean that the so-called "ratification" was effective here. First, NRS 78.140(2)(a) requires that any decision pursuant to that statutory provision be made by independent directors acting in "good faith." As demonstrated herein, there are at a minimum disputed issues of material fact with respect to whether the "ratifying" directors were independent, and whether they acted in good faith and on an informed basis.

Second, the Ratification MSJ simply assumes without explanation or authority that actionable conduct can be cured by "ratification." However, it cites absolutely no authority for such proposition. *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 137 P.3d 1171 (2006), which it cites, is not authority for such a proposition. In *Shoen*, the Nevada Supreme Court merely cited NRS 78.140 as "governing interested director transactions." *Shoen*, 122 Nev. at 636 n. 34, 137 P.3d at 1181 n. 34. Defendants in *Shoen* did not assert ratification as a defense or rely on NRS 78.140. And, in contrast to the so-called ratification here, *Shoen* did not involve a board's "ratification" of a prior decision by the board or board committee. Rather, *Shoen* involved a web of interested business dealings and transactions between the corporation (Amerco) and the SAC entities that were controlled by certain directors of Amerco. Thus, Defendants fail to cite any case applying NRS 78.140, let alone a case applying it outside of a contract or transaction between a corporation and its director or officer

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For the reasons explained above, NRS 78.140 by its terms does not provide for curing actionable conduct; it merely provides for authorization of interested director contracts or transactions by independent directors acting in good faith on an informed basis.

C. The Moving Party Bears the Burdens of Proof.

1. The Moving Party Bears the Burden of Proving That the "Independent" Directors "Resorted in Good Faith to an Informed Decision-Making Process."

Although the actions of the "independent" directors have been depicted for litigation purposes as "ratification," they are the type of actions taken by a special litigation committee seeking dismissal of a derivative action. The reason that the Ratification MSJ does not refer to the "independent" directors as such is because their acts and omissions over the few days in which the "ratification" "process" was executed evidence a wholesale failure to perform a good faith and thorough investigation leading to good faith and informed "ratification" decisions.

Where, as here, relief is sought based on the conduct of a subset or committee of a board of directors to whom or which decision-making authority has been delegated, the movant bears the burden of proving that those directors conducted a good faith and thorough investigation. *Jacksonville Police and Fire Pension Fund v. Brokaw (In re DISH Network Derivative Litig.)*, 401 P.3d 1081, 1088 (Nev. 2017). In assessing "whether an individual director or Board of Directors acted in good faith and, in turn whether protection under the business judgment rule is available[,]" the Court may and should conduct an "inquiry into the procedural indicia of whether the directors resorted in good faith to an informed decision making process." *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, 399 P. 3d. 334, 343 (Nev. 2017 (citing *WLR Foods, Inc.* v. *Tyson Foods, Inc.*, 857 F. Supp. 492, 494 (W.D. Va. 1994)). This includes, among other things, "inquiry into the identity and qualifications of any sources of information or advice sought which bear upon the decision reached, the circumstances surrounding selection of the sources [and] the general topics … of the information sought are imparted…" *Id.*

Moreover, evidence that "the investigation [by a special committee of supposedly independent directors] has been so restricted in scope, so shallow execution, or otherwise so *pro forma* or halfhearted as to constitute a pretext or sham... would raise questions of good faith or conceivably fraud which would never be shielded by [the business judgment] doctrine." *In re DISH Network Derivative Litig.*, 401 P.3d at 1092 (citing and quoting *Auerbach v. Bennett*, 47 N.Y.2d 619, 419 N.Y.S.2d 920, 393 N.E.2d 994, 1003 (1979)).

2. The Moving Party Also Bears the Burden of Proving the Independence of the "Ratifying" Directors

A board of directors may "delegate to a committee of disinterested directors the board's power to control corporate [derivative] litigation." *Kaman v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 102 (1991). Such a committee typically is called a special litigation committee or an "SLC." *Beam v. Stewart*, A.2d 1040, 1055 (Del. 2004).

Where, as here, that has occurred, the moving party also bears the burden of proving the independence of board members whose actions and/or decisions serve as the basis for the relief sought. *In re DISH Network Derivative Litig.*, 401 P.3d at 1088, 1089. Therefore, the District Court "should not presume [a special litigation committee] to be independent nor require the derivative plaintiff to bear the burden of proof" with respect to the issue of independence. *Id.* at 1089.

Put differently, the party seeking dismissal of a derivative action based upon the actions or recommendations of a board committee "bears the burden of persuasion" and must "demonstrate that no material factual question exists regarding... independence [of the committee members]." *In re Oracle Corp. Derivative Litig.*, 624 A.2d 917, 920 (Del. Ch. 2003). The test of committee member independence is whether connections between them and the directors who are the subject of the committee's decision "would weigh on the mind of a reasonable special litigation committee member." *Id.* at 947. If so, those connections "generate a reasonable doubt about the [committee members'] impartiality because they suggest that material considerations other than the best interests of [the corporation] could have influenced the[ir] inquiry and judgments." *Id.* Thus, the District

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Court must "assess whether any improper influences prevented the SLC from impartially considering the merits of a derivative suit before recommending it be dismissed." *In re DISH Network Derivative Litig.*, 401 P.3d at 1090.

Unlike the motions for partial summary judgment, in which Plaintiff bore the burden of proof with respect to the issue of the independence of individual directors who sought to invoke the business judgment rule, here the moving party bears the burden of "establishing... independence by a yardstick that must be 'like Caesar's wife -- above reproach.'" *Beam v. Stewart*, 845 A.2d 1040, 1055 (Del. 2004).

For the foregoing reasons, this Court's prior determinations that Plaintiff had failed to raise disputed issues of material fact regarding the independence of the five directors with respect to the matters that were the subject of motions for partial summary judgment does not and cannot excuse the moving party here from satisfying its burden of proof with respect to their independence. Simply put, both the burdens of proof and the substantive standards applicable here are different than those which were applicable to the motions for partial summary judgment.

Additionally, if the Court does not deny the Ratification MSJ, Plaintiff is entitled to and hereby requests an evidentiary hearing with respect to both issues as to which defendants bear the burden of proof, namely, independence and a thorough investigation conducted in good faith. *Shoen*, 122 Nev. at 645, 137 P.3d at 1187. As the record (including from May 2, 2018 evidentiary hearing) makes clear, questions of fact and credibility, the latter on the part of both the "independent" directors and their conflicted counsel, predominate.

D. The Ratification MSJ Satisfies None of the Burdens of Proof It Bears.

As demonstrated below, the Ratification MSJ fails to satisfy the burdens of proving that there are no disputed issues of material fact with respect to both (i) the independence of the "ratifying" directors, and (ii) whether those directors who approved "ratification" as a result of a good faith, thorough investigation that enabled them to make a good faith, informed decision.

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1. Use of Company Counsel Establishes a Lack of Independence, as a Matter of Law and Fact

Courts repeatedly hold that the use of company counsel, whether by special committees or other supposedly independent directors, raises questions about the independence of the advisors and, thereby, the committee and the individual directors. *Gesoff v. IIC Industries Inc.*, 902 A.2d 1130, 1147 (Del. Ch. 2006), *subsequent proceedings*, 2006 Del. Ch. LEXIS 161, 2006 WL 2521441 (Del. Ch. Aug. 22, 2006) ("[A] special committee's decision to use the legal and financial advisors already advising the parent 'alone rais[ed] questions regarding the quality and independence of the counsel and advice received'")(citing *In re Tele-Communications, Inc. Shareholders Litig.*, 2005 WL 3642727 (Del. Ch. Dec. 21, 2005)); *see generally* William T. Allen, *Independent Directors in MBO Transactions: Are They Fact or Fantasy?*, 45 BUS. LAW. 2055 (1990). Thus, courts reject determinations made by directors based on advice of counsel where such advice may be tainted by a conflict of interest. *In re Oracle Securities Litig.*, 829 F. Supp. 1176, 1189 (N. D. Cal. 1993) (a board committee reliance on the inherently biased advice of in-house counsel made the committee's determination "worthless.")

In *In re Par Pharm., Inc. Derivative Litig.*, 750 F. Supp. 641 (S.D.N.Y. 1990), the nominal defendant company moved to dismiss after a special litigation committee conducted an investigation and recommended dismissal, and the supposedly independent members of the company's board of directors accepted that recommendation and voted to dismiss. The court denied the motion to dismiss, in part because "the Committee failed to retain independent counsel," "but instead relied upon the firm [that represented the Company] and its board in th[at] litigation." *Id.* at 644, 647. The court described that counsel as having a "conflict of interest . . . ." *Id.* at 647. With respect to the jurisprudence, the Court observed that "[b]oth New York and Delaware law contemplate that a special litigation committee be represented by independent counsel." *Id.* (citing *Spiegel v. Buntrock*, 571 A.2d 767, 772 (Del. 1990); *Kaplan v. Wyatt*, 484 A.2d 501, 511 (Del. Ch. 1984), *aff'd*, 499 A.2d 1184 (Del. 1985); *Byers v. Baxter*, 69 A.D. 2d 343, 348, 419 N.Y.S. 2d 497, 500 (App. Div. 1979)).

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Here, the "independent" directors have relied entirely on "advice" from Company Counsel, who face actual, pervasive and debilitating conflicts arising from the fact that the Company that employs and pays them is controlled by the Cotter sisters.

As to Craig Tompkins, RDI's General Counsel who reports to Ellen Cotter and to whom GT attorneys report, Kane testified that he (Kane) understood that Tompkins was on the side of Ellen Cotter in her disputes with Plaintiff, as well as that he (Kane) was of the view that "Tompkins always acted in his own self-interest." (*See* **Ex. 12** hereto, Kane dep. 6/9/16 dep. tr. at 427:3-9, 428:2-9 and 432:13-25.) In the former regard, Kane at deposition explained that the words he used in an email stating "according to [Ellen Cotter], Craig is also on the 'team[,]' meant that Tompkins "was [with] Ellen and Margaret versus Jim." (*See* **Ex. 6** hereto Kane 5/2/16 dep. tr. at 176:18-177:1, and Ex. 17 to JJC 6/8/18 Motion (Dep. Ex. 105))

As to GT, GT lawyers ignored the conflicts with which they are faced and consistently acted to further the interests of the individuals who control the Company and employ them as Company counsel, both in this action and in the board room.

GT as counsel of record for nominal defendant RDI has acted vigorously to terminate this case, thereby protecting and pursuing the interests of the Cotter sisters. This began with a contrived motion to compel arbitration (following the filing of a contrived arbitration) and included, among other things, motions to dismiss and motions for summary judgment asserting bases available only to individual defendants.

During the pendency of this action, GT repeatedly has "advised" "independent" directors, who have acted in reliance on GT's advice in making decisions that benefit Ellen and Margaret Cotter, who control RDI, which employs and pays GT. For example, GT in 2015 "advised" Kane and Adams, to work around rather than address the issue of ownership of the so-called 100,000 share option.

With respect to the purported "ratification," GT lawyers actually viewed their client as the Company. GT attorney Bonner testified as follows:

BY MR. FERRARIO:

Q Mr. Bonner, you currently work at Greenberg Traurig; correct?

A Yes.

Q *And is a company called Reading International a client?*

A Yes. It's a client of our firm.

Q Okay. And are you the principal contact for that client?

A Yes.

Q Okay. *And in your capacity as a lawyer for that client do you get involved with something called the special independent committee of the board of directors of Reading International, Inc.?*

A Yes.

(*See* Ex. 15 to JJC 6/8/18 Motion, 5/2/18 hearing tr. at 19:3-16.) (Emphasis supplied.)

In view of the foregoing, there can be little if any doubt that "ratification" is a "litigation strategy" hatched by GT lawyers for use in this derivative action for the benefit of defendants Ellen Cotter and Margaret Cotter. As described above, GT lawyers cleared "ratification" with Ellen Cotter, Margaret Cotter and Tompkins before "advising" SIC committee members Gould, McEachern and Codding at the (previously concealed) telephonic SIC meeting on December 21, 2017 that and how to use "ratification" as a "litigation strategy." Next, GT lawyers provided Tompkins and Ellen Cotter drafts of what came to be Gould's December 27, 2017 email on behalf of the "independent" directors requesting that the two "ratification" matters be approved at the board meeting on December 29, 2017. Presumably in an effort to avoid the open issue of the reliance of Adams and Kane on GT's 2015 "advice" as the sole basis for their conclusion regarding ownership of the 100,000 share option, the December 27, 2017 email omits that issue.

Most recently, GT lawyers have withheld evidence in discovery, the effect of which was to conceal the actual "ratification" "process." Nevertheless, the May 30 and 31 supplemental productions and (facially inadequate) privilege logs reveal that "ratification" was a "litigation strategy" approved by Ellen Cotter, Margaret Cotter and Tompkins, and that the "independent" directors simply did what GT lawyers told them to do. To that end, GT lawyers belatedly prepared the minutes of the December 21, 2017 SIC meeting, but excluded the portion of the meeting concerning "ratification." They also failed to produce or log those minutes.

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Now, the lawyers who "advised" the "independent" directors are asserting attorney-client privilege, on behalf of the Company, with respect to their communications with those directors in an effort to render the actual basis for the "independent" directors' "ratification" decisions ("advice" from conflicted counsel) undiscoverable. Tellingly, in the face of such conflicts, GT has not advised the "independent" directors to seek advice from independent counsel.

As the foregoing shows, the record before the Court shows that the "independent" directors lacked independence or, at a minimum, raises disputed issues of material fact about their independence that require denial of the Ratification MSJ.

2. Other Factors Also Show a Lack of Independence

Courts have identified a number of factors to be considered in determining the independence of directors as members of special litigation committees. Several of those factors weigh decidedly against a determination of independence.

One such factor is whether the directors were members of the corporation's board at the time of the alleged wrongdoing. *In re KLA-Tencor Corp. Shareholder Derivative Litig.*, No. C06-03445 JW Slip Op. at 5, 7 (N.D. Cal. Dec. 11, 2008) (finding a lack of independence because one of two committee members was a member of the board during the alleged wrongdoing). Gould, McEachern and Kane each were members of the Board at the time of all complained of actions, and Codding and Wrotniak were board members at the time of several of the complained of actions.

Another factor is whether the directors participated in the alleged wrongdoing. *Grynberg v. Farmer*, 1980 WL 1456, at *6 (D. Colo. Oct. 8, 1980). A similar factor is whether they approved the conduct or transaction involving the alleged wrongdoing. *KLA-Tencor*, Slip Op. at 5, 7. Here both are the case for each of the five insofar as he or she was a Board member at the time.

And, critically here, whether the committee received advice from independent counsel also is a factor. *In re Par Pharm. Inc. Derivative Litig.*, 750 F. Supp. at 644 (denying motion to dismiss the derivative action where the committee "did not obtain independent legal counsel but instead relied upon... counsel for [the nominal defendant corporation]

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and its Board in this litigation.") As discussed above, none sought or obtained the advice of independent counsel but, instead, accepted and relied on the advice of conflicted Company Counsel.

Finally, statements "conflating the SLC and the Company" also weigh against a finding of independence. *KLA-Tencor*, Slip Op. at 5, 7. Here, there are statements by Company Counsel (Bonner's testimony identifying RDI as his client in his dealings with the SIC) that do so, and statements by directors (*e.g.*, Wrotniak's "protection for Reading" statement) that do so.

In view of this evidence, there exists at a minimum disputed issues of material fact regarding their independence, which requires denial of the Ratification MSJ.

3. The Evidence Shows an Inadequate if Not Fraudulent Process Undertaken in Bad faith in Furtherance of a Preordained Result

Discovery to date, including as described above, shows that the "ratification" scheme was conceived by GT lawyers, who first obtained approval from defendants Ellen Cotter and Margaret Cotter to pursue it, and who then "advised" "independent" directors to "ratify" certain conduct the Court previously found to be actionable. Dutifully "advised," SIC members Gould, Codding and McEachern on December 21, 2017 each agreed after a brief telephonic discussion claimed privileged to approve "ratification." Next, GT attorneys worked with Tompkins and EC to draft the December 27, 2017 email Gould sent, purportedly on behalf of the "independent" directors, to approve "ratification" of two matters. With respect to that email, Gould had no input into the contents, and the other four did not even see it until their depositions in this case. Wrotniak first heard about "ratification" on December 27 or 28, 2017, when he spoke telephonically with GT attorneys Bonner and Ferrario, who told him that "ratifying" prior conduct would be on the agenda for the December 29, 2017 board meeting. Kane's agreement was foregone, because it was his decisions that were being "ratified." As Gould acknowledged at his deposition, "ratification" is a "litigation strategy." The evidence shows that the preordained purpose of that "litigation strategy," which was

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hastily carried out by "independent" directors in reliance on advice from conflicted counsel.

When combined with the ongoing efforts of defense counsel to conceal what actually transpired with respect to the purported ratifications, the evidence presents a clear picture of a sham or fraudulent exercise undertaken to reach a preordained conclusion, namely, "ratification" as a "litigation strategy" intended to bring about the dismissal of this derivative action.

Thus, defendants have failed to bear the burden of showing that the "independent" directors engaged in a good faith, informed decision-making process leading to good faith, informed, disinterested and independent decisions. The Ratification MSJ therefore must be denied, for this reason alone.

E. "Ratification" Did not Address All of the Issues Arising from the Authorization of the Exercise of the 100,000 Share Option

As described above, and as admitted by Kane at the time, a threshold issue in determining whether to authorize the exercise of the 100,000 share option was whether that option was owned by the Estate. However, the "ratification" is confined to the use of RDI class A nonvoting stock as consideration for the exercise. Thus, the purported ratification does not eliminate the authorization of the exercise of the 100,000 share option as an issue in this case.

F. Plaintiff is Entitled to Rule 56(f) Relief

Where a plaintiff properly identifies additional facts necessary to oppose a summary judgment motion and seeks additional time to obtain that discovery, summary judgment is improper. *Aviation Ventures, Inc. v. Joan Morris, Inc.* 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005). Where it is "unclear whether genuine issues of material fact exists," a Rule 56(f) continuance allows for "proper development of the record." *Aviation Ventures,* 121 Nev. at 115, 110 P.3d at 60. Here, due to the delay of Responding Parties in providing court-ordered discovery, Plaintiff through no fault of his own is not yet in a position to present all "facts essential to justify the party's opposition." For the reasons set forth

above and in the accompanying declaration of Mark G. Krum, Plaintiff is entitled to NRCP 56(f) relief.

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully submits that the Ratification MSJ should be denied.

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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: **PLAINTIFF'S OPPOSITION TO ELLEN COTTER, MARGARET COTTER AND GUY ADAMS' MOTION FOR SUMMMARY JUDGMENT (BASED ON RATIFICATION"); DECLARATION OF MARK G. KRUM**, to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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DATED this 13th day of July, 2018.

By: /s/ JUDY ESTRADA

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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 G. KRUM PURSUANT TO NRCP 56(f) AND IN OPPOSITION TO SUMMARY JUDGMENT MOTIONS** **Hearing Date: June 19, 2018** **Hearing Time: 8:30 a.m.**

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I, Mark G. Krum, declare:

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

2. The Motion for Summary Judgment filed on June 1, 2018 by defendants Ellen Cotter, Margaret Cotter and Guy Adams (the "Ratification MSJ") is predicated on the assumption that, because the Court found no disputed issues of material fact with respect to the disinterestedness of certain directors for the purposes of the matters raised in partial summary judgment motions argued on December 11, 2017, those directors therefore are disinterested and independent for all purposes, including for the purposes of the "ratification" on which the Ratification MSJ is based.

3. The Motion for summary judgment regarding demand futility filed on June 4, 2018 by counsel of record for nominal defendant Reading International, Inc. ("RDI") is predicated on the same assumption.

4. Because disinterestedness and independence are questions of fact, Plaintiff is entitled to discovery, including regarding the "ratification" "process," as the Court found on January 8, 2018 and ruled on May 2, 2018, when the Court ordered RDI and former defendants (the "Responding Parties") to provide additional documents and information with respect to "ratification" and matters related thereto, described below.

5. Likewise, Plaintiff is entitled to discovery regarding whether the "ratifying" directors acted in good faith and on an informed basis, which also are questions of fact. That discovery likewise concerns the "ratification" "process."

6. On or about January 12, 2018, Plaintiff issued subpoenas to the Responding Parties and document requests and interrogatories to the remaining defendants. By the end of February 2018, all but Gould purported to have produced or listed on a privilege log all responsive documents. Additionally, the remaining defendants provided

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interrogatory responses.

7. As the Court knows from prior motion practice, Counsel for Plaintiff learned for the first time at depositions of SIC members Doug McEachern, Judy Codding and William Gould of a meeting of the "Special Independent Committee" of the RDI board of directors (the "SIC") in December 2017 at which "ratification" had been discussed and "formally" approved.. As the Court also knows from prior motion practice, counsel for Plaintiff specifically requested that counsel for the Responding Parties produce minutes of that December 2017 SIC meeting.

8. Finally, on or about April 12, 2018, minutes of what turned out to be a December 21, 2017 SIC meeting were produced for the first time. However, they were produced in a wholly redacted form.

9. As a result of the foregoing, among other efforts on the part of the remaining defendants and Responding Parties to frustrate Plaintiff's ability to obtain discovery regarding the "ratification" "process," Plaintiff filed a motion for "omnibus relief." That motion was heard on April 30, 2018, at which time the Court ordered an evidentiary hearing, which occurred on May 2. At the end of the May 2 hearing, the Court granted Plaintiff's motion for omnibus relief in part, ordering that the Responding Parties produce and/or log all documents responsive to three categories of information, as follows:

> THE COURT: ... So three categories, [i] the 12/21 special committee meeting, whether its scheduling, content, scope, minutes, whatever, related to that meeting; [ii] P-1 [the 12/27/18 email], whether its subject matter, preparation, drafting, circulation, how we're going to get it on the agenda for the 12/29 meeting; and the third item is [iii] any discussion of ratification, not limited by time.

(5/2/18 hearing tr. at 79:6-13.) (Emphasis supplied.)

10. The Court on May 2, 2018 also granted the remaining defendants motion to file what is the now filed Ratification MSJ, but instructed them not to file it until after they had complied with the Court's May 2, 2018 order and also had afforded counsel for Plaintiff sufficient time to review and analyze the documents and privilege logs ordered

produced, and to then determine whether Plaintiff needed further discovery. In this regard, the Court stated as follows:

> THE COURT: Yeah. So I want Mr. Krum, instead of me facing a 56(f) issue at the time you file that motion, he's ready to file his opposition, I want him to have the opportunity to get these documents with the privilege logs, look at them, and then have a period of time he can decide
>
> whether he needs to take additional depositions and, if you fight about it, for me to rule on it. So I'm going to grant your request even though I am hesitant to do so under the circumstances, but I don't want to be in a position where you guys slow play them and then I'm sitting back here again that he didn't get the stuff

(5/2/18 hearing tr. at 81:6-16.)

11. On June 1 and 4, 2018, respectively, the remaining defendants filed the renewed Ratification MSJ and RDI file the renewed Demand Futility MSJ. As described below, what the Court sought to avoid has happened. The remaining defendants and the Responding Parties have slow played Plaintiff, whose counsel has not an opportunity to do what he is entitled to do and what the Court ordered he be afforded the opportunity to do.

12. On May 30 and 31, 2018, Greenberg Traurig ("GT'), for RDI and/or for the Responding Parties, made supplemental productions of thousands of pages of documents and produced two (facially deficient) voluminous, supplemental privilege logs. Dozens upon dozens of documents relating to one or more of the foregoing three categories have been withheld based on claims of attorney-client privilege, the work product doctrine, or both, as reflected by entries on those privilege logs. As demonstrated in a separate motion, Plaintiff seeks the production of those documents, asserting that those documents are not privileged and are not properly claimed to be subject to work product protection and, even if they were subject to proper claims of privilege and/or work product protection, both were waived.

13. However, even if the documents listed on the May 30 and 31, 208 privilege logs are properly withheld based on claims of attorney-client privilege, work product or both, they must be properly logged so counsel for Plaintiff is able to use the entries on the

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privilege logs for the various purposes for which they are required, including to examine witnesses (who claim not to recall) to learn what communications were had between and among the counsel for RDI, the remaining defendants and/or the Responding Parties with respect to the three subject matters of the Court's May 2, 2018 order. Because the May 30 and 31, 2018 privilege logs suffer from several facial deficiencies, including the failure to identify each sender and recipient by name, and the failure to describe the subject matter of the documents logged in terms that are not so general as to be meaningless, counsel for Plaintiff is unable to use those to logs even identify the subjects matter of dozens upon dozens of logged communication, much less examine witnesses to confirm the subject matters and/or the participants.

14. On June 6, 2018, I met and conferred telephonically with counsel for RDI and the remaining defendants and the Responding Parties (except for Gould) regarding the May 30 and 31 document productions and privilege logs. On June 8, counsel for RDI advised that the responding parties would be making supplemental productions of documents and would provide a revised privilege log.

15. On Saturday, June 9, 2018, GT made a further supplemental production of documents, producing over 2000 pages of documents. Counsel for Plaintiff has not completed the review of those documents, but it appears that they are largely if not entirely draft SEC filings and email communications regarding those drafts.

16. About the close of business on June 11, 2018, GT made another supplemental production of documents, the total volume of which is in excess of 3000 pages. The documents were password protected and counsel for Plaintiff was not provided with password until June 12. Faced with deadlines for oppositions to the recently renewed summary judgement motions, counsel for Plaintiff did not review those documents yesterday or today.

17. Last night, at approximately 8 p.m. Pacific on Tuesday, June 12, 2018, GT made another supplemental production of documents, the total volume of which appears to be over 1000 pages. Counsel for Plaintiff has not yet reviewed these documents.

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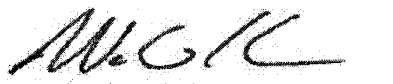
18. Also on June 12, 2018, GT attorney Kara Hendricks advised that a supplemental and/or superseding privilege log would be produced today, June 13, 2018. It has not been produced at the time of completion of this declaration..

19. Counsel for Plaintiff will need time to complete the review of documents produced on June 9, 2018, and to commence and complete the review of documents produced on June 11 and 12, 2018. Counsel for Plaintiff likewise will be time to review a supplemental privilege log, if and when it is produced. If the course of discovery is any indication, such a log is unlikely to cure all of the deficiencies from which the May 30 and 31, 2018 logs suffered. Even if it did so, Plaintiff has not had the opportunity to use the that log for any purpose, or the May 30 and 31, 2018 logs to further depose any of Ellen Cotter, Craig Tompkins, Margaret Cotter, William Gould, Judy Codding, Michael Wrotniak and/or Ed Kane, each of whom was (according to documents produced on May 30 and 31, 2018 and/or entries in the May 30 and 31, 2018 privilege logs) party to communications that concerned one or more of the three subjects of the Court's May 2, 2018 order.

20. Simply put, the remaining defendants and the Responding Parties have not complied with the Court's May 2, 2018 order, delayed compliance or both, as a result of which Plaintiff has not had an opportunity to obtain the discovery the Court ordered Plaintiff was entitled to obtain. As indicated by Plaintiff's description of certain of the documents produced on May 30 and 31, 2008, as well as by Plaintiff's description of certain entries on the May 30 and 31, 2018 privilege logs, Plaintiff reasonably expects that additional discovery (without regard to whether the Court orders the production of additional documents) will evidence the contemporaneous involvement of defendants Ellen Cotter and/or Margaret Cotter, along with RDI counsel Tompkins, in the "ratification" "process," together with extensive disclosure to Ellen Cotter and to Tompkins of matter supposedly privileged and confidential vis-à-vis at least the remaining defendants. Plaintiff also reasonably anticipates this discovery will reveal not only with whom each of the supposedly independent directors communicated about

"ratification" and the other particular matters that were the subject of the Court's May 2, 2018 order, but also will evidence what they did and did not do in determining to approve "ratification." All such evidence will go to the question of the independence of the directors whose independence is a basis for the Ratification MSJ and the summary judgment motion based on demand futility, and/or to the question of whether those directors acted in good faith and on an informed basis in approving "ratification."

Executed this 13th day of June, 2018.



Mark G. Krum, Esq.

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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 G. Krum Pursuant to NRCP 56(f) and in Opposition to Summary Judgment Motions** 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

DATED this 13th day of June, 2018.

By: /s/ JUDY ESTRADA

Exhibit 1

8-K 1 rdi-20180223x8k.htm 8-K

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): February 23, 2018

Reading International, Inc.
(Exact Name of Registrant as Specified in its Charter)

Nevada	**1-8625**	**95-3885184**
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

5995 Sepulveda Boulevard, Suite 300, Culver City, California	**90230**
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: **(213) 235-2240**

N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 8.01 Other Events.

Reading International, Inc.'s through its press release dated February 23, 2018, announced that the Superior Court of the State of California for the County of Los Angeles entered a statement of decision (the "Statement of Decision") in the matter regarding the James J. Cotter Living Trust ("Cotter Living Trust"), Case No. BP159755 (the "Trust Litigation") on February 14, 2018.

For more information, see the press release attached as exhibit 99.1, the charter of the Special Independent Committee attached as exhibit 99.2, and the California Superior Court issued Statement of Decision dated February 14, 2018 attached as exhibit 99.3, hereto.

Item 9.01 Financial Statements and Exhibits.

99.1	Press release issued by Reading International, Inc. providing an update on the California Superior Court's Ruling regarding the Cotter Living Trust
99.2	Reading International, Inc.'s Board of Directors Special Independent Committee Charter adopted on August 7, 2017
99.3	California Superior Court issued Statement of Decision dated February 14, 2018 in the matter In Re: James V. Cotter, Living Trust, Ellen Marie Cotter, Margaret Cotter, Petitioners, vs. James J. Cotter, Jr., Respondent, Case No: BP159755

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

READING INTERNATIONAL, INC.

Date: February 23, 2018

By: /s/ Ellen Cotter
Name: Ellen Cotter
Title: Chief Executive Officer and President

EX-99.1 2 rdi-20180223xex99_1.htm EX-99.1

Reading International Announces Trial Court Decision to Appoint Temporary Trustee Ad Litem to Obtain Offers to Purchase RDI Voting Stock in James J. Cotter, Sr., Voting Trust

Culver City, California, - (BUSINESS WIRE) – February 23, 2018 – Reading International, Inc. (the "Company") today announced that the California Superior Court has issued a statement of decision (the "Statement of Decision") in the matter *In Re: James V. Cotter, Living Trust*, *Ellen Marie Cotter, Margaret Cotter, Petitioners, vs. James J. Cotter, Jr., Respondent,* Case No: BP159755 (the "Cotter Trust Case"), relating to Mr. James J. Cotter, Jr.'s February 8, 2017 petition to appoint a temporary trustee ad litem (a "Temporary TAL") to pursue a sale of the Class B Voting-Stock owned, before his death, by Mr. James J. Cotter, Sr. These shares represent more than 66% of the outstanding voting power of our Company. In response to Mr. Cotter, Jr.'s petition, the California Superior Court has determined to appoint a Temporary TAL "with the narrow and specific authority to obtain offers to purchase the RDI stock in the voting trust, but not to exercise any other powers without court approval, specifically the sale of the company or any other powers possessed by the trustees."

In a prior statement of decision dated December 8, 2017, the California Superior Court determined Ellen Cotter and Margaret Cotter to be the sole trustees of the James J. Cotter, Sr., Living Trust (the "Cotter Trust"), and Margaret Cotter to the sole trustee of the voting trust to be created under the Cotter Trust (the "Voting Trust"). The Statement of Decision, except with respect to the limited authority granted to the Temporary TAL, leaves Ellen Cotter and Margaret Cotter in place as trustees, with all powers granted to them under the applicable trust documents, over all other matters relating to the Cotter Trust, the Voting Trust and their respective assets, including authority to vote the Class B Stock held by the Cotter Trust and/or the Voting Trust.

The Statement of Decision does not name a Temporary TAL, but provides that if the parties cannot agree on a Temporary TAL, one will be appointed at some future date by the California Superior Court.

Our Company's Board of Directors previously established a Special Independent Committee comprised of directors William Gould (our lead independent director who also serves as the Chair of the Special Independent Committee), Judy Codding and Douglas McEachern to, among other things, address any potential change of control transaction relating to the sale of the shares of Class B Voting Stock, which may now or in the future be held by the Cotter Trust.

The Charter of the Special Independent Committee includes the following statements: "Due to the fact that the Voting Stock held by the [Cotter] Trust and the [Cotter] Estate represents less than 5% of the outstanding equity of the Company, there is a risk that the interests of the person or group acquiring such a controlling block would not be consistent with the long term business strategy adopted by the Company's Board or would otherwise be inconsistent with the interest of holders of Class A Common Stock or other holders of Class B Common Stock. The Board had previously determined that it would be in the best interests of the Company and its stockholders for the Company to pursue its long-term business strategy as an independent company. Ellen Cotter, Margaret Cotter, and/or an entity in which they have a

controlling interest may be involved in the Trust Share Sale Process as a potential purchaser

---

of such shares, and have advised the Board that they intend to continue with the implementation of the business strategy adopted by the Board. Mr. Cotter, Jr., voted against approval of that business strategy." A complete copy of the Special Independent Committee Charter will be attached to our filing on Form 8-K, being made with respect to this press release.

Our Company has advised the California Superior Court that it opposes the appointment of a Temporary TAL, as it believes that such an appointment is not in the best interests of our Company and our stockholders generally. Such a marketing process, conducted without the participation or support of the Board of Directors and without any protections for minority stockholders, risks an acquisition of control that does not reflect our Company's value and growth opportunities and transfers value from our stockholders to a potentially unqualified individual or group. Moreover, irrespective of who may eventually end up with control, such a process risks distracting key employees from executing our business plan and disrupting present and future business relations, valuation creation strategies and development projects.

Our Board of Directors has not changed its position that it is in the best interests of our Company and our stockholders generally to continue the independent pursuit of our Company's current business plan and that a sale of the Company at this time would not be in the best interests of stockholders generally. The Special Independent Committee and our Board of Directors will monitor further developments arising out of the Statement of Decision and determine what steps, if any, should be taken in the best interests of our Company and our stockholders generally.

As previously announced, on December 11, 2017, the District Court in Nevada in the matter *Cotter vs. Cotter, et al.,* Case No.: A-15-719860-B, Dept. No. XXVII (the "Cotter Derivative Litigation") dismissed all derivative claims against Directors Judy Codding, William Gould, Edward L. Kane, Doug McEachern and Michael Wrotniak determining that Mr. James J. Cotter, Jr., had failed to demonstrate any "genuine issues of material fact related to the disinterestedness and/or independence of those directors." On December 29, 2017, these five directors (constituting a majority of our Board of Directors) voted to ratify the actions of our Board of Directors in terminating Mr. Cotter, Jr., as President and CEO, and the actions of our Compensation Committee in permitting the Cotter Estate to use shares of Class A Non-Voting Stock to pay the exercise price of options held by the Cotter Estate to acquire Class B Voting Stock. Based on this ratification, our Company intends to seek dismissal of Mr. Cotter, Jr.'s derivative claims relating to these actions.

About Reading International, Inc.

Reading International, Inc. (NASDAQ: RDI) is a leading entertainment and real estate company, engaging in the development, ownership and operation of multiplex cinemas and retail and commercial real estate in the United States, Australia and New Zealand.

The family of Reading brands includes cinema brands Reading Cinemas, Angelika Film Centers, Consolidated Theatres, and City Cinemas; live theaters operated by Liberty Theatres in the United States; and signature property developments, including Newmarket Village, Auburn Red Yard and Cannon Park in Australia, Courtenay Central in New Zealand and 44 Union Square in New York City.

Additional information about Reading can be obtained from the Company's website: http://www.readingrdi.com.

Forward-Looking Statements

Our statements in this press release contain a variety of forward-looking statements as defined by the Securities Litigation Reform Act of 1995. Forward-looking statements reflect only our expectations regarding future events and operating performance and necessarily speak only as of the date the information was prepared. No guarantees can be given that our expectation will in fact be realized, in whole or in part. You can recognize these statements by our use of words such as, by way of example, "may," "will," "expect," "believe," and "anticipate" or other similar terminology.

These forward-looking statements reflect our expectation after having considered a variety of risks and uncertainties. However, they are necessarily the product of internal discussion and do not necessarily completely reflect the views of individual members of our Board of Directors or of our management team. Individual Board members and individual members of our management team may have different views as to the risks and uncertainties involved, and may have different views as to future events or our operating performance.

Among the factors that could cause actual results to differ materially from those expressed in or underlying our forward-looking statements are the following:

- *Future actions, developments and decisions by one or more litigants, a temporary trustee ad litem or other trustee or guardian appointed by a court, or the courts, including appellate courts, in the above-described legal matters.*
- *Future actions by members of the Cotter family or their respective affiliates and representatives.*
- *Future actions by the Company's Special Independent Committee or the Board of Directors or any of the Company's stockholders.*
- *Future actions of third parties.*

The above list is not necessarily exhaustive.

Given the variety and unpredictability of the factors that will ultimately influence the matters covered in this press release, no guarantees can be given that any of our forward-looking statements will ultimately prove to be correct. Actual results will undoubtedly vary and there is no guarantee as to how our securities will perform, either when considered in isolation or when compared to other securities or investment opportunities.

Finally, we undertake no obligation to publicly update or to revise any of our forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required under applicable law. Accordingly, you should always note the date to which our forward-looking statements speak.

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Andrzej Matyczynski, Executive Vice President for Global Operations
(213) 235-2240

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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: **Plaintiff James J. Cotter Jr.'s Motion for Relief Based on Noncompliance with the Court's May 2, 2018 Rulings and Application for Order Shortening Time and Order Shortening Time,** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

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Attorneys for Defendant William Gould

DATED this 12th day of June, 2018.

By: Judy Estrada

Docket 75053 Document 2019-36562

Exhibit 1
(to be filed under seal)

Exhibit 2
(to be filed under seal)

Exhibit 3

DISTRICT COURT

CLARK COUNTY, NEVADA

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

VOLUME V
(Pages 664-695)

VIDEOTAPED DEPOSITION OF EDWARD KANE, defendant herein, noticed by Lewis, Roca, Rothgerber, Christie, LLP, taken at Litigation Services, 655 West Broadway, Suite 880, San Diego, California, on Friday, April 20, 2018, at 9:26 a.m., before Marc Volz, CSR 2863, RPR, CRR, crc

Job No.: 465069

APPEARANCES OF COUNSEL:

For Plaintiff, James J. Cotter, Jr.:
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For the Defendants, Doug McEachern, Guy Adams, Judy Codding, Michael Wrotniak, Margaret Cotter, Ellen Cotter, Edward Kane:
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Also Present: Alex Payam, videographer

INDEX

WITNESS: EDWARD KANE

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Mr. Krum	667

EXHIBITS

PLAINTIFF	DESCRIPTION	PAGE
EXHIBIT 525	Email: Batista to Adams, Codding, Cotter, Jr., Margaret Cotter, Gould, Kane, McEachern, Wrotniak, cc: Ellen Cotter, Craig Tompkins; Agenda for meeting, December 29, 2018 (Previously marked.)	673
EXHIBIT 527	Email: Ellen Cotter from Marcia Wizelman, cc: Tompkins Bonner (Previously marked.)	683

THE VIDEOGRAPHER: Good morning. This is the beginning of media number 1 in the deposition of Edward Kane in the matter of James J. Cotter, Jr. versus Margaret Cotter, et al. and related actions, held at 655 West Broadway, Suite 880 in San Diego, California, on April 20th 2018 at 9:26 a.m.

The court reporter is Marc Volz. I am Alex Payam, the videographer, on behalf of Litigation Services. This deposition is being videotaped at all times unless specified to go off the video record. Would all present please identify themselves beginning with the witness.

THE WITNESS: Edward Kane.

MR. SEARCY: Marshall Searcy for defendants, Doug McEachern, Guy Adams, Judy Codding, Michael Wrotniak, Margaret Cotter, Ellen Cotter and for the witness Ed Kane.

MR. FERRARIO: Mark Ferrario for RDI -- or Reading.

MR. KRUM: Mark Krum, appearing telephonically, for plaintiff.

THE VIDEOGRAPHER: Thank you. Would the court reporter please swear in the witness.

EDWARD KANE,

defendant herein, having been sworn, testifies further as follows:

-EXAMINATION-

BY MR. KRUM:

Q. Good morning, Mr. Kane.

A. Morning.

Q. Is there any reason that you cannot provide truthful, accurate and complete testimony today?

A. No.

Q. You're not taking any medication or anything of that nature that would impair your ability to do so?

A. No.

Q. I'm going to remind you of a couple ground rules that we will need to follow today to make this go as efficiently as possible. First, please afford me the time and perhaps an extra breath to finish my questions before you begin to answer. In turn, I will attempt to do the same. That way we will not be speaking over each other and we'll have a better, more comprehensible transcript. That's particularly true today, because if we talk at the same time, one or both of us will not hear the other. You recall that, right?

A. Yes.

Q. And of course, that was a segue to the next admonition. It's particularly important today that you provide audible responses in words because I may not understand an "uh-huh" or a "yeah" even if the court reporter does. And the court reporter may not. And

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that will result in an erroneous transcript. What did you do to prepare for your deposition today, Mr. Kane?

A. First, could you make this a little louder, I'm having a little trouble hearing.

MR. SEARCY: It is a little soft.

Mark, the phone was little soft. Maybe you could repeat your question.

MR. KRUM: Of course. I actually forgot an admonition.

Q. If you need to take a break, Mr. Kane, let me know. I'm not going to be able to discern that by looking at you. I'd ask only that you answer any question that's pending before you ask for a break. And I will add to that, Mr. Kane, that I hope to not need to have you appear for another deposition. Obviously I think I do, and I have some matters that I intend to cover as quickly as possible, and I'm hopeful that we will do so before we take a break and that will leave you the rest of the Friday to enjoy. So with that by way of admonitions, my first question is what did you do to prepare for your deposition today?

A. I reviewed some testimony that I had previously given that was provided to me by Mr. Searcy. And I think there was some documents in there that I also briefly reviewed.

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Q. When you refer to testimony you have previously given, Mr. Kane, are you referring to prior deposition testimony in this case?

A. Yes, I am.

Q. Were you provided transcripts or excerpts of transcripts or both?

A. I'm not sure I know the difference. If I may, perhaps Mr. Searcy could describe better what he provided me.

MR. SEARCY: I don't get to answer any of the questions, Ed. Just do your best with the question.

THE WITNESS: I think they were transcripts of prior depositions that you had with me.

MR. KRUM:

Q. What I meant, Mr. Kane, by the word excerpts is whether you were provided something less than complete deposition transcripts to review. Do you recall?

A. I think they were complete. But I don't know how I would know if there was something left out, to tell you the truth. It's been so long since you last deposed me. However, my best guess is that they were complete transcripts.

Q. Let's move forward. Mr. Kane, you recall that on the morning of December 29, 2017 there was a telephonic meeting of the Reading International board of

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directors?

A. Yes.

Q. By the way, I'm going to call Reading International RDI, if that's okay with you.

A. Fine.

Q. Mr. Kane, at any time prior to that telephonic board meeting on December 29, 2017 were you party to any communications with Judy Codding about the termination of Jim Cotter, Jr. as its president and CEO of RDI?

A. I can't recall any such conversations.

Q. At any time prior to the telephonic board meeting on December 29, 2017 were you party to any communications with Michael Wrotniak regarding or that referenced the termination of Jim Cotter, Jr. as president and CEO of RDI?

MR. SEARCY: Let me just pose the objection. Vague.

You can answer, Ed.

THE WITNESS: I cannot recall any such conversations.

MR. KRUM:

Q. You've eliminated quite a few of my follow-up questions which should please you. At the -- strike that.

A. Strike it should please me?

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Q. That was my own comment. I apologize. It was not directed at you, sir.

A. Okay.

Q. Did there come a time when you heard or learned that ratification of prior actions or decisions would be taken up or considered at the December 29, 2017 telephonic board meeting?

A. I cannot recall whether I had such -- I may have, but I just can't recall them.

Q. What is your best recollection, Mr. Kane, about when you first heard or learned that ratification of anything would be or was going to be taken up at the December 29, 2017 board meeting?

A. I can't recall if I -- if there was any -- any conversation, any communication regarding the December 29th meeting. There may have been, but I just don't have any recollection of such.

Q. The following question, Mr. Kane, is asked for the purpose of assisting you in terms of remembering events at a particular time. I'm not asking about your personal life, sir. December 25th, Christmas day, was a Monday, right?

A. If you say so. I don't have a calendar. I wouldn't know one way or the other.

Q. You can accept that from me. Nobody will argue

Q. Okay. This calls for a yes or no response, Mr. Kane. Was counsel, meaning an attorney who represents you and/or an attorney who represents RDI, the source of some or all of the information you received regarding T-2 and the intervening plaintiffs?

A. Sir, I can't recall so I can't say yes or no.

Q. Very well.

MR. KRUM: Let's take a break.

THE VIDEOGRAPHER: Off the record. The time is 10:21 a.m.

(Recess.)

MR. KRUM: Back on the record. So in light of what we've covered and how we've covered it and the circumstances that bear upon that I don't have anything further at this time. Mr. Kane, thank you for your time. Have a nice day, sir.

THE WITNESS: Thank you. You too.

MR. SEARCY: Thank you.

MR. KRUM: Bye, guys.

(The proceedings concluded at 10:41 a.m.)

***

STATE OF CALIFORNIA) ss

I, Marc Volz, CSR 2863, RPR, CRR, CRC, do hereby declare:

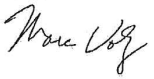
That, prior to being examined, the witness named in the foregoing deposition was by me duly sworn pursuant to Section 2093(b) and 2094 of the Code of Civil Procedure;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to text under my direction.

I further declare that I have no interest in the event of the action.

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

WITNESS my hand this 23rd day of April, 2018.



MARC VOLZ, CSR NO. 2863, RPR, CRR, CRC

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state),

and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

Page	Line	Should read:	Reason for Change:

ERRATA SHEET

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Signature of Witness

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Name Typed or Printed

Exhibit 4
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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., derivatively on behalf of Reading International, Inc.,	Case No. A-15-719860-B Dept. No. XI
Plaintiff,	Coordinated with:
v.	Case No. P-14-0824-42-E
MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK,	Dept. No. XI Jointly Administered
Defendants.	**PLAINTIFF'S OPPOSITION TO ELLEN COTTER, MARGARET COTTER AND GUY ADAMS' MOTION FOR SUMMMARY JUDGMENT (BASED ON "RATIFICATION"); DECLARATION OF MARK G. KRUM**
And READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	**HEARING DATE: JUNE 19, 2018** **HEARING TIME: 8:30 A.M.**

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I. INTRODUCTION

"Ellen Cotter, Margaret Cotter, and Guy Adams Motion for Summary Judgment" (the "Ratification MSJ") argues that certain Reading International, Inc. ("RDI" or the "Company") directors, pursuant to NRS 78.140, "ratified" certain prior conduct that remains at issue in this case and that, because the Court previously had determined that no disputed issues of material fact existed regarding their independence with respect to the matters raised in motions for partial summary judgment, those directors are independent for the purposes of the Ratification MSJ which, they argue, therefore should be granted. The Ratification MSJ must be denied for a number of independent reasons, including the following:

NRS 78.140 has no application here and, even if it did, would not warrant the relief sought by the Ratification MSJ. By its terms, NRS 78.140 applies solely to contracts and transactions between the corporation, here RDI, and the interested directors and/or officers, here, Ellen Cotter, Margaret Cotter and Guy Adams. Here, neither of the matters purportedly ratified are contracts or transactions between RDI and any or all of those defendants. Moreover, even if NRS 78.140 applied here, which it does not, it requires any decision made pursuant to it be made by independent directors acting in good faith.

Unlike the motions for partial summary judgment, in which Plaintiff bore the burden of proof on the issue of the independence of individual directors who sought to invoke the business judgment rule, here the moving party bears the burden of proving (i) the independence of the board members whose actions and/or decisions serve as the basis for the relief sought, and (ii) that those directors conducted a good faith and thorough investigation. The Ratification MSJ fails to satisfy either of those burdens.

With respect to the independence of the directors whose conduct serves as the basis for the Ratification MSJ, it proffers no evidence whatsoever. That failure alone requires denial. Moreover, the record evidence shows a lack of independence, as a matter of fact and law. First, the "independent" directors here relied entirely on "advice" from counsel representing RDI. Courts repeatedly have found that the use of company counsel evidences a lack of independence of the supposedly independent committee and/or

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individual directors who do so. Second, other factors considered in determining director independence also show a lack of independence, as shown below.

With respect to whether the directors whose conduct serves as the basis for the Ratification MSJ conducted a thorough investigation in good faith, resulting in an informed decision-making process, the sole evidence proffered in support of the Motion is the minutes of the December 29, 2017 board meeting, as if defendants had succeeded in concealing from Plaintiff and the Court the hasty, sham exercise that preceded that meeting and resulted in the preordained result, "ratification." What the belatedly produced evidence and privilege logs show is that the "ratification" scheme was conceived by GT lawyers, who first obtained approval from defendants Ellen Cotter and Margaret Cotter to pursue it, and then "advised" supposedly independent directors to "ratify" certain conduct the Court previously found to be actionable, all for the purpose of creating a purported basis on which to seek dismissal of this derivative action.

For their part, not one of the supposedly independent board members undertook in good faith to make an informed decision; instead, each did as he or she was "advised" by the conflicted lawyers on whom they mistakenly relied. Indeed, privilege log entries appear to indicate that RDI in-house counsel Craig Tompkins and defendant Ellen Cotter herself at least reviewed if not provided input regarding the operative language of Gould's December 27, 2017 email. Of course, that became the operative language of the agenda for the December 29, 2017 board meeting and, ultimately, the draft minutes which serve as the basis for the ratification MSJ.

Independent of the foregoing, the purported ratification with respect to the exercise of the so-called 100,000 share option by its terms does not "ratify" the disputed determination regarding ownership of the purported option, which remains at issue in this case. That alone also requires denial of the Ratification MSJ.

Separately, Plaintiff is entitled to relief under NRCP 56(f). Plaintiff is still reviewing and analyzing privilege logs and documents produced on May 30 and 31, 2018, as well as thousands of pages of documents produced on Saturday, June 9, 2018, Monday and Tuesday, June 11 and 12, and anticipates receiving a further supplemental

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privilege log to be produced on or about June 13, 2018. The Court previously ruled that Plaintiff is entitled to time to review such material to determine what further discovery if any Plaintiff needs. Given the significance of the responsive documents not disclosed (produced and or logged) until the very end of May 2018, and in view of the supplemental productions of June 9, 11 and 12, 2018, as well as the advice that a supplemental and/or superseding privilege log will be produced on or about June 13, 2018, Plaintiff is entitled to Rule 56(f) relief.

Finally, if the Court does not deny the Ratification MSJ or provide Plaintiff with Rule 56(f) relief, Plaintiff is entitled to and requests an evidentiary hearing with respect to both issues as to which defendants bear the burden of proof, namely, independence and a thorough investigation conducted in good faith. *Shoen v. SAC Holding Corp.*, 122 Nev. 621, 645, 137 P.3d 1171, 1187 (2006). As the record (including from May 2, 2018 evidentiary hearing) makes clear, questions of fact and credibility, the latter on the part of both the "independent" directors and their conflicted counsel, predominate.

II. STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

A. Creation and Delegation of Authority to the SIC

In August 2017, the RDI board of directors to (the "Board") authorized the formation of a "Special Independent Committee" (the "SIC" or "SLC"). (*See* **Ex. 1** hereto, RDI's February 23, 2018 Form 8-K.) On or about February 23, 2018, RDI filed a Form 8-K with the SEC. That Form 8-K attached and disclosed publicly for the first time the Charter of the SIC. (*Id.* at Ex. 99.2) (The charter was admitted as defendants' Ex. B at the May 2, 2018 evidentiary hearing.) Section IV of the Charter describes the responsibilities and duties of the SIC, including the authority delegated to it with respect to this derivative action and other lawsuits (defined therein as "Cotter Related Proceedings"). The Charter states in relevant part as follows:

RESPONSIBILITIES AND DUTIES

To fulfill its responsibilities and duties, the [SIC] is authorized to, in its discretion:

****

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> ii. ... [I]nstruct legal counsel representing the Company to take certain actions, including but not limited to, file pleadings or other papers, appear in any proceedings... and otherwise take such steps as the [SIC] deemed to be in the best interest of the Company in any Cotter Related Proceedings [which includes this derivative action] or
>
> iii. Participate in and direct legal counsel representing the Company to conduct negotiations and take actions to resolve matters related to the Cotter Related Proceedings...
>
> iv. Report to the Board, as it determines to be appropriate (subject to the maintenance of attorney-client privileges and with due regard for and the institution of appropriate safeguards in order to take into account any conflicts of interest that may exist involving other members of the Board and without limiting its delegated authority under this Charter), its recommendations and conclusions with respect to the determinations delegated to it by this Charter; and
>
> v. Take all such other actions as the [SIC] may deem to be necessary or appropriate in connection with the above.
>
> **********
>
> *The [SIC] shall have the authority to enter into or bind the Company in connection with a Cotter Related Proceedings...* provided, however, that the [SIC] shall not have any authority to ...approve any merger, consolidation or liquidation of the Company.

(*Id.*) (Emphasis supplied.)

B. The Inception of "Ratification" With the SIC.

According to deposition testimony of former defendants and current RDI directors Douglas McEachern ("McEachern") and William Gould ("Gould"), the subject of ratification was first raised with them by lawyers from Greenberg Traurig ("GT"). McEachern testified that the subject of ratification was raised "in late Fall sometime of 2017," at which time it was tabled. (*See* **Ex. 7** hereto, McEachern 2/28/18 dep. tr. at 548:21-550:1.) McEachern explained that the "main focus was on the termination of Jim Cotter,

Jr." (*Id.*) McEachern also testified that "ratification" was within the purview of the SIC's responsibilities, as follows:

> *"[I]t was delegated to the [SIC] to handle this type of matters. We were approving [ratification]...."*

(*Id.* at 507:1-508:2, 546:1-10.) (Emphasis supplied.)

Gould testified that the first communication he had regarding ratification was telephonically in mid or late November 2017 with GT lawyers Michael Bonner ("Bonner") and Mark Ferrario ("Ferrario"). (*See* **Ex. 6** hereto, Gould 4/5/18 dep. tr. at 509:13-15.) Gould testified that "ratification" was within the scope of his responsibilities as Chair of the SIC, as follows:

> "I was the chairman of the special [independent] committee and [GT lawyers Bonner and Ferrario] were discussing [ratification] with me in my capacity as the chairperson of that committee."

(*Id.*)

C. GT Previously Cleared "Ratification" With Defendants Ellen and Margaret Cotter.

1. Late 2016 and Early 2017

For the first time on May 30 (and 31), 2018, GT produced supplemental privilege logs jointly on behalf of RDI and the five dismissed directors. The May 30 log discloses for the first time what apparently were communications in *November or December 2016 and January 2017* regarding "ratification," among other things. (Although the log entries are deficient on their face, the inclusion of them in the log must mean that they concern "ratification.") The first entry, dated November 22, 2016, is an email from Craig Tompkins, who then was special counsel to Ellen Cotter as CEO of RDI (Ex. 18 to Plaintiff James J. Cotter Jr.'s Motion to Compel, Filed on June 8, 2018 ("JJC 6/8/18 Motion")), Tompkins 10/18/17 dep. tr. at 60:1-12), to GT attorneys Bonner and Ferrario, copied to Ellen Cotter, the subject of which is "alternative approaches: attorney-client privileged attorney work product communication." (*See* Ex. 2 to JJC 6/8/18 Motion, entry ending in 71278.) The next entry is a December 7, 2016 email from Ferrario to Tompkins and Quinn Emanuel attorneys Marshall Searcy and Christopher Tayback, the subject of which is the

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attached "option memo." (*See id.*, entry ending in 67300.) The next two entries are dated January 6 and 7, 2017, concern "alternative litigation resolution approaches" and are between Tompkins and Bonner, and copied to Ferrario *and to Ellen Cotter*. (*See id.*, entries ending in 71290 and 64891.)

2. December 2017.

In December 2017, before seeking and securing approval of "ratification" from the SIC on December 21 (described below), GT lawyers cleared the "ratification" "process" with Margaret Cotter, Ellen Cotter and Tompkins.[1] On December 13, 2017, Ferrario and Bonner exchanged emails with Tompkins, *which emails were copied to Ellen Cotter,* regarding the subject of a "Special Committee." (*See* Ex. 1 to JJC 6/8/18 Motion, entry ending in 60907 and 60911; *see also* Ex. 3 to JJC 6/8/18 Motion, GT May 31, 2018 privilege log, entries ending in RDI 73538, 76569, 76783.) Those emails are described as "Communication[s] regarding Ratification process." (Ex. 1 to JJC 6/8/18 Motion, entries ending in 60907 and 60911.)

Again on December 15, 2017, Bonner exchanged emails with Tompkins, *which emails also were copied to Ellen Cotter*, regarding "Misc." (*See* Ex. 1 to JJC 6/8/18 Motion, entries ending in 60823 and 60824.) Those emails are described as "Communication[s] regarding ratification process." (*Id.*)

Also on December 15, 2017, Ferrario discussed the subject of ratification with *Margaret Cotter* in person. (*See* Ex. 16 to JJC 6/8/18 Motion, Margaret Cotter's February 14, 2018 Interrogatory Responses, No. 2.) (Margaret Cotter's interrogatory responses disclosed this communication regarding "ratification," but not others described herein.)

On December 21, 2015, Bonner sent an email to Tompkins, copied to *Ellen Cotter* and Ferrario, regarding "special committee/stockholder action alternatives." (*See* Ex. 1 to JJC 6/8/18 Motion, entry ending in 60533.) Ellen Cotter at her deposition acknowledged

[1]As to Craig Tompkins, RDI's General Counsel to whom GT attorneys report, Kane at deposition explained that the words he used in an email stating "according to [Ellen Cotter], Craig is also on the 'team[,]' meant that Tompkins "was [with] Ellen and Margaret versus Jim." (*See* Ex. 14 to JJC 6/8/18 Motion, Kane 5/2/16 dep. tr. at 176:18-177:1; Ex. 17 to JJC 6/8/18 Motion (Dep. Ex. 105).)

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receiving this email. (*See* Ex. 9 to JJC 6/8/18 Motion, Ellen Cotter 4/4/18 dep. tr. at 479:21-480:6.)

D. The SIC Approves "Ratification."

The SIC met telephonically with GT attorneys Bonner and Ferrario on December 21, 2017. (*See* Ex. 5 to JJC 6/8/18 Motion, redacted minutes of that December 21, 2017 meeting; *see also* GT May 31, 2018 Privilege log, entries CN 2075, 2174, 2494, 2504, 2634.) As described below, they approved "ratification" of the two decisions which thus became the subject of "ratification" votes at the December 29, 2017 Board meeting.

McEachern testified that the SIC at the December 21, 2017 telephonic meeting approved ratification in an effort to "resolve" certain issues that remained in this derivative action, stating as follows:

> *"[I]t was delegated to the [SIC] to handle this type of matters. We were approving [ratification].* ... I think we had a call [on December 21, 2017] to talk about a couple issues that were still existing in this -- in this derivative case by Jim Cotter, Jr., and we were trying to address them in a fashion to resolve them."

(See Ex. 7 hereto, at 507:1-508:2, 546:1-10.) (Emphasis supplied.)

With respect to the December 21, 2017 SIC meeting, Gould testified that the SIC "formally [took] action" to advance "ratification." (*See* **Ex. 5** hereto, at 529:10-18.) As to the purpose of the "ratification(s)," Gould admitted that "ratification might be a litigation strategy" employed in this derivative action (in an effort to create a basis upon which to seek dismissal in advance of trial). (*See id.*, at 541:15-18.)

With respect to the December 21, 2017 SIC meeting, Codding testified that Bonner and/or Gould explained the notion of ratification with respect to the two matters later taken up at the December 29, 2017 Board meeting. Codding testified that the SIC approved "ratification," explaining that she did not distinguish between the process or fact of "ratification" and the merits of the two "ratification" decisions (that defendants claim were made at the December 29, 2017 Board meeting). (*See* **Ex. 4** hereto, at 205:24-207:4.)

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E. GT Works With Tompkins and Ellen Cotter to Effectuate the "Ratification" by "Independent" Directors

The next day, December 22, 2017, GT lawyers followed through with the ratification scheme. Ferrario's assistant sent emails, one to Tompkins' assistant and one to Ellen Cotter's assistant, regarding "call re letter for special committee meeting re ratification." (See Ex. 2 to JJC 6/8/18 Motion, at entries RDI 67258 and64872.) Tompkins responded and an email chain ensued. (*See* Ex. 1 to JJC 6/8/18 Motion, entries ending in 60258, 60260, 60262, 60265 and 60267.) (The "letter for special committee meeting re ratification" it appears to refer to what came to be the December 27, 2017 email from Gould purportedly on behalf of the five "independent" Directors.)

F. The December 27, 2017 Email Was Prepared by Litigation Counsel With Input From Tompkins and Probably Ellen Cotter, But Not Gould, and Not the "Independent" Directors, Who Did Not See It Before It Was Sent.

On December 27, 2017, Bonner and other GT lawyers exchanged emails with Tompkins about one or more drafts of what came to be the December 27, 2017 email[22] sent by Gould, purportedly on behalf of the five dismissed directors. Several privilege log entries describe the emails as "Communication regarding draft letter re Special Board Meeting." (*See* Ex. 1 to JJC 6/8/18 Motion, entries ending in 57090, 59768, 59899, 59911, 59912, 59959, 60790, 60802 and 60810.) Also on December 27, 2017, Tompkins and GT lawyers exchanged the subjects of which were "Ratification," and which are described as "Communication[s] regarding draft letter re Special Board Meeting" or "Communication[s] regarding Special Meeting Request." (*See id.*, entries ending in 60404, 60408, 60412, 60424, 60428, 60450, 60464, 60843, 60846.)

Several of the December 27, 2017 emails with the subject "Ratification" also *were copied to Ellen Cotter*. (*See id.*, entries ending in entries ending in 60450, 60452, 60464 and 60846; Ex. 2, 5/30/18 privilege log, entries ending in RDI 68619, 68626, 70083, 70095.)

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[22] That email was marked as Dep. Ex. 527 and Ex. P-1 from the 5/2/18 evidentiary hearing. It is attached as Ex. 6 to the JJC 6/8/18 Motion.

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the sender and/or recipients of the document listed on the logs; (ii) hundreds of entries have subject matter descriptions that are woefully inadequate and or incomplete, in that they failed to identify the subject matters of the log documents; (iii) there entries for which either or both no attorney or no outside counsel is identified as a sender or recipient; (iv) there entries that include identify centers or recipients with whom privileged communications could not be shared; and (v) they contain no explanation of the basis on which the documents log are claimed to be privileged, attorney work product or both.

The June 9 and 11 supplemental document productions, and the presumably forthcoming privilege log, are too late to remedy Responding Parties' noncompliance with the Court's May 2, 2018 Orders.

For the reasons referenced above in demonstrated below, Plaintiff is entitled to the relief sought by this motion.

A. The Responding Parties Concealed the December 21, 2017 SIC Meeting

1. The SIC Approved "Ratification" on December 21, 2017

The SIC met telephonically with GT attorneys Bonner and Ferrario on December 21, 2017. (See Ex. 5 to JJC 6/8/18 Motion, redacted minutes of that December 21, 2017 meeting.) As described below, they approved "ratification."

McEachern testified that the SIC approved "ratification" in an effort to "resolve" certain issues that remained in this derivative action, stating as follows:

> *"[I]t was delegated to the [SIC] to handle this type of matters. We were approving [ratification].* … I think we had a call [on December 21, 2017] to talk about a couple issues that were still existing in this -- in this derivative case by Jim Cotter, Jr., and we were trying to address them in a fashion to resolve them."

(See Ex. 12 to JJC 6/8/18 Motion, McEachern 2/28/18 dep. tr. at 507:1-508:2 and 546:1-10.) (Emphasis supplied.)

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With respect to the December 21, 2017 SIC meeting, Gould testified that the SIC "formally [took] action" to advance the purported ratification(s). (*See* Ex. 10 to JJC 6/8/18, Gould 4/5/18 dep. tr. at 529:10-18.)**.)** As to the purpose of the "ratification(s)," Gould admitted that "ratification might be a litigation strategy" employed in this derivative action (in an effort to create a basis upon which to seek dismissal in advance of trial). (See Ex. 10 to JJC 6/8/18 Motion, Gould 4/5/18 dep. tr. at 541:15-18**.)**

With respect to the December 21, 2017 SIC meeting, Codding testified that the SIC approved "ratification," explaining that she did not distinguish between the process or fact of "ratification" and the merits of the two "ratification" decisions. (See Ex. 8 to JJC 6/8/18 Motion, Codding 2/28/18 dep. tr. at 205:24-207:4.)

2. The Responding Parties Concealed the 12/21/17 SIC Meeting

As the foregoing testimony of each of the SIC committee members makes clear, the December 21, 2017 telephonic SIC meeting not only addressed "ratification," it did so formally, in the sense that the SIC approved "ratification" and authorized SIC chairperson Gould to take action in furtherance of the "ratification" the SIC had approved. The documents and supplemental privilege logs produced on May 30 and 31establish unequivocally that GT lawyers contemporaneously were aware of the foregoing.

Nevertheless, except for belatedly producing minutes of the December 21, 2017 SIC meeting in entirely redacted form on or about April 12, 2018, counsel for the Responding Parties failed to produce and/or list on a privilege log documents concerning the December 21, 2017 SIC meeting until doing so for the first time on May 30 and 31, 2018.

Only counsel for Gould, who for months concealed his supposed loss of his emails, dared offer an explanation for why counsel for the Responding Parties had withheld (meaning neither produced nor logged) documents concerning the December 21, 2017 SIC meeting. That explanation was that the documents were "not responsive" to Plaintiff's January 12, 2018 document requests. To say that explanation is disingenuous is an understatement.

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"Ratification" was the basis for one of the summary judgment motions denied without prejudice and with respect to which the Court ordered that Plaintiff was entitled to discovery. "Ratification" was a subject covered at the December 21, 2017 SIC meeting. The claim that documents concerning that meeting were "not responsive" must be seen for what it is, and after-the-fact prevarication intended to conceal the fact that Responding Parties and their counsel sought to conceal from Plaintiff, and from the Court, the role played by the SIC, as advised by GT, in the "ratification" "process."

At the May 2 evidentiary hearing, GT attorney Bonner acknowledged that the SIC discussed "ratification" at its December 21, 2017 meeting. Nevertheless, he apparently chose not to mention "ratification" in the meeting minutes he belatedly prepared. That raises the unfortunate question of whether those minutes purposefully omitted some of what transpired in anticipation of withholding them in subsequent discovery. Together with Bonner's testimony to the effect that the SIC on December 21, 2017 took no formal action with respect to "ratification" (see 5/2/18 hearing tr. at 40:20-41:25) which testimony contradicts the deposition testimony of each of the three SIC members, the regrettable but unavoidable the question raised is whether subsequent withholding of evidence concerning the December 21, 2017 meeting was anticipated or planned in advance.

Without regard to what if anything was done or planned prior to January 3, 2018 filing of the Original Ratification MSJ, what the record now makes clear is that the Responding Parties purposefully withheld documents regarding the December 21, 2017 (8 p.m.) telephonic SIC meeting, starting with the January 3, 2018 Original Ratification MSJ that makes no mention of that meeting. As the Court stated at the April 30, 2018 hearing, "I was never told about a special committee meeting. I was only told that the December 2[9]th meeting occurred and which hereby ratified the actions of the directors who remain parties to this case." (April 30, 2018 hearing tr. at 7:22-25.)

Obviously and indisputably, the entire discovery process with respect to "ratification" and the independence of the five dismissed directors, including in particular the SIC members, was undermined by the failure to produce and to log clearly

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responsive, important documents. Responding Parties' noncompliance with the Court's May 2, 2018 orders exacerbates the already severe prejudice from which Plaintiff suffers.

B. The May 30 and 31 Privilege Logs Are Facially Deficient

The May 30 and 31, 2018 privilege logs suffer from several facial deficiencies, beyond the inclusion of nonresponsive documents due to the fact that some documents have been included based solely on electronic search results, without actually having been reviewed by a person to determine that they are responsive.

First, there are entries that fail to identify the sender of what appears to be an email communication, at least in an intelligible manner. For example, the May 31, 2018 privilege log contains at least eight entries dated "12/27/2017" regarding "special committee meeting" for which the sender is identified in the following manner:

> "[/O=EXCHANGELABS/OU=EXCHANGEADMINISTRATIVEGROUP9FYDIBOHFA23SPDLT)/CN=RECIPIENTDS/CN=CC29D52852174/EC5AC3D76CFE2883-GOULD.WILL]"

(See Ex. 3 to JJC 6/8/18 Motion, GT May 31, 2018 privilege log entries ending in CN 2065, 2069, 2070, 2631, 2658, 2659 and 2660.)

Obviously, every privilege log entry must identify by name and, if the person is not readily known to the parties, by title and/or position, each author each recipient of each communication. Information of the sort described above is facially inadequate.

Second, none of the entries describe the communications in a manner (without revealing privileged information) that enables Plaintiff to assess whether the privilege applies, as required by NRCP 26(b)(5). The only descriptions are the "email subject" descriptions, which are insufficient to test the privilege. Examples of those email subject descriptions in the May 30 log are: "executive committee," "to do list," "status," "latest draft," "joint defense communication," "Fwd:," "alternative approaches," "alternative litigation resolution approaches," "the option memo," "who can work with GT

today.msg," and "the attorney-client communication.msg." Examples in the May 31 log include "alternative approaches," "confidential attorney-client and attorney work product communication," "alternative litigation resolution approaches," "Reading legal matters," "notes from interview," "re," "sent on behalf of Ellen Cotter," "attorney-client communications," "FW," "can you review," and "call." Plaintiff cannot assess from these subject line of the emails what the actual subject matter or nature of the email communication is/was.

Thus, such entries do not comply with NRCP 26(b)(5); *see also Nevada Power Co. v. Monsanto*, 151 F.R.D. 118, 121 n. 5 (D. Nev. 1993) (requiring that the log sets out "for each document . . . (5) the subject matter of the document . . . ."); Nevada Civil Practice Manual § 13.04[6] ("a privilege log must use an appropriate degree of specificity in identifying . . . and in describing the subject matter").

The results of such inadequate descriptions include that counsel for Plaintiff cannot know what the subject matter(s) are, cannot determine whether and how the documents reflected by such entries fit or do not fit in the "ratification" chronology, cannot make an informed decision whether to challenge claims of attorney-client privilege and/or attorney work product, and cannot determine whether and how such entries may or should be used at deposition. The inadequate subject matter descriptions also preclude the Court from making an informed decision with respect to any challenges to claims of attorney-client privilege and/or attorney work product.

Third, there are entries for which attorney-client privilege and/or work product is asserted, but to which no outside counsel is party. (See Ex. 3 to JJC 6/8/18 Motion, GT May 31, 2018 privilege log entries ending in CN 2174, 2496, 2558, 2559, 2658 and 2660.) Many of these appear to be communications among members of the "Special Independent Committee." (See also Ex. 3 to JJC 6/8/18 Motion, GT May 31, 2018 Privilege log entry ending in QE 24382.) The foregoing are examples, not an exhaustive list.

Fourth, there are many entries that include parties with whom privileged communications could not be shared. The most common and important examples are the

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inclusion of defendants Ellen Cotter and Margaret Cotter in communications concerning the subjects of the Court's May 2, 2018 orders. (See Ex. 3 to JJC 6/8/18 Motion, GT May 31, 2018 privilege log entries ending in RDI 73538, 76569, 7678376937, 76753, 76904 and 76931.) Some such entries include SIC chair Gould and Ellen Cotter. (See Ex. 2 to JJC 6/8/18 Motion, GT May 30, 2018 privilege log entries ending in RDI 67080, 73495, 68634 and 68635.) Nevertheless, such communications are claimed to be attorney-client privileged and work product. More information and an explanation are required for such entries, including on whose behalf attorney-client privilege and/or attorney work product is asserted.

Last but not least, the May 30 and 31, 2018 privilege logs contain no information whatsoever explaining why documents listed are subject to a claim of attorney-client privilege, attorney work product or both. The reader of these logs is left to surmise, based upon frequently inadequate descriptions of the subject matter, the sometimes inadequate descriptions of the sender and/or recipients, the "privilege": that states "communication with counsel," "work product," or both. Previously, the February 22, 2018 privilege log included a column gratuitously labeled "additional information requested by plaintiff," which column contained information explaining the claim of privilege, including descriptions such as "communication regarding draft board meeting minutes." The May 30 and 31 privilege laws contain no such column which, on occasion, could be read with an otherwise inadequate description of the subject matter to discern what the subject matter actually was.

C. Plaintiff Is Entitled to Further Depositions

As described above, the May 30, 2018 privilege log disclosed for the first time that in November and December 2016, and in January 2017, Ellen Cotter and Craig Tompkins were parties to email communications discussing "alternative approaches" and "alternative litigation resolution approaches," which apparently included "ratification." The May 30 privilege log also includes entries indicating that Ellen Cotter and Tompkins were party to a December 22, 2017 conference call regarding the "letter for special

committee meeting re ratification," which likely was a discussion of the contents of what came to be the December 27, 2017 email from Gould, based on the December 21, 2017 approval of "ratification" by the SIC. The May 30 privilege log also includes over three dozen entries dated December 26 and 27 that appear to concern preparation of what came to be the December 27, 2017 email transmitted by Gould, purportedly on behalf of the five, calling for "ratification" to be approved at the December 29, 2017 board meeting.

Even if these communications are privileged, and Plaintiff maintains they are not as reflected by a separate motion Plaintiff has filed, Plaintiff is entitled to depose Ellen Cotter and Tompkins to learn to which communications (emails and calls) that concern "ratification," the December 21, 2017 SIC committee meeting and approval of "ratification," and/or what came to be the December 27, 2017 email from Gould, either or both of them were party. For example, Plaintiff is entitled to discover if they reviewed and/or commented on drafts of what came to be the December 27, 2017 email, even if Plaintiff is not entitled to the substance of those communications, as he contends.

Because documents improperly were withheld, including for example the email invitation for the December 22, 2017 conference call that apparently reviewed the SIC meeting of the day before and discussed what the future December 27, 2017 Gould email should say, Plaintiff's counsel was unable to depose Ellen Cotter as he could and should have had the improperly withheld documents of been produced. Likewise, because documents were not properly logged, Plaintiff's counsel was forced to work with incomplete information, which prevented him from understanding what communications Ellen Cotter had with whom regarding matters that were the subject of the Court's May 2, 2018 order.

As to Tompkins, Plaintiff chose not to depose Tompkins, based upon the misimpression created by defendants improperly withholding (not producing and not logging) responsive documents. The documents belatedly produced and logged show that Tompkins was an omnipresent participant in the "ratification" "process" such that, even if the scope of his testimony is confined to identifying the subjects of the Court's

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May 2, 2018 order which were covered in communications he had with others, such information will prove critical to counsel for Plaintiff understanding and describing the "ratification" "process," which is exactly what Plaintiff must do in addressing the independence of the directors whose purported independence is the basis for the two renewed motions for summary judgment.

As for Margaret Cotter, Plaintiff chose not to depose her for two reasons. First, the documents previously produced and logged gave no indication that she had any involvement whatsoever in any communications regarding "ratification," except as disclosed in her interrogatory responses. Second, her interrogatory responses identified her only communication regarding "ratification" as a December 15, 2017 in person conversation with GT attorney Ferrario. (See Ex. 16 to JCC 6/8/18 Motion, Margaret Cotter interrogatory responses, at Response No. 2.) It appears that, by design or oversight, her interrogatory responses were incomplete. The May 31, 2018 privilege log identifies a December 21, 2017 email from GT attorney Bonner to Tompkins and GT attorney Ferrario, regarding "special committee/stockholder action alternatives," which was copied to both Ellen Cotter and to Margaret Cotter. (See Ex. 3 to JJC 6/8/18 Motion, GT May 31, 2018 privilege log entry ending in RDI 76937.)

With respect to Board member Kane, counsel for Plaintiff conducted an abbreviated, telephonic deposition of him because the documents and privilege log previously produced gave no indication that he had any communications with anyone regarding anything related to "ratification" prior to the December 29, 2017 board meeting. When asked at his deposition whether he had communications regarding "ratification" prior to December 29, 2017 board meeting, Kane testified that he did not recall. (See Ex. 3 hereto, Kane 4/20/18 dep. tr. at 672:4-17.) However, the May 31, 2018 privilege log includes entries that indicate the Kane was invited to participate in one or more telephone calls on December 28, 2017, the day prior to the December 29, 2017 board meeting. (See Ex. 3 to JJC 6/8/18 Motion, GT May 31, 2018 privilege log entries ending in RDI 76403, 76511, 76621, 76629, and 76633.) Because defendants had failed to produce or

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log these documents previously, counsel for Plaintiff did not possess the documents and/or information he should have possessed and therefore was not able to prompt or test Kane's recollection about communications regarding "ratification" on the day before the December 29, 2017 board meeting.

Because there are approximately 20 separate entries indicating one or more calls that day, most if not all of which were with one or both of GT attorney Bonner and Ferrario, only by examining the persons who are indicated as participants on those calls, which included Codding, Wrotniak, McEachern, Gould and Kane, could counsel for Plaintiff actually effectively depose those people and learn what they discussed regarding "ratification" with whom and when, including on December 28, 2017 when, it appears, GT attorneys Bonner and Ferrario placed calls to all "independent" directors to make sure they were prepared to approve "ratification" the next day.

D. Unless the Trial Date is Vacated, Plaintiff will be Prejudiced and the Remaining Defendants Will Benefit from the Responding Parties' Noncompliance with the Court's May 2, 2018 Orders

Under EDCR 7.30(a), good cause exists to continue the July 9 trial date. As demonstrated above, the Responding Parties have failed to comply with the Court's May 2, 2018 orders and, in doing so, have impaired Plaintiff's ability to oppose the recently renewed motions for summary judgment and to prepare for trial. Assuming that those motions are denied, Plaintiff's ability to respond to a defense at trial based upon the purported "ratifications" of December 2017 is materially impaired for the same reasons. The facially inadequate May 30 and 31, 2018 privilege logs impair Plaintiff's ability to, among other things, demonstrate a lack of independence of the part of the purportedly independent directors whose "ratification" serves as the basis for this claimed defense, as well as substantially all other matters that will be the subject of trial.

In view of the fact that Responding Parties intentionally concealed from Plaintiff and from the Court the December 21, 2017 SIC meeting, which was the means by which "ratification" was raised and assured approval, the failure of Responding Parties to timely produce adequate privilege logs reasonably may be inferred to be another effort to

conceal evidence. Even if it is an honest mistake, the fact of the matter is that Plaintiff has not been provided with what the Court ordered provided, and Plaintiff therefore cannot do what he needs to do to respond to a "ratification" defense proffered at trial and, separately, present the evidence he is entitled to present at trial with respect to the independence of the Responding Parties. Unless the Court is to allow its May 2, 2018 orders to be ignored and the remaining defendants to benefit from the failure of the Responding Parties to do what the Court ordered, the present trial date of July 9, 2017 must be vacated.

IV. CONCLUSION

For the foregoing reason, Plaintiff respectfully submits that this Motion should be granted.

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independently by "independent" directors. Such entries also show that Craig Tompkins, who is now RDI's General Counsel and reports to Ellen Cotter, and defendants Ellen Cotter and Margaret Cotter themselves, were participants in the "ratification" "process." Remarkably, certain entries suggest that Tompkins and Ellen Cotter participated in the preparation of the December 27, 2017 email sent by/for Gould. As the Court knows, it was the language in that email that was used to prepare the operative portion of the December 29, 2017 board agenda and, ultimately, the minutes of the December 29, 2017 board meeting that purportedly memorialize actions of a "legal consequence."

As demonstrated below, the May 30 and 31, 2018 privilege logs are facially deficient, including because they contain dozens of entries that fail to adequately identify the subject matters of the documents logged. As a result, counsel for Plaintiff cannot do what Plaintiff is entitled to do with those logs, whether to challenge claims of privilege with respect to entries that have subject matters that say nothing substantive, to use the privilege logs to learn particulars of the "ratification" chronology or to use entries to examine deponents who claim not to remember.

As demonstrated below, in addition to being hamstrung by the facially inadequate May 30 and 31, 2018 privilege logs, counsel for Plaintiff has not been afforded the time necessary to review documents. In that regard, Responding Parties made supplemental productions of documents on June 9 (a Saturday) and 11, 2018. The former production was in excess of 2000 pages and the latter in excess of 3000 pages. Additionally, Responding Parties have indicated that they will be producing a corrected and/or revised and/ or updated privilege log, which counsel for Plaintiff has not received, much less reviewed.

As the foregoing indicates, Responding Parties have not complied with the Court's May 2, 2018 orders and counsel for Plaintiff has not received, much less received and had an opportunity to use, what the Court on May 2, 2018 ordered be provided. For such reasons and the reasons shown below, Plaintiff is entitled to the relief sought by this motion.

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II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. The Original Demand Futility and "Ratification" MSJs

On January 3, 2018, counsel for the remaining individual defendants filed a motion entitled "The Remaining Director Defendants' Motion for Judgment as a Matter of Law" (the "Original Ratification MSJ"). The Original Ratification MSJ was predicated on a single piece of "evidence," which was draft minutes of a December 29, 2019 RDI board of directors meeting. The Original Ratification MSJ argued that recently dismissed directors had at a December 29, 2017 board meeting "ratified" certain conduct from 2015 with respect to which the Court had denied motions for partial summary judgment as to the remaining defendants.

Also on January 3, 2018, counsel for nominal defendant Reading International, Inc. ("RDI") filed a motion entitled "Motion to Dismiss for Failure to Show Demand Futility" (the "Original Demand Futility MSJ").

In addition to his substantive oppositions to the foregoing motions, Plaintiff invoked Rule 56(f). The Court denied both motions without prejudice and ordered that Plaintiff was entitled to obtain discovery with respect to the matters on which those motions were based, including "ratification."

B. The Court's May 2, 2018 Orders

On April 23, 2018, Plaintiff filed a "Motion for Omnibus Relief." The Motion for Omnibus Relief stated that it was:

> "based on the apparent intentional failure of RDI, Codding, McEachern, and Gould to either produce or list on a privilege log an obviously and indisputably discoverable document concerning the very purported ratifications upon which they previously based a motion for summary judgment: The minutes of a December 21, 2017 meeting of the so-called Special Independent Committee of the RDI Board of Directors, about which each of the committee members (McEachern, Codding, and Gould) testified and admitted that the subject of ratification was addressed at this meeting.

(4/23/18 Motion for Omnibus Relief at 2:5-13.)

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On April 30, 2018, the Court heard Plaintiff's motion for omnibus relief and scheduled an evidentiary hearing, which occurred on May 2. Following that evidentiary hearing, the Court on May 2, 2018 ordered that the Responding Parties supplement their document productions and privilege logs. In particular, the Court ordered the Responding Parties to make supplemental productions of responsive documents and provide supplemental privilege logs, identifying the categories of information as follows:

> THE COURT: … So three categories, [i] the 12/21 special committee meeting, whether its scheduling, content, scope, minutes, whatever, related to that meeting; [ii] P-1 [the 12/27/18 email], whether its subject matter, preparation, drafting, circulation, how we're going to get it on the agenda for the 12/29 meeting; and the third item is [iii] any discussion of ratification, not limited by time.

(5/2/18 hearing tr. at 79:6-13.)

The Court on May 2, 2018 also granted the remaining defendants motion to file what is the now filed Ratification MSJ, but instructed them not to file it until after they had complied with the Court's May 2, 2018 order and afforded counsel for Plaintiff an opportunity to review and analyze the documents and privilege logs and then determine whether Plaintiff needed further discovery. In this regard, the Court stated as follows:

> THE COURT: Yeah. So I want Mr. Krum, instead of me facing a 56(f) issue at the time you file that motion, he's ready to file his opposition, I want him to have the opportunity to get these documents with the privilege logs, look at them, and then have a period of time he can decide whether he needs to take additional depositions and, if you fight about it, for me to rule on it. So I'm going to grant your request even though I am hesitant to do so under the circumstances, but I don't want to be in a position where you guys slow play them and then I'm sitting back here again that he didn't get the stuff.

(5/2/18 hearing tr. at 81:6-16.)

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C. The Responding Parties' May 30 and 31 Document Productions and Supplemental Privilege Logs

By status report dated May 24, 2018, the Responding Parties reported to the Court that they had "completed the collection of William Gould, Edward Kane, Douglas McEachern, Judy Codding and Michael Wrotniak's documents pursuant to the Court's Order on May 2, 2018 [and] had not located any additional responsive nonprivileged documents that have not already been produced in these Directors' previous productions." (Defendants' Status Report Regarding Discovery dated May 24, 2018, at 1:15-19.) The report further stated that "RDI expects to complete its review and production on or before June 4, 2018 [and] [a]ll documents determined to be responsive, and not duplicative, will either be produced or logged on a privilege log." (*Id.* at 2:1-3.) During a teleconference with the Court on May 29, 2018, the Court informed them that June 4 and June 1 were too late.

1. The May 30 Production

At approximately 5:45 p.m. on May 30, 2018, counsel for RDI sent an email with a link to a supplemental production of documents. Included in that production for the first time were documents that concern the December 21, 2017 meeting of the "Special Independent Committee" (the "SIC") of the RDI board of directors, what came to be the December 27, 2017 email from Bill Gould and "ratification." (See Ex. 1 hereto, documents produced on May 30 that bear production numbers RDI0064314 – 19.) These documents are email invitations to RDI General Counsel Craig Tompkins and several Greenberg Traurig ("GT") lawyers to participate in a conference call on December 22, 2017, which is described as "Call re Letter for Special Meeting re Ratification." (*Id.)*

2. The May 30 Privilege Log

As for the May 30, 2018 privilege log, it is sixty-four (64) pages long and appears to include on average eight (8) entries per page. It contains dozens of entries, and probably well over 100, the email subject descriptions of which are insufficient under NRCP 26(b)(5) to enable Plaintiff to assess whether such communications are entitled to a privilege. Examples of those "email subject" descriptions include "to do list," "status,"

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"latest draft," "joint defense communication, "Fwd:," "alternative approaches," "alternative litigation resolution approaches," "the option memo," "who can work with GT today.msg," "executive committee," and "the attorney-client communication.msg." The log entirely fails to set out what "the nature" of those communications are to test the alleged privileges.

The May 30, 2018 privilege log (Ex. 2 to Plaintiff James J. Cotter Jr.'s Motion to Compel filed on 6/8/18 ("JJC 6/8/18 Motion")) contains dozens of entries responsive to one or more of the three categories of documents which were the subject of the Court's May 2, 2018 order. Examples are described below.

- The May 30, 2018 privilege log reveals for the first time that in November and December 2016, and in January 2017, "alternative approaches" and "alternative litigation resolution approaches" were considered. Chronologically, the first was a November 22, 2016 email from Craig Tompkins, who at the time was special counsel to Ellen Cotter as CEO, to GT lawyers Bonner and Ferrario, copied to Ellen Cotter, the subject of which is "alternative approaches…." (See May 30, 2018 privilege log entry ending in RDI 71278.) The next is a December 7, 2016 email from Ferrario to Tompkins and Quinn Emmanuel lawyers Searcy and Tayback, the description of which is "the option memo." (See May 30, 2018 privilege log entry ending in RDI 67300.) (Based on the inclusion of these log entries on May 30, 2018 privilege log, one reasonably could infer that one of the matters they address is "ratification," but Plaintiff had no opportunity to ask deponents about these documents previously because they had not been logged).
- The May 30, 2018 privilege log also includes seven entries dated January 7, 2017 and January 9, 2017, most between Tompkins and GT lawyer Bonner, all of which are copied to GT lawyer Ferrario and all but one of which are copied to Ellen Cotter, all concerning "alternative

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litigation resolution approaches." (See May 30, 2018 privilege log entries ending in RDI forty-nine one, 71285, 71288, 64885, 64888, 71279 and 71282.) (Whether by design or oversight, these privilege log entries do not use the word "ratification.")

- Also on the May 30, 2018 privilege log are two December 22, 2017 entries regarding "call re: letter for special committee meeting re ratification," both from attorney Ferrario's assistant, one to Tompkins' assistant, and the other to Ellen Cotter's assistant and copied to Tompkins and Bonner. (See May 30, 2018 privilege log entries ending in 67258 and 64872.) It cannot be determined from reviewing these entries whether they refer to the same documents, described above, that were first produced on May 30, 2018.
- The May 30 privilege log also includes over three dozen entries relating to "ratification" and relating to the December 27, 2017 email from Gould that was one subject of the Court's May 2, 2018 order. These entries are dated December 26 and 27, 2017, and have subjects such as "Draft [for] your review," "Special Board Meeting," "Board agenda," "for Bill Gould to sign" and "Ratification." Most are emails between GT lawyers and by then RDI General Counsel Craig Tompkins. (See May 30, 2018 privilege log entries ending in RDI 68634, 68635, 65942, 67080, 68066, 68306, 68308, 68619, 68626, 68628, 68630, 68632, 70072, 70083, 70085, 70089, 70093, 70094, 70095, 70097, 70099 and 73495.) Gould is party to several. (See May 30, 2018 privilege log entries ending in RDI 68634, 6835, 67080 and 73495.) Ellen Cotter is copied on or the addressee of even more. (See May 30, 2018 privilege log entries ending in RDI 68634, 68635, 65939, 65942, 67080, 68619, 68626, 70083, 70095 and 73495.) The log also includes December 28, 2017 emails to which GT attorney Bonner, Ellen Cotter

and Craig Tompkins are party, the subject of which is "final version." (See May 30, 2018 privilege log entries ending in RDI 65937 and 73079.)

Counsel for Plaintiff continues to review the May 30, 2018 privilege log.

3. The May 31 Production

At approximately 4:50 p.m. on May 31, 2018, counsel for RDI served and filed supplemental disclosures. That pleading indicated that RDI was making a supplemental production of documents bearing production Nos. RDI 0064970-5120

At approximately 8 p.m. on May 31, 2018, counsel for RDI sent an email with a link to the supplemental production of documents. Included in that production for the first time were clearly nonprivileged documents that relate to the December 21, 2017 SIC meeting. These documents are 12/21/17 email invitations from Marcia Wizelman, Gould's assistant, to SIC committee members and GT attorneys Bonner and Ferrario to participate in a conference call at 8 p.m. on December 21, 2017, which is described as "Special Committee Meeting Conference Call." (*Id.)* (See Ex. 2 hereto, RDI0064970-72.) (It appears that these documents concern the December 21, 2017 SIC meeting at which "ratification" was approved, but Plaintiff has not had the opportunity to ask any deponent about these documents because they were withheld until May 31, 2018.)

4. The May 31 Privilege Log

The May 31 supplemental disclosure also attached a further supplemental privilege log, with respect to which the filing included a footnote at page 10 of 15 states as follows:

> "Please be advised that this log contains email sent to or from Craig Tompkins that did not include any non-retained attorneys or other third-party recipients. This log was created after running the agreed-upon search terms on data collected from Mr. Tompkins and using a predictive coding model. Due to the volume of data collected from Mr. Tompkins, a manual review of all emails was not completed and as such this log may include documents not relevant to this litigation, but this data was captured by the predictive coating model which assign these materials a response score of seventy or higher….."

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(See RDI's May 31, 2018 Thirty-Second Supplemental Disclosures at p. 10, n. 1.)

Counsel for Plaintiff understands this footnote to indicate that this 115 page privilege log, which appears to include over 550 entries, may include a significant number of nonresponsive documents. Counsel for Plaintiff has not completed their review of the May 31, 2018 privilege log and qualify the description of its contents herein accordingly. Nevertheless, it is apparent that the May 31, 2018 privilege log is deficient on its face. First, some entries do not identify a person as the sender and/or recipient of the email in question. Second, the privilege log contains a significant number of entries the subject description of which is inadequate to identify the subject matter(s) of the document. Examples include "alternative approaches," "confidential attorney-client and attorney work product communication," "alternative litigation resolution approaches," "Reading legal matters," "notes from interview," "re," "sent on behalf of Ellen Cotter," "the attorney-client communications," "FW," "can you review," and "call."

Many of these documents with subject descriptions that fail to identify the subject matter(s) of the documents appear to be documents concerning "ratification" or other matters that were the subject of the Court's May 2, 2018 order. For example, almost twenty (20) entries dated 12/28/2017 have a subject description of "Re: Call." Although the privilege log entries provide absolutely no information regarding the subject matter(s) of the call(s), they may well reference telephone calls GT lawyers Bonner and/or Ferrario placed on December 28, 2018 to "independent" directors the to discuss "ratification" and/or the "ratification" "process." (See Ex. 3 to JJC 6/8/18 Motion, GT May 31, 2018 privilege log entries ending in CN 2657, QE 241907, RDI 76390, 76391, 76403, 76466, 76469, 76511, 76522, 76544, 76552, 76563, 76565, 76621, 76629, 76633, 76915, 77009, and 77154.) Codding and Wrotniak testified about such a call, but could not place it in time. Gould did not. Some of these entries reflect emails between SIC members (E. G. Codding and Wrotniak), but several others reflect emails to or from Kane, who was not a SIC member. Some of these entries reflect emails between SIC members (E. G. Codding and Wrotniak), but several others reflect emails to or from Kane, who was not a SIC member.

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These privilege log entries are the very first evidence that he had any communications with anyone, much less GT lawyers, about "ratification" prior to the December 29, 2017 board meeting. His deposition testimony was to the effect that he had no such communications. (See 3 hereto, Kane 4/20/18 dep. tr. at 672:4-17.) (Of course, Plaintiff was unable to use these privilege log entries at the depositions of any of the four because those entries were disclosed for the first time on May 31, 2018.)

5. Gould's May 31, 2018 Supplemental Production

By email transmitted at approximately 5:30 p.m. on May 31, 2018, counsel for Gould made a supplemental production of documents. That production consisted of five single page documents, each of which was a 12/21/17 email invitation from Gould's assistant, Marcia Wizelman, to Codding, McEachern, and GT lawyers Bonner and Ferrario for a "special committee meeting conference call" at 8:00 p.m. on December 21, 2017, or a response to that email invitation. (See Ex. 4 hereto, WG 738-742.) In response to the question from counsel for Plaintiff why these documents had not been produced previously, counsel for Gould stated in a June 1, 2018 email as follows:

> "These documents were not produced previously because meeting invites related to the December 21, 2017 [SIC] meeting were not considered responsive to document requests until the court ordered such information to be produced on May 2."

As for a supplemental privilege log, counsel for Gould stated that "we sent all of our privileged emails to Greenberg Traurig to include in the RDI privilege log. My understanding is that the log that was provided last night included all of Gould's privilege documents." The May 31, 2018 privilege log produced by RDI does not specify which entries are for Mr. Gould.

6. The June 9, 2018 Production

On Saturday, June 9, 2018, GT made a further supplemental production of documents, producing over 2000 pages of documents. Counsel for Plaintiff has not

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completed the review of those documents, but it appears that they are largely if not entirely draft SEC filings and email communications regarding those drafts.

7. The June 11, 2017 Production

About the close of business on June 11, 2018, GT made another supplemental production of documents, the total volume of which is in excess of 3000 pages. The documents were password protected and counsel for Plaintiff was not provided with password. For that reason and because of the volume of documents, counsel for Plaintiff has not reviewed them.

8. The June ??, 2018 Privilege Log

As of noon Pacific on June 12, 2018, GT has not produced a further supplemental privilege log, as promised on June 9, 2018.

III. ARGUMENT

As the Court will recall, in response to Plaintiff's motion for omnibus relief, the Court on April 30, 2018 ordered an evidentiary hearing, which occurred in May 2, 2018. At the conclusion of the May 2, 2018 evidentiary hearing, the Court ordered the Responding Parties to supplement their document productions and privilege log(s) with respect to three categories of documents/information, including "ratification" generally and, more particularly, a December 21, 2018 meeting of the SIC, and a December 27, 2018 email sent by/for William Gould, which email purportedly was the means by which "ratification" was raised and approved.

On May 30 and 31, 2018, the responding parties made supplemental productions of documents and produce supplemental privilege logs. As described below, the supplemental document production showed, among other things, that the Responding Parties purposefully concealed the December 21, 2018 SIC meeting from Plaintiff and the Court.

As described below, May 30 and 31, 2018 supplemental privilege logs are facially inadequate, and amount to noncompliance with the Court's rulings of May 2, 2018. These privilege logs are inadequate because, among other things, (i) some entries fail to identify

Subject to the foregoing general and specific objections, Defendant responds as follows: Defendant spoke to Mark Ferrario in person, in New York, regarding the topic identified in Interrogatory No. 7 on or about December 15, 2017. Details of the conversation with Mr. Ferrario are subject to the attorney-client privilege.

INTERROGATORY NO. 9:

Identify each attorney who provided you or any member of the board of directors of RDI advice concerning the substance of the matters to be discussed at the meeting held on December 29, 2017 to the extent it concerned Ratification.

RESPONSE TO INTERROGATORY NO. 9:

Defendant incorporates by reference her General Objections. Defendant further objects to this Interrogatory because it seeks information protected from disclosure by the attorney-client privilege, work product doctrine, common interest privilege, or joint defense privilege. Defendant further objects to the definitions of the terms "Identify" and "substance of the matters to be discussed" as vague, ambiguous, overly broad (including as to time), unduly burdensome, duplicative, and seeking information that is not within her possession, custody, or control.

Subject to the foregoing general and specific objections, Defendant responds as follows: Mark Ferrario and Michael Bonner provided information regarding the topic identified in Interrogatory No. 9.

INTERROGATORY NO. 10:

With respect to each person identified under Interrogatory No. 9, please specify:

a. The date(s) on which you spoke;

b. The method of communication, and the location of such discussion, if it was in person;

c. Any other persons present for or privy to such communication; and

d. A detailed description of what was said.

RESPONSE TO INTERROGATORY NO. 10:

Defendant incorporates by reference her General Objections. Defendant further objects to this Interrogatory because it seeks information protected from disclosure by the attorney-client

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privilege, work product doctrine, common interest privilege, or joint defense privilege. Defendant further objects to the term "spoke" as vague and ambiguous because it is not clear whether it is limited to oral communications or may also include written communications; depending on what "spoke" means, the answer to the Interrogatory may necessitate the preparation or the making of a compilation, abstract, or summary of or from Defendant's documents, the burden or expense of preparing or making it would be substantially the same for Plaintiff as for Defendant, and therefore pursuant to N.R.C.P. 33(d), it is a sufficient answer to specify the writings from which the answer may be derived or ascertained.

Subject to the foregoing general and specific objections, Defendant responds as follows: Defendant spoke to Mark Ferrario in person, in New York, regarding the topic identified in Interrogatory No. 9 on or about December 15, 2017. Details of the conversation with Mr. Ferrario are subject to the attorney-client privilege.

Michael Bonner and Mark Ferrario provided information regarding the topic identified in Interrogatory No. 9 during the December 29, 2017 meeting of RDI's Board of Directors.

Mr. Bonner summarized the request for a special meeting at the behest of the five named Directors (Codding, 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. 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.

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.

Dated: February 14, 2018

COHENJOHNSONPARKEREDWARDS

By: */s/ H. Stan Johnson*

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

VERIFICATION

I, Margaret Cotter, declare that I am Defendant in this action. I have read the foregoing Objections and Responses to Plaintiff James J. Cotter, Jr.'s January 12, 2018 Interrogatories, know the contents thereof and am authorized to make this verification. I am informed and believe that the substantive answers provided are true and correct and, based upon that, declare that the contents of the Objections and Responses to Plaintiff James J. Cotter, Jr.'s January 12, 2018 Interrogatories are true and correct.

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

Dated: February 14, 2018

MARGARET COTTER

CERTIFICATE OF SERVICE

I hereby certify that, on February 14, 2018, I caused a true and correct copy of the foregoing **DEFENDANT MARGARET COTTER'S OBJECTIONS AND RESPONSES TO PLAINTIFF JAMES J. COTTER, JR.'S JANUARY 12, 2018 INTERROGATORIES** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

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

EXHIBIT 18

UNITED STATES DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS MCEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1-100, inclusive, Defendants.	No. A-15-719860-B
AND RELATED CROSS-ACTIONS.	

VIDEOTAPED DEPOSITION OF CRAIG TOMPKINS, ESQ.

Los Angeles, California

Wednesday, October 18, 2017

Job No. 425134

UNITED STATES DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES COTTER, JR., individually and derivatively on behalf of Reading International, Inc.,
Plaintiff,
vs. No. A-15-719860-B
MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS MCEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1-100, inclusive,
Defendants.

AND RELATED CROSS-ACTIONS.

Videotaped Deposition of CRAIG TOMPKINS, ESQ., taken on behalf of Plaintiffs at 1901 Avenue of the Stars, Suite 1600, Los Angeles, California, beginning at 10:03 a.m. on Wednesday, October 18, 2017, before SHERRY A. CASE, Certified Shorthand Reporter No. 2989, CLR, RPR.

APPEARANCES:

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ALSO PRESENT: JAMES COTTER
VIDEOGRAPHER: BRIAN MURPHY

I N D E X

WITNESS: CRAIG TOMPKINS, ESQ.

EXAMINATION

	PAGE
BY MR. KRUM:	9

E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exhibit 284	Document Bates stamped EK00001673	32
Exhibit 507	Document Bates stamped RDI0031146	40
Exhibit 508	Document Bates stamped EK00001556 to 1559	58

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(Exhibit 508 was marked for identification by the court reporter and is attached hereto.)

BY MR. KRUM:

Q Take such time as you need to review Exhibit 508 and let me know when you've read it to your satisfaction.

A Okay.

Q Do you recognize Exhibit 508?

A Not really.

Q Did you prepare it?

A It looks like something that is in my style and structure, but I don't really have a recollection of preparing this document.

Q I hand you what previously was marked as Exhibit 333.

(Exhibit 333 was previously marked for identification by the court reporter and is attached hereto.)

BY MR. KRUM:

Q My question is: Is Exhibit 508 the draft term sheet that was apparently attached to Exhibit 333?

A I don't know.

Q Well, I bring to your attention that the production numbers are in sequence. Do you see that?

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A Yes.

Q Okay. So with the benefit of Exhibit 333 -- well, strike that.

Did you, in or about August of 2015, have communications with Helen Cotter about your position at or with Reading?

A Yes.

Q And what communications did you have?

A I don't recall specifically.

Q Is Exhibit 333 and Exhibit 508 part of those communications?

A I don't know anything about Exhibit 333. As I said, I don't have a recollection of Exhibit 508 other than to say that it's drafted in the style in which I draft these sorts of things.

Q In the -- well, strike that.

Was there a point in time in 2016 when you held a position called Special Counsel to the CEO?

MR. FERRARIO: Did you say '16 or --

MR. KRUM: '16.

MR. FERRARIO: This is '15.

MR. KRUM: Okay.

MR. FERRARIO: Do you want to make it broad?

MR. KRUM: Yeah. Thank you. Thank you.

BY MR. KRUM:

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Q Was there a time, Mr. Tompkins, that you held a position called or to the effect of Special Counsel to the CEO?

A Yes.

Q And when was that?

A It was at or about the same time that I became Recording Secretary. I don't remember the exact dates.

Q Well, can you put it in a time frame, like the year or quarter?

A I think -- I think it was sometime near the fourth quarter of 2015 would be my best estimate.

Q And do you recall the circumstances or the context of how it occurred that you became Special Counsel to the CEO?

A I was asked and I said yes.

Q You were asked by whom?

A I don't remember who broached the subject.

Q Well, was it Ellen Cotter?

A It could have been.

Q Could it have been somebody else?

A It could have been.

Q Who else would have broached that subject with you?

A It could have been any one of a number of the

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directors.

Q Now, this draft term sheet indicates the title President, Special Counsel to the CEO, Chief Compliance Officer, and Recording Secretary.

Do you see that?

A Yes, I do.

Q And you actually have -- you're Chief Compliance Officer now.

A Correct.

Q We've covered that. I'm not going to ask you to repeat it.

And when did you become a recording secretary? Late quarter of 2015, do you believe?

A I think so. I'm going to say late fourth quarter. Sometime in the fourth quarter.

Q Thank you.

So did you have discussions or communications with Ellen Cotter about taking the title of President?

A Yes.

Q When did you have those communications?

A I don't recall.

Q Well, did you have them before Jim Cotter, Jr., was terminated as president?

A No.

Q How do you recall that you did not have them

efficient and clear record where you assert the privilege and so forth. So in the interest of not wasting anyone's time, I'm going to stop. Obviously, I reserve my rights because we have some open issues.

MR. FERRARIO: I understand.

MR. KRUM: But I don't think we have a circumstance where there's a question about where the instruction has been given. And so I don't see any point in crisscrossing this again.

MR. FERRARIO: I appreciate that.

MR. KRUM: So with that, we're done for the day at least.

MR. FERRARIO: Yeah.

THE WITNESS: Great. Thank you.

MR. KRUM: Thank you for your time.

THE VIDEO OPERATOR: This concludes the deposition of Craig Tompkins, Volume I, October 18, 2017, which consists of three media files. The original media files will be retained by Litigation Services.

Off the video record at 3:35 p.m.

(TIME NOTED: 3:35 p.m.)

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

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

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

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

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

Dated: November 5th, 2017 Sherry A. Case

SHERRY A. CASE
RPR, CLR, CSR No. 2989

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state), and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

Page	Line	Should read:	Reason for Change:

ERRATA SHEET

Page	Line	Should read:	Reason for Change:

Date: _____

_____
Signature of Witness

_____
Name Typed or Printed

Electronically Filed
6/12/2018 4:45 PM
Steven D. Grierson
CLERK OF THE COURT

MCOM
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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 **PLAINTIFF JAMES J. COTTER JR.'S MOTION FOR RELIEF BASED ON NONCOMPLIANCE WITH THE COURT'S MAY 2, 2018 RULINGS AND APPLICATION FOR ORDER SHORTENING TIME AND ORDER SHORTENING TIME** **Hearing Date: June 19, 2018** **Hearing Time: 8:30 a.m.**

06-12-18P02:29 RCVD

Case Number: A-15-719860-B

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Pursuant to N.R.C.P. 16, 26, 34, 37, 45, and EDCR 2.34 and 7.30, plaintiff James J. Cotter ("Plaintiff") hereby moves the Court for relief against the remaining individual defendants, former defendants William Gould, Judy Codding, and Doug McEachern, and nominal defendant Reading International, Inc. ("RDI") (collectively, "Responding Parties"), who and which have failed to comply with this Court's rulings of May 2, 2018 when, in ruling on Plaintiff's motion for omnibus relief, the Court ordered the Responding Parties to make supplemental productions of responsive documents and provide supplemental privilege logs, identifying the categories of information as follows:

> THE COURT: … So three categories, [i] the 12/21 special committee meeting, whether its scheduling, content, scope, minutes, whatever, related to that meeting; [ii] P-1 [the 12/27/18 email], whether its subject matter, preparation, drafting, circulation, how we're going to get it on the agenda for the 12/29 meeting; and the third item is [iii] any discussion of ratification, not limited by time.

(5/2/18 hearing tr. at 79:6-13.) (Emphasis supplied.)

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

(1) Order Responding Parties to provide privilege logs that satisfy the Court's requirements, including in particular but not limited to (a) identifying by name and title each author or recipient of a logged document; and (b) providing descriptions of the subject matters of the documents logged sufficient to enable Plaintiff to understand what the subject matters are and sufficient to enable the Court make a ruling on disputed claims of attorney-client privilege and/or attorney work product, subject to *in camera* review and, more particularly, specify as to each document logged whether it concerns or in any way relates to (i) the December 21, 2017 meeting of the "Special Independent Committee" of the RDI Board of Directors (the "SIC"), including its scheduling, content, scope, minutes anything else related to that meeting, (ii) the December 27, 2018 email from Gould's assistant, marked as P-1 at the May 2, 2018 evidentiary hearing, including its subject matter, preparation, drafting, circulation, how it would be used to get its contents on the agenda for the December 29, 2017 RDI Board of Directors meeting and otherwise related to that document, and/or (iii) ratification; (c) identify each attorney who

was party to each document logged and/or each attorney whose advice is contained in each document logged; and (d) identify the basis on which each document logged is claimed to be subject to the attorney-client privilege and/or the attorney work product doctrine;

(2) Order William Gould, Judy Codding, Doug McEachern, Ellen Cotter, Margaret Cotter, Craig Tompkins and Ed Kane to appear for further deposition, should Plaintiff choose to depose them further after these matters are resolved, and order that the travel and lodging costs incurred by counsel for Plaintiff to further depose any one or all of them with respect to these matters be awarded against the Responding Parties; and

(3) Order that trial of the captioned action be postponed until such time as Plaintiff has had the opportunity to complete review of documents produced on June 9 and 11, 2018 and the privilege log(s) sought by this motion, pursue any motion practice with respect to any disputed claims of attorney-client privilege and/or attorney work product, review any documents subsequently produced and then take the depositions of the persons identified in the immediately preceding paragraph.

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

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

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

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

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

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

3. By the instant motion, Plaintiff requests that the Court:

- Order Responding Parties to provide privilege logs that satisfy the Court's requirements, including in particular but not limited to (a) identifying by name and title each author or recipient of a logged document; and (b) providing descriptions of the subject matters of the documents logged sufficient to enable Plaintiff to understand what the subject matters are and sufficient to enable the Court make a ruling on disputed claims of attorney-client privilege and/or attorney work product, subject to in camera review and, more particularly, specify as to each document logged whether it concerns or in any way relates to (i) the December 21, 2017 meeting of the "Special Independent Committee" of the RDI Board of Directors (the "SIC"), including its scheduling, content, scope, minutes anything else related to that meeting, (ii) the December 27, 2018 email from Gould's assistant, marked as P-1 at the May 2, 2018 evidentiary hearing, including its subject matter, preparation, drafting, circulation, how it would be used to get its contents on the agenda for the December 29, 2017 RDI Board of Directors meeting and otherwise related to that document, and/or (iii) ratification; (c) identify each attorney who was party to each document logged and/or each attorney whose advice is contained in each document logged; and (d) identify the

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basis on which each document logged is claimed to be subject to the attorney-client privilege and/or the attorney work product doctrine;

- Order William Gould, Judy Codding, Doug McEachern, Ellen Cotter, Margaret Cotter, Craig Tompkins and Ed Kane are to appear for further deposition, should Plaintiff choose to depose them further after these matters are resolved, and order that the travel and lodging costs incurred by counsel for Plaintiff to further depose any one or all of them with respect to these matters be awarded against the Responding Parties; and
- Order that trial of the captioned action be postponed until such time as Plaintiff has had the opportunity to complete review of documents produced on June 9 and 11, 2018 and the privilege log(s) sought by this motion, pursue any motion practice with respect to any disputed claims of attorney-client privilege and/or attorney work product, review any documents subsequently produced and then take the depositions of the persons identified in the immediately preceding paragraph.

Reason for Order Shortening Time

4. Plaintiff respectfully submits that this Motion should be heard on an order shortening time because unless and until Plaintiff obtains the documents and information which are the subject of this Motion, which Responding Parties are obligated to provide but have not provided, Plaintiff will not be able to complete the discovery he needs and to which he is entitled with respect to the purported "ratification" by Gould, Codding, McEachern and two other former director defendants of certain prior actionable conduct. More fundamentally, Plaintiff will not be able to provide the oppositions to the remaining defendants renewed "ratification" and demand futility summary judgment motions that Plaintiff otherwise would be able to provide. Plaintiff likewise will not be able to proffer the evidence at trial respect to these matters that Plaintiff would were the discovery which is the subject of this motion provided, as the Court previously ordered on May 2, 2018. For such reasons, Plaintiff respectfully submits that the Motion should be

heard on an order shortening time rather than in the ordinary course. In particular, Plaintiff requests that this motion be set for June 19, 2018, when counsel for the parties are scheduled to appear before the Court.

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

Discovery Disputes and EDCR 2.34 Conference

6. As the Court knows from prior motion practice, Counsel for Plaintiff learned, for the first time, of a meeting of the "Special Independent Committee" of the RDI board of directors (the "SIC") in December 2017 and depositions of SIC members Doug McEachern, Judy Codding and William Gould. As the Court also knows from prior motion practice, counsel for Plaintiff specifically requested that counsel for the Responding Parties produce minutes of that December 2017 SIC meeting.

7. Finally, on or about April 12, 2018, minutes of what turned out to be a December 21, 2017 SIC meeting were produced for the first time. However, they were produced in a wholly redacted form.

8. As a result of the foregoing, among other efforts on the part of the remaining defendants and Responding Parties to frustrate Plaintiff's ability to obtain discovery regarding the "ratification" "process," Plaintiff filed a motion for "omnibus relief." That motion was heard on April 30, 2018, at which time the Court ordered an evidentiary hearing, which occurred on May 2. At the end of the May 2 hearing, the Court granted Plaintiff's motion for omnibus relief in part, ordering that the Responding Parties produce and/or log all documents responsive to three categories of information, as follows:

> THE COURT: … So three categories, [i] the 12/21 special committee meeting, whether its scheduling, content, scope, minutes, whatever, related to that meeting; [ii] P-1 [the 12/27/18 email], whether its subject matter, preparation, drafting, circulation, how we're going to get it on the agenda for the 12/29 meeting; and the third item is [iii] any discussion of ratification, not limited by time.

(5/2/18 hearing tr. at 79:6-13.) (Emphasis supplied.)

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9. The Court on May 2, 2018 also granted the remaining defendants motion to file what is the now filed Ratification MSJ, but instructed them not to file it until after they had complied with the Court's May 2, 2018 order and afforded counsel for Plaintiff an opportunity to review and analyze the documents and privilege logs and then determine whether Plaintiff needed further discovery. In this regard, the Court stated as follows:

> THE COURT: Yeah. So I want Mr. Krum, instead of me facing a 56(f) issue at the time you file that motion, he's ready to file his opposition, I want him to have the opportunity to get these documents with the privilege logs, look at them, and then have a period of time he can decide whether he needs to take additional depositions and, if you fight about it, for me to rule on it. So I'm going to grant your request even though I am hesitant to do so under the circumstances, but I don't want to be in a position where you guys slow play them and then I'm sitting back here again that he didn't get the stuff.

(5/2/18 hearing tr. at 81:6-16.)

10. On June 1, 2018, one and two days following the production of documents and supplemental privilege logs on the evenings of May 30 and 31, 2018, described below, the remaining defendants filed the Ratification MSJ. Thus, what the Court sought to avoid is exactly what happened. The remaining defendants and the Responding Parties "slow played" Plaintiff, who has not an opportunity to do what he is entitled to do and what the Court ordered he be afforded the opportunity to do.

11. On May 30 and 31, 2018, Greenberg Traurig ("GT"), for RDI and/or for the Responding Parties, made supplemental productions (totaling thousands of pages) of documents and produced two (facially deficient) voluminous, supplemental privilege logs. Dozens upon dozens of documents relating to one or more of the foregoing three categories have been withheld based on claims of attorney-client privilege, the work product doctrine, or both, as reflected by entries on those privilege logs.

12. Additionally, hundreds of entries on the May 30 and 31, 2918 privilege logs suffer from several facial deficiencies, including the failure to describe the subject matter

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of the documents logged in terms that are not so general as to be meaningless. As a result, counsel for Plaintiff is unable to use those to logs identify the subjects matter of the communication, much less challenge claims of privilege or examine witnesses to confirm the subject matters and/or the participants.

13. On June 6, 2018, I met and conferred telephonically with counsel for RDI and the remaining defendants and the Responding Parties (except for Gould) regarding the May 30 and 31 document productions and privilege logs. On June 8, counsel for RDI advised that the responding parties would be making supplemental productions of documents and would provide a revised privilege log. I believe the foregoing efforts, made in good faith to resolve these matters without Court intervention, satisfy the parties' obligations under EDCR 2.34.

14. On Saturday, June 9, 2018, GT made a further supplemental production of documents, producing over 2000 pages of documents. Counsel for Plaintiff has not completed the review of those documents, but it appears that they are largely if not entirely draft SEC filings and email communications regarding those drafts.

15. About the close of business on June 11, 2018, GT made another supplemental production of documents, the total volume of which is in excess of 3000 pages. The documents were password protected and counsel for Plaintiff was not provided with the password until today. For that reason and because of the volume of documents, counsel for Plaintiff has not reviewed them.

16. As of noon Pacific on June 12, 2018, GT has not produced a further supplemental privilege log, as promised on June 9.

Certificate pursuant to EDCR 7.30((c)

17. For the reasons set out above and those stated more detailed below, good cause exists to continue the July 9 trial date. Under EDCR 7.30(c), I certify that I

have provided a copy of this Motion together with the exhibits thereto to Plaintiff James Cotter Jr.

Executed this 12th day of June, 2018

Mark G. Krum, Esq.

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court and good cause appearing therefor, IT IS HEREBY ORDERED, that the hearing on James J. Cotter, Jr.'s Motion to For Omnibus Relief shall be heard before the above-entitled Court in Department XI, before Judge Elizabeth Gonzalez on the 19 day of June, 2018, at 8:30 a.m./p.m., or as soon thereafter as counsel may be heard, at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89101.

DATED this 12 day of June, 2018

DISTRICT COURT JUDGE

Respectfully submitted:

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On April 30, 2018, in response to Plaintiff's motion for omnibus relief, the Court ordered an evidentiary hearing, which occurred on May 2, 2018. At the end of that hearing, the Court granted in part Plaintiff's motion for omnibus relief and, in particular, ordered that the Responding Parties produce and list on supplemental privilege logs documents regarding "ratification" and two other more particularized categories of information. Also on May 2, the Court granted a motion for permission to file a renewed summary judgment motion but, in doing so, specifically directed the remaining defendants not to file summary judgment motions until the Responding Parties had complied with the Court's order to produce and log additional documents. The Court explained this was required to afford counsel for Plaintiff an opportunity to review supplemental productions and privilege logs, seek relief from the Court respect to disputed claims of privilege and otherwise conclude the discovery to which the Court previously had determined Plaintiff was entitled, and to avoid Plaintiff needing to invoke NRCP 56(f).

Exactly what the Court sought to avoid has occurred. Responding Parties have slow played counsel for Plaintiff, making their belated supplemental productions of thousands of pages of documents and voluminous, facially inadequate supplemental privilege logs on the evenings of May 30 and 31, 2018, days before filing motions for summary judgment on June 1 and 4, 2018.

As demonstrated below, the May 30 and 31, 2018 supplemental document productions show, among other things, that Responding Parties purposefully sought to conceal from Plaintiff and the Court that the "Special Independent Committee" of the RDI board of directors (the "SIC") met telephonically on the evening of December 21, 2017 and "formally" approved "ratification."

As demonstrated below, the May 30 and 31 supplemental privilege logs included dozens of entries that suggest that the "ratification" "process" was not carried out

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Aug 30 2019 03:24 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

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

JOINT APPENDIX TO OPENING BRIEFS FOR CASE NOS. 77648 & 76981
Volume XXXI
JA7559 – JA7808

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2018-05-07	Transcript of 5-2-18 Hearing on Evidentiary Hearing	XXVII, XXVIII	JA6727-JA6815
2018-05-24	Transcript of 05-21-18 Hearing on Adams and Cotter sisters' Motion to Compel	XXIX	JA7158-JA7172
2018-06-20	Transcript of 06-19-18 Omnibus Hearing on discovery motions and Ratification MSJ	XXXIV	JA8343-JA8394
2018-10-02	Transcript of 10-01-18 Hearing on Cotter Jr.'s Motion to Retax Costs	LIII	JA13126-JA13150

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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