IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appeal (77733)
Eighth Judicial District Court, Dept. XI
The honorable Elizabeth G. Gonzalez

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

Volume II
RA242 – RA468

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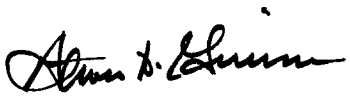

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JAMES COTTER, JR. Plaintiff vs. READING INTERNATIONAL, INC. Defendant . . . . . . And related cases and parties	CASE NO. A-735305 A-719860 P-082942 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT, MOTION TO COMPEL, AND MOTION TO AMEND

TUESDAY, AUGUST 9, 2016

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

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

APPEARANCES:

FOR THE PLAINTIFF:	KRISTEN T. GALLAGHER, ESQ. MICHAEL A. SHERMAN, ESQ. MARK G. KRUM, ESQ.
FOR THE DEFENDANTS:	HAROLD STANLEY JOHNSON, ESQ. MARK E. FERRARIO, ESQ. MARSHALL M. SEARCY, ESQ.

LAS VEGAS, NEVADA, TUESDAY, AUGUST 9, 2016, 10:23 A.M.

(Court was called to order)

THE COURT: If I could go to Cotter.

We missed you, Mr. Ferrario, on the last argument, but Mr. Miltenberger did a fine job without you.

MR. FERRARIO: He's masterful sitting there.

THE COURT: He said some things.

MR. FERRARIO: I didn't see it. He's very capable.

THE COURT: All right. We're dealing with competing motions for summary judgment first, and then we'll go to the motion to compel.

MS. GALLAGHER: Good morning, Your Honor. Kristen Gallagher and Michael Sherman on behalf of plaintiff James Cotter, Jr.

THE COURT: Good morning.

MR. SHERMAN: Good morning, Your Honor.

Your Honor, on behalf of Mr. Cotter's claim for advancement I would really like to begin, if I may, by presenting a copy of one of the documents that we had attached to our motion.

THE COURT: You can just tell me where to go. I have your motion right here.

MR. SHERMAN: Very well. It is the employment demand for arbitration itself.

THE COURT: And that's Exhibit 2?

MR. SHERMAN: I believe it is, Your Honor, yes.

The demand for arbitration with claimant Reading International, respondent James J. Cotter, Jr., states on the second page the nature of relief, the attachment to the arbitration demand as follows. If you go down to about the fifth line down, "Reading contends that this includes requiring him to resign his position...on the company's board of directors." That's how they started this in mid July 2015. It continues on, "Mr. Cotter is challenging the validity," and they go on, "...and has refused to resign from any position." In that same demand for arbitration in the second paragraph, "Nature of Claim. Reading seeks declaratory relief determining that...Mr. Cotter is required to submit his resignation from all positions with the company and its affiliates and subsidiaries, including as a member of the board of directors." They go on, in case it's not clear enough, that "Reading will also seek an order requiring Mr. Cotter to resign and/or any damages resulting from his failure to resign."

Your Honor, it is clear that -- as the substantial body of caselaw demonstrates, that because this arbitration revolves around Reading's claim that Mr. Cotter has an obligation to resign as a director of Reading it doesn't matter how they're going to try to spin this now. You can tell from the face of the arbitration demand that there is a

causal connection between the arbitration and Mr. Cotter's position as a director, implicating all the fiduciary duties that that entails.

Now, I started with what I thought was the meat of the issue because I think that there's a -- maybe a forshpeis, an appetizer, if you will, the suggestion that any action, suit, or proceeding would not include an arbitration. I mean, clearly an arbitration is a proceeding. The subordinate clause is not in any way restrictive. Delaware authority, which is obviously persuasive here in Nevada, Your Honor, provides repeatedly with bylaws exactly the same the Palino [phonetic] case, for example, that arbitrations are candidates for advancement. Advancement provisions, as this Court knows, are construed very broadly. The Home Store case teaches the tie goes to the runner. This is not close. And in that regard, Your Honor, unless the Court has other questions, I'd reserve for any --

THE COURT: You are only seeking reimbursement related to the arbitration in this motion; correct?

MR. SHERMAN: We're only seeking advancement for that, yes.

THE COURT: Thank you.

MR. FERRARIO: Good morning, Your Honor.

THE COURT: 'Morning.

MR. FERRARIO: I think this was very thoroughly

briefed by all sides. All cases were analyzed. I really think the starting point here isn't the demand for arbitration, because I don't think that that really changes any of the analysis. The starting point is the provision in the bylaws. If you look at the provision of the bylaws, conspicuously absent there is any reference to advancement in an arbitration proceeding. In fact, the bylaws specifically state that advancement will occur in defending a civil or criminal action, suit, or proceeding. And what the plaintiffs are trying to do here is really do violence to the employment agreement that was executed that has a prevailing party attorneys' fees provision in it. They want us to pay attorneys' fees up front, and I guess it would be a pay and chase situation. And what they're really advocating here is a distorted concept where you have an employee who refuses to abide by their agreement then claiming if they're an officer or director that somehow that triggers advancement under the bylaws provision. And that's not this works. And in the cases that we cite and the analysis we provide shows that even in Delaware that doesn't fly.

What I found interesting in Mr. Sherman's comments this morning was he said that the proceeding clearly involves Mr. Cotter's job as a director and it implicates all the fiduciary duties. That's simply incorrect. This case involves -- or this arbitration proceeding, which is not a

civil action, which is not a criminal action, this arbitration proceeding, a private arbitration pursuant to the employment contract involves one issue, did he breach his agreement, yes or no. That does not in any way implicate his fiduciary obligation as a director.

Now, having said that, why did Mr. Sherman make that comment? It's because the cases that we cite show that the only time you trigger advancement and hence indemnification down the road under the bylaws provision is where you have a proceeding that does that. And this case simply doesn't involve that.

So at the end of the day Mr. Cotter, Jr., isn't left out in the cold. There is a prevailing party attorneys' fees provision in the arbitration agreement -- or in the employment agreement; and if he's successful, he can petition for fees there. Simply put, advancement isn't triggered under the very language of the bylaw section that they're citing.

And I'll be happy to answer any questions from Your Honor.

THE COURT: Thank you, Mr. Ferrario.

Anything else, sir?

MR. SHERMAN: Yes. Mr. Ferrario suggests that the arbitration involves one issue. Your Honor has the demand in front of you. You see what they've read. The suggestion that we ought to be going deeper than that right now really does

violence to the whole principle of advancement that this is to be determined in a summary fashion by the Court. He suggests that Mr. Cotter, Jr., is not being left out in the cold. There is a critical distinction, as this Court is well aware, between advancement and a later determination of a right to attorneys' fees. Mr. Cotter has provided an undertaking. This is no different than a mandatory requirement that Mr. Cotter be -- advance these moneys akin to equivalent to a loan. And this is in no way distortive of anything. We're using their own words in terms of the obligation, the alleged obligation to resign as a director and the fact that this arbitration revolves around that fact. Thank you, Your Honor.

THE COURT: Thank you.

The motion is denied. Here the employment arbitration is not within the scope of the bylaws reimbursement provision. So good luck. 'Bye.

Now could I go to the motion to compel. Did you get Mr. Krum's most recent supplemental privilege log that he mentioned in the opposition I read this morning?

MR. SEARCY: Your Honor, I did receive the supplemental privilege log last night, and I'd like to talk about that with the Court briefly.

We've got a pattern here, Your Honor, where we bring a motion to compel and then plaintiff submits a privilege log to us that's deficient. As we set forth in our papers, we

brought a motion to compel in March. The plaintiff was ordered to provide a proper privilege log. Plaintiff didn't. So we brought another motion to compel again in June. Plaintiff was ordered to provide a proper privilege log. Plaintiff didn't. We were promised a proper privilege log in July 12th, July 22nd, promised one again on July 26th. Now, on August 8, after discovery has ended, plaintiff has provided us with a privilege log that still fails to meet the Court's order.

And particularly, Your Honor, there are six pages' worth of entries on there that contain communications between the attorneys for T2 and the attorneys for plaintiff. And Your Honor specifically inquired of plaintiff at the hearing in June whether plaintiff recognized that there was no privilege between plaintiff and T2 concerning those communications. Specifically, at page 17, line 19, and page 18, line 5, of the hearing transcript where the Court asks, "So you recognize there's no privilege between your client and Mr. Robertson's clients' communications related to Reading?" Plaintiff's counsel responded, "I think that's the case. I know there's no joint prosecution agreement."

So now, Your Honor, we still have a privilege log that's deficient, and I'd like to be able to address the issues in that privilege log as quickly as possible with the Court. What I would --

THE COURT: Today's not the day we're going to do it.

MR. SEARCY: And that's --

THE COURT: Okay.

MR. SEARCY: You're two steps ahead of me, Your Honor, as usual. What I would like to do, Your Honor, is submit the privilege log that plaintiff has provided to us to the Court and schedule with the Court at some point at the Court's earliest convenience a call where we can go over the deficient entries in those privilege log and finally bring this issue to an end.

THE COURT: So why don't you first talk to Mr. Krum about the deficiencies in the privilege log he gave you yesterday.

MR. SEARCY: And I intend to do that, Your Honor.

THE COURT: Okay. But don't involve me till you've done that.

MR. SEARCY: But I believe if we can set up a call with the Court, then we can move that process along quickly.

THE COURT: How about you give Mr. Krum your comments first.

MR. SEARCY: All right. Thank you.

THE COURT: You never know. You may resolve them.

MR. SEARCY: Your Honor, we're looking at our fourth motion to compel on the privilege log --

THE COURT: I am aware of that.

MR. SEARCY: -- so I'm not optimistic. But I'll certainly give Mr. Krum a call.

THE COURT: Well, no. You've got to do more than that. You've got to actually talk to him.

MR. SEARCY: Absolutely.

THE COURT: Not just call. You've got to talk to him.

MR. SEARCY: And, Your Honor, if I may point out, on our third motion to compel we've done a lot of talking to Mr. Krum. In fact, Mr. Krum and I speak quite a bit.

THE COURT: Yes.

MR. SEARCY: So I don't want there to be any confusion on that point. But we --

THE COURT: I speak with you guys a lot, too, though.

MR. SEARCY: Yes, you do, Your Honor. And I'd like to -- I'd like to try and bring this issue to a head. So thank you, Your Honor.

THE COURT: Okay. Mr. Krum, anything you want to tell me?

MR. KRUM: Your Honor, I'm not going to take any of my limited time or yours to repeat what's in our papers --

THE COURT: Okay.

MR. KRUM: -- or even respond to what he said.

Unless you have questions, I have nothing to add.

THE COURT: So since you've already produced a privilege log, I'm going to require that counsel meet and confer. I would prefer an actual meeting where you actually sit down and talk about it between the two of you, but if that's not possible, a telephonic conference call where you sit down and talk about it. After you are unable to resolve your differences related to the supplemental privilege log it would be lovely if you would send it to me and we would have a conference call.

MR. SEARCY: Thank you, Your Honor.

THE COURT: Okay. So if I can go to the motion to amend.

MR. KRUM: Thank you, Your Honor.

The motion to amend raises matters learned in the course of discovery and developments that postdate the last pleading, a classic matter appropriately included in a motion to amend. The principal areas --

THE COURT: Certainly better than asking to amend according to proof at the time of trial.

MR. KRUM: Well, we were pretty proud of that, actually, Your Honor, that we got ahead of that curve. So one of those new subjects is the supposed search hiring Ellen Cotter as CEO. We raised that in our first amended complaint as best we could given that our first amended complaint

preceded the conclusion of that series of events. That subject was raised in the intervening plaintiff's claim. The defendants have taken discovery with respect to it. Had we sought to file an amended complaint, as their opposition suggests, promptly following the public announcement of it, I can just hear Mr. Ferrario saying something like, come on, Judge, is Mr. Krum going to amend the complaint every time Mr. Cotter disagrees with a board decision. So what we did is what we're entitled to do, is take discovery, learn facts, and file the pleading. Discovery, by the way, Your Honor, effectively commenced in mid April. As you'll recall, defendants delayed approximately -- the individual defendants delayed approximately five months before making a substantial production of documents.

The other -- another new subject is not new. That's Margaret Cotter is the director of real estate for New York City. This was raised in our first amended complaint based on facts we knew at the time. See, for example, paragraph 18. She was made -- given that position in March. I guess the opposition says we're therefore supposed to file an amended complaint then. But we wanted to see the documents and take some depositions; because, after all, what we knew is that the individual director defendants had previously by and large taken the position that she was not qualified for that. So obviously there were going to be documents and/or testimony

that explained why they took a different position. We took that discovery. Based on that discovery we included that in the second amended complaint.

Now, I should add, Your Honor, that counsel for the director defendants, including Ms. Conning and Mr. Rodniak, spent extensive time examining plaintiff about that, questions like, "You think it's a wrong decision to have hired Margaret Cotter; correct?" "Am I correct that if the right process was followed and they hired Margaret you would be fine with that?" On and on and on and on. So they took discovery with respect to that. There's no prejudice to anybody.

The other subject that's a new one is the offer. And that obviously is a development so recent that we could not have taken, much less completed, discovery regarding it. The response of the director defendants to the offer, Your Honor, raises exactly the issue raised in most, if not all, of the matters in the FAC, the first amended complaint, namely, entrenchment and self dealing by Ellen and Margaret Cotter and abdication of the fiduciary responsibilities by the other individual director defendants in deference to what they believe to be the wishes of Ellen and Margaret Cotter.

So this is in the first amended complaint, this kind of conduct, for example, paragraphs 1, 3, 6, 7, 9, 16, and 57. We quote Mr. Storey as saying, "As directors we can't just do what a shareholder," meaning Ellen and Margaret, "asks."

Paragraph 160 of our second amended complaint says, "Each of the non-Cotter directors in determining whether and how to respond to the offer made their respective decisions largely, if not entirely, on their understanding of what Ellen and Margaret wanted." So to respond to the individual defendants, the offer is the ultimate kind of entrenchment and abdication of fiduciary responsibilities. That is exactly the nature of every claim made in this case. That it gives rise to a different category of damages doesn't mean that it doesn't belong in the case. It's the same kind of conduct, and we're entitled to cover all of it that exists, not have some of it that closes the loop excluded from the case.

And the interested director defendants take issue with the allegations of the second amended complaint about that series of events, and to do that they cite a press release they issued. Well, interestingly enough, the second amended complaint alleges that the press release itself is misleading.

Prejudice. Delay alone without some substantive prejudice accompanying is insufficient to serve as a basis to deny a motion to amend. The circumstances with which the parties are faced here are due largely, if not entirely, to the defendants themselves. They delayed the production of documents by five months. They delayed depositions. I had to bring motions to compel before they even scheduled

depositions. We've run around the country for three straight months in places where neither Mr. Ferrario nor his partners nor I live deposing these people. We're not still not finished. We have five depositions that haven't been completed, some of them even started, one of which is Mr. Tompkins, for whom I've been asking since mid May. Mr. Ferrario I believe made good-faith efforts to produce him. Mr. Tompkins since hired his own counsel and tell me there are going to be privilege issues they're going to have the Court resolve before he'll be produced.

The document production, by the way, has been ongoing. Since the April production of the 20,000 documents -- 20,000 pages by the individuals they've produced 15.

Last comment, the second amended complaint pleads as to each matter on which a claim is based, demand futility. Thank you, Your Honor.

THE COURT: Thank you.

Mr. Ferrario.

MR. FERRARIO: Your Honor, I'm going to cut to the chase on behalf of the company. This case has been a tremendous drain on company resources, as Your Honor can imagine. I mean, just harvesting documents --

THE COURT: I've been trying to get this case moving for almost a year.

MR. FERRARIO: Well, it has been.

THE COURT: You guys are poky.

MR. FERRARIO: No. I would take issue with that. We are essentially done with --

THE COURT: I tried to set a preliminary injunction hearing to resolve all these issues a year ago.

MR. FERRARIO: It wasn't me, Your Honor. That wasn't me, as you recall, okay. We asked what was the -- what were the issues that were going to be resolved, and Mr. Krum couldn't even articulate that.

So here's what -- here's where we're at. We have like four mop-up depositions to do. Two I think -- we have like an hour with Doug McEachern, and we have a half a day with the plaintiff, we have a half a day with Mr. Adams. Those are all in the process of being set.

Mr. Tompkins's deposition will go forward. We proposed a number of dates. Mr. Santoro's representing him. That shouldn't get in the way, okay.

The real issue is do we allow a change in the complexion of the case at this late date. There are certain claims that Mr. Krum articulated that have been in the case via the T2 complaint. Now, that case is in the process of hopefully being resolved. We have a hearing in front of Your Honor October 6th. So have there been questions raised in the complaint about hiring Ellen Cotter, have there been questions raised in -- not in the complaint, in the case about Margaret

Cotter? Yes. Those were part of the T2 action in large part. But what's missing here from what is now essentially an employment case if Your Honor doesn't allow the amendment -- because that's really all it was. Mr. Krum himself said this was an equitable case so that his client could get reinstated. Now they're trying to take over the claims that were previously being prosecuted by T2. T2 has said, hey, we take a look at this, there's no reason to move forward. Now they want to basically take those claims and take them to the finish line. So from our perspective it does change the dynamic here. And what Mr. Krum didn't address is the fact that many of these claims that he wants to now bring arose after there was a significant change in the board. We have two new board members.

His demand futility allegations fall as a matter of law. You don't -- you can't say that Ms. Cotting is incapable of making a decision because she is the friend of the mother of his client, who also happens to be the mother of his two sisters. I don't think that satisfies -- which I haven't seen the case where friendship alone disqualifies you from making an independent decision when a demand is placed upon you. And that's really what's missing from his complaint, his proposed amended complaint.

So I can go through this, I can hack it all up, I can tell you when Rodniak was on the board, we can do all

that. He talks about serial amendment. His client essentially gripes and challenges every decision made by the board, okay. So I suspect we'll be doing this again close to trial. We addressed this the last time we were here when I said, so, you know, is this just going to keep going with discovery, do we just keep opening depositions, do we go back now every time we make a decision and redepose somebody. At some point you have to have some structure to these proceedings. The structure comes from a demand to the board. That's the first thing.

So having said all that, because I know Your Honor's read this and you probably have your mind made up and I'm making record, here's what the company can't afford to have happen. We cannot afford to have a delay in these proceedings. They are a drain on company assets. This needs to be resolved. And if Your Honor does allow the amendment, we do not want there to be any delay in the trial. And --

THE COURT: It's set for November.

MR. FERRARIO: Which is set for November. So there's plenty of time --

THE COURT: Absolutely.

MR. FERRARIO: -- for us to accommodate whatever we have to do --

THE COURT: And any motion practice you need to do.

MR. FERRARIO: If Your Honor is so inclined to allow

us that, yes, we can do all the motion practice --

THE COURT: Of course. You always get motion practice.

MR. FERRARIO: -- we can do all the motion practice we need to do. But in terms of -- and this is going to be addressed on Thursday. I will not be here. I'd prefer to have that hearing set for Friday, if we could. I have to be out state in a deposition.

THE COURT: Everybody okay with moving the hearing Thursday to Friday? Everybody nodded their head okay.

MR. KRUM: Your Honor, I don't know. I'm flying out on Friday. I do not know what time.

THE COURT: My hearings start at 8:30 on Friday.

MR. KRUM: I just need to check, Your Honor. I don't know.

THE COURT: Okay. Will you check?

MR. KRUM: Of course.

MR. FERRARIO: So I -- you know, I can slice this up. Mr. Searcy can talk to you about what's in his pleadings.

THE COURT: Well, but you used all the time.

MR. FERRARIO: Well --

THE COURT: He doesn't have any time left.

MR. FERRARIO: Give him a little bit. Look, this is -- look, with all due respect, Judge, this is a really serious matter, and we --

THE COURT: I know it is, Mr. Ferrario.

MR. FERRARIO: -- we have worked very hard --

THE COURT: But do you remember what the standard is for me allowing amendments?

MR. FERRARIO: Your Honor, this is different. I know what the standard is for amendments, and I knew where you were headed when you said at least we're not doing this at trial. But I think here when you have a derivative case there is a different element that comes into play. This isn't a PI-type case or a simple auto case or breach of contract case where you might find another related claim. This is a derivative claim. And the predicate for any derivative claim is a demand upon the board. And we've had some significant changes to the complexion of the board going forward. It isn't the same board that existed in the summer of 2015. New people were added, people that don't have some of the same issues that the other directors had, people that don't have, you know, 50-year friendships, as he's alleged, things that we think are irrelevant at any rate and more than happy to address. But it is a different dynamic here.

So from the company's perspective if Your Honor does allow the amendment we would request that we maintain the trial date. And we will work with whatever deadlines. And Your Honor knows that I will do that, having lived through CityCenter, where there were some very difficult deadlines.

We will work with any deadlines that Your Honor imposes so long as we can get this case to the finish line in November.

THE COURT: Thank you.

You may have a minute and a half, Mr. Searcy.

MR. SEARCY: Your Honor, thank you.

I just want to emphasize a point Mr. Ferrario made and that was made by Mr. Krum but is incorrect. That's the notion that somehow the director defendants delayed in providing discovery. In fact, Your Honor, we produced documents well in advance of depositions. As we set forth in page 11 of our brief, Your Honor, we provided Ellen Cotter for three days of deposition, Margaret Cotter for three days of deposition, Ed Kane for four days of deposition.

THE COURT: See, it's less effective for you guys to tell me the history of discovery when I'm doing all my own discovery, because I remember how many times you guys have been in here fighting. Anything else?

MR. SEARCY: Well, Your Honor, but the point is that my clients have done this in an effort to make that November trial date. So I --

THE COURT: We're going to make the November trial date. That's not the issue. Anything else?

MR. SEARCY: And, Your Honor, thank you. I don't need the rest of my time.

THE COURT: All right. The motion to amend is

granted. I find that demand would be futile on the board under the circumstances. However, that does not preclude you from filing a motion to dismiss once it's filed relating to the other issues.

Anything else?

MR. FERRARIO: No. Thank you, Your Honor.

THE COURT: All right. So, Mr. Krum, can you tell us if you can come Friday?

Could you wait a minute while I do the last page and then I go back to --

(Pause in the proceedings)

THE COURT: Okay. Mr. Krum, what'd you find out?

MR. KRUM: The answer's yes. I can do that Friday morning.

THE COURT: Okay. So we'll see you guys at 8:30 Friday morning. The things that are on Thursday will be Friday. Whatever is on Thursday is now on Friday. That's --

MR. FERRARIO: There was one -- the motion to --

MR. KUTINAC: It was just signed yesterday, so it might not be in the system yet.

MR. FERRARIO: It was a motion to continue trial.

THE COURT: What?

MR. FERRARIO: I'd as soon deal with it now so she doesn't [inaudible].

THE COURT: I haven't read it, but you know what I'm

going to do.

MR. FERRARIO: I know. That's what I told Mr. Krum. He's made his record.

THE COURT: No.

MR. KRUM: That was my response, as well.

MR. FERRARIO: Okay. All right. Friday?

THE COURT: So if you guys can come Friday, I'll see you then.

MR. FERRARIO: 8:30?

MR. KRUM: Friday at 8:30 will work.

MR. FERRARIO: Thank you, Your Honor.

THE COURT: Anything else? Have a lovely day. 'Bye.

THE PROCEEDINGS CONCLUDED AT 9:30 A.M.

* * * * *

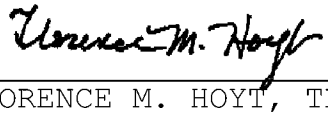
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

8/11/16

DATE

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CLERK OF THE COURT

ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,

Plaintiff,

v.

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

Defendants.

In the Matter of the Estate of

JAMES J. COTTER,

Deceased.

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

Plaintiff,

v.

MARGARET COTTER, et al,

Defendants.

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

Coordinated with:

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

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

ORDER GRANTING PLAINTIFF JAMES J. COTTER, JR.'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND COMMUNICATIONS RELATING TO THE ADVICE OF COUNSEL DEFENSE

Hearing
Date: August 30, 2016
Time: 8:30a.m.

THIS MATTER HAVING COME BEFORE the Court on August 30, 2016 on "Plaintiff James J. Cotter, Jr.'s Motion To Compel Production Of Documents And Communications Relating To The Advice Of Counsel Defense On Order Shortening Time" (the "Motion"), Mark G. Krum appearing for plaintiff James J. Cotter, Jr. ("Plaintiff"); Harold S. Johnson and Marshall M. Searcy appearing for defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding and Michael Wrotniak; Kara Hendricks appearing for

Reading International, Inc.; Shoshana E. Bannett appearing for William Gould; and Alexander Robertson IV appearing for the intervening plaintiffs.

This Court, having considered the papers and pleadings on file and having heard oral arguments, and good cause appearing,

IT IS HEREBY ORDERED that the Motion is **GRANTED** the legal opinion referenced by Messrs. Kane and Adams in their deposition testimony as having been relied upon relating to the 100,000 share option shall be produced by Defendants including:

1. Any and all documents or communications to or from Tompkins concerning the 100,000 share option, and EC's and MC's right or ability as executors of the Estate to exercise the option;

2. Any and all communications to or from and Ellis concerning the 100,000 share option, and EC' s and MCs right or ability as executors of the Estate to exercise the option;

3. Any and all communications to or from any attorney or employee of Greenberg Traurig concerning the 100,000 share option, and EC's and MC' s right or ability as executors of the Estate to exercise the option;

4. Any and all documents, communications, materials, or information relied upon or referred to in any advice, opinion, or communication from Tompkins concerning the 100,000 share option, and EC's and MC's right or ability as executors of the Estate to exercise the option;

5. Any and all documents, communications, materials, or information relied upon or referred to in any advice, opinion, or communication from Ellis concerning the 100,000 share option, and EC's and MC's right or ability as executors of the Estate to exercise the option; and

6. Any and all documents, communications, materials, or information relied upon or referred to in any advice, opinion, or communication from any attorney or employee of Greenberg Traurig concerning the 100,000 share option, and EC's and MC' s

right or ability as executors of the Estate to exercise the option.

DATED this 3rd day of October, 2016.

DISTRICT COURT JUDGE

OGM
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Attorneys for Plaintiff
James J. Cotter, Jr.

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

Plaintiffs,

vs.

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

CASE NO.: A-15-719860-B
DEPT. NO. XI

Coordinated with:

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

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

Jointly Administered

Business Court

ORDER REGARDING PLAINTIFF JAMES J. COTTER, JR.'S MOTION TO PERMIT CERTAIN DISCOVERY CONCERNING THE RECENT "OFFER" ON ORDER SHORTENING TIME

Date of Hearing: 8/30/2016
Time of Hearing: 8:30 a.m.

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

THIS MATTER HAVING COME BEFORE the Court on August 30, 2016 on "Plaintiff James J. Cotter, Jr.'s Motion To Permit Certain Discovery Concerning The Recent "Offer" On Order Shortening Time" (the "Motion"), Mark G. Krum appearing for plaintiff James J. Cotter, Jr. ("Plaintiff"); Harold S. Johnson and Marshall M. Searcy appearing for defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding and Michael Wrotniak; Kara Hendricks appearing for Reading International, Inc.; Soshana Bannett appearing for William Gould; and Alexander Robertson IV appearing for the intervening plaintiffs and the Court having reviewed the Motion and oppositions to the Motion, and having considered the arguments of counsel and such other pleadings on file herein as the Court saw fit, and good cause appearing therefor, the Court rules as follows:

IT IS HEREBY ORDERED that the Motion is GRANTED in part and DENIED in part.

IT IS FURTHER ORDERED that the document requests submitted with the Motion shall be responded to within fifteen (15) days of the August 30, 2016 hearing on the Motion. Additionally, the Company shall produce a Rule 30(b)(6) deponent to testify regarding the so-called Offer and the reasons it was not pursued, for a period not to exceed two hours. Plaintiff also may ask questions about those subjects at depositions of the individual directors that have not

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Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

been concluded (but Plaintiff's remaining time to conclude these depositions is not increased) but, beyond that, no additional or third-party discovery sought by the Motion will occur.

DATED this ___ day of September, 2016.

DISTRICT COURT JUDGE

JW

Submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By:/s/ *Mark G. Krum*
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Attorneys for Plaintiff

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Counsel for Reading International, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of

JAMES J. COTTER,

Deceased.

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

Plaintiff,

v.

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

Defendants.

And

READING INTERNATIONAL, INC., a Nevada Corporation,

Nominal Defendant.

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

Coordinated with:

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

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

READING INTERNATIONAL, INC.'S REPLY IN SUPPORT OF DEFENDANT WILLIAM GOULD'S MOTION FOR SUMMARY JUDGMENT

Date of Hearing: October 27, 2016
Time: 1:00 p.m.

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
Telephone: (702) 792-3773
Facsimile: (702) 792-9002

READING INTERNATIONAL, INC. ("RDI" or "Company") hereby submits this *Reply in Support* of *William Gould's Motion for Summary Judgment and RDI's Joinder thereto.* In addition to joining the arguments advanced on behalf of Gould in his Motion, RDI requests judgment in its favor for the reasons set forth in the attached memorandum of points and authorities, and based on the pleadings and papers filed in this action, and any oral argument of counsel made at the time of the hearing.

DATED: this 21st day of October, 2016.

GREENBERG TRAURIG, LLP

/s/ Mark E. Ferrario
MARK E. FERRARIO, ESQ.
(NV Bar No. 1625)
KARA B. HENDRICKS, ESQ.
(NV Bar No. 7743)
TAMI D. COWDEN, ESQ.
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Counsel for Reading International, Inc.

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MEMORANDUM OF POINTS AND AUTHORITIES

The introductory section of Plaintiff's Opposition to Gould's Motion for Summary Judgment reads much like his Oppositions to the summary judgment motions filed by Directors Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding and Michael Wrotniak (collectively "Individual Defendants"). Plaintiff's strategy appears to be to avoid the specific allegations in his own complaint and the specific issues in which summary judgment is sought and throw random facts and law at the Court in hopes of manufacturing an issue that may defeat summary judgment. However, to move forward against Director Gould, Plaintiff must present evidence in support of his claims and meet the requisite legal standard. Here, there are no facts that support any breach of fiduciary duty claim against Gould.

Because Plaintiff is unable to meet the standard, the Opposition sets forth unsupported theories that Gould collaborated in an ongoing entrenchment scheme. Glaringly absent from the Opposition, however, are allegations that you would typically see in an entrenchment case.

Cotter, Jr. has provided no evidence (and none exists) of any of the measures normally associated with improper entrenchment, such as sudden amendments to the bylaws or articles, adoption of poison pill measures, modification of annual meeting procedures, rejection of board nominees who were willing to serve, or rejection of proposed board nominees by stockholders to replace board candidates. What is more, there is no evidence of any adoption of golden parachute measures for any directors. The discreet issues raised by Plaintiff certainly do not rise to a level of entrenchment.

Plaintiff has not come forward with facts or law to support his claims against Gould and thus summary judgment is warranted.

LEGAL ARGUMENT

The summary judgment motion filed by Gould lacks evidence to support Plaintiff's claims against Gould in the Second Amended Complaint ("SAC"). After the filing of Gould's Motion, Cotter, Jr. was obligated to present admissible evidence to show that there are material issues of fact preventing summary judgment, or summary judgment must be granted. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007). Additionally, because a plaintiff is required to prove each element of his cause of action, if any element cannot be proven by admissible evidence, then summary judgment is proper. *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992). Plaintiff did not meet his burden.

In an attempt to side-step the summary judgment requirements, Plaintiff argues that the allegations in the SAC do not stand alone and "must be viewed and assessed collectively." Opposition, p. 11. However, Rule 56 itself makes clear that partial summary judgments are entirely proper to limit and define the issues to be decided by a jury. Specifically, NRCP 56 states, in pertinent part:

> A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor ***as to all or any part thereof.***

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NRCP 56(b) (emphasis added). Furthermore, the rule provides that where judgment is not granted in its entirety, the District Court should "make an order specifying the facts that appear without substantial controversy." NRCP 56(d).

Here, there is ample basis to narrow (if not eliminate) the issues that go to trial relating to Director Gould. Specifically the Court can make findings and issue summary judgment on the following: 1) Gould did not breach his fiduciary duty relating to the termination of Cotter, Jr.; 2) RDI's use of the Executive Committee is supported by law; 3) the appointment of Codding and Wrotniak to RDI's Board was proper; 4) the search for a new CEO of RDI and Ellen Cotter's appointment to the CEO position was appropriate; and 5) compensation of RDI's executives and Board members warranted. As there are minimal arguments in the Opposition that were not argued by Plaintiff in relation to the summary judgment motions filed by the Individual Defendants (which RDI joined), RDI adopts by reference the motions and replies thereto.[1]

In an attempt to create a claim, Plaintiff's statement of facts refers to purported "untimely emails" and Gould's correspondence with other directors prior to Cotter, Jr.'s termination. Such references do not support a breach of fiduciary duty claim. Similarly, Cotter Jr.'s twisting of the evidence relating to RDI's disclosures and accusations that Gould was "collaborator" in wrong doing are not supported by the record and do not support a breach of fiduciary duty claim.

Cotter, Jr., bears the burden of proof that there was in fact a breach of fiduciary duty. In proving this, the burden is on the plaintiff to overcome the Nevada business judgment rule presumption set forth in NRS 78.138(1). Nevada does not recognize any shifting of this burden of proof, other than in the case of NRS 78.140(2)(d). However, NRS 78.140 does not establish

[1] Specifically, RDI adopts and incorporates by reference: 1) the arguments set forth in the Individual Defendants' Motion for Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims and RDI's Joinder thereto; 2) the arguments set forth in the Individual Defendants' Motion for Summary Judgment (No. 2) Re: Director Independence and RDI's Joinder thereto; 3) the arguments set forth in the Individual Defendants' Motion for Summary Judgment (No. 3) Re: the Unsolicited Expression of Interest and RDI's Joinder thereto; 4) the arguments set forth in the Individual Defendants' Motion for Summary Judgment (No. 4) Re: RDI's Executive Committee and RDI's Joinder thereto; 5) the arguments set forth in the Individual Defendants' Motion for Summary Judgment (No. 5) Re: the CEO Search and Ellen Cotter's appointment to CEO and RDI's Joinder thereto; and 6) the arguments set forth in the Individual Defendants' Motion for Summary Judgment (No. 6) Re: the Estate's Option Exercise and other issues and RDI's Joinder thereto.

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any grounds for liability on the part of directors, only for the voidance under certain circumstances of the contract or transaction under review. On the other hand, NRS 78.138(7) provides that there is no director liability unless **it is proven that**, the breach of the directors fiduciary duties "involved intentional misconduct, fraud or a knowing violation of law." Even taking Cotter, Jr.'s accusations in the Opposition at face value, Gould cannot be said to have acted fraudulently, knowingly violating the law or being involved in intentional misconduct.

It is unfortunately that Plaintiff is using this case to pursue a personal vendetta against the Directors that voted to terminate his employment with RDI. Gould did not vote to terminate Plaintiff and has demonstrated his independence as a Director of the Company. Nothing in the Opposition provides a basis for the Court to conclude otherwise.

WHEREFORE, RDI respectfully requests that Gould's summary judgment be granted and that to the extent that allegations against Gould in the SAC are imputed against RDI, that summary judgment be entered in RDI's favor.

DATED: this 21st day of October, 2016.

GREENBERG TRAURIG, LLP

/s/ Mark E. Ferrario
MARK E. FERRARIO, ESQ.
(NV Bar No. 1625)
KARA B. HENDRICKS, 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 on this day, I caused a true and correct copy of ***Reading International, Inc.'s Reply in Support of Defendant William Gould's Motion for Summary Judgment*** to be filed and served via the Court's Wiznet E-Filing system on all registered and active parties. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 21st day of October, 2016.

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

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

MOTION FOR EVIDENTIARY HEARING REGARDING JAMES COTTER, JR.'S ADEQUACY AS DERIVATIVE PLAINTIFF

MOTION FOR EVIDENTIARY HEARING REGARDING JAMES COTTER, JR.'S ADEQUACY AS DERIVATIVE PLAINTIFF

TO: ALL PARTIES, COUNSEL, AND THE COURT:

COMES NOW, Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak (collectively, "Moving Defendants"), by and through their counsel of record, Cohen|Johnson|Parker|Edwards and Quinn Emanuel Urquhart & Sullivan, LLP, hereby submit this Motion for Evidentiary Hearing Regarding James Cotter, Jr.'s Adequacy as Derivative Plaintiff.

The Moving Defendants respectfully request that the Court set an evidentiary hearing to determine whether James Cotter, Jr. is an adequate plaintiff in this shareholder derivative action under applicable Nevada law.

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

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Dated: October 11, 2017

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson

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

NOTICE OF MOTION

TO: ALL PARTIES, COUNSEL, AND THE COURT:

PLEASE TAKE NOTICE that the above Motion will be heard on **November 17,** 2017 at **In Chambers** in Department XI of the above designated Court or as soon thereafter as counsel can be heard.

Dated: October 11, 2017

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson
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Attorneys for Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak

DECLARATION OF COUNSEL NOAH HELPERN

I, Noah Helpern, state and declare as follows:

1. I am a member of the bar of the State of California, and am an attorney with Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel"), attorneys for Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak ("Moving Defendants"). I make this declaration based upon personal, firsthand knowledge, except where stated to be on information and belief, and as to that information, I believe it to be true. If called upon to testify as to the contents of this Declaration, I am legally competent to testify to its contents in a court of law.

2. Attached hereto as **Exhibit A** are excerpts of a true and correct copy of Volume 4 of the deposition of James J. Cotter, Jr.

3. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiff's *Ex Parte* Petition of Co-Trustee James J. Cotter, Jr. for Appointment of Trustee *Ad Litem*.

4. Attached hereto as **Exhibit C** is a true and correct copy of Plaintiff's Second Supplement to *Ex Parte* Petition of Co-Trustee James J. Cotter, Jr. for Appointment of Trustee *Ad Litem*.

5. Attached hereto as **Exhibit D** is a true and correct copy of Patton Vision's January 23, 2017, expression of interest letter.

6. Attached hereto as **Exhibit E** is a true and correct copy of the Nevada Supreme Court's April 14, 2017, Order Denying Petition for Writ of Prohibition or Mandamus.

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

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

Executed on October 11, 2017, in Los Angeles, California.

/s/ *Noah Helpern*
Noah Helpern

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TABLE OF AUTHORITIES

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In this action, James J. Cotter, Jr. ("Plaintiff") purports to act on behalf of all stockholders of RDI as a derivative plaintiff. Plaintiff's role as a representative of RDI stockholders has, from the beginning, been a conflicted one; without support of any other RDI stockholders, he sought to reinstate himself as RDI's CEO and substitute his own interest and judgement for that of the Board of Directors. As this derivative suit has progressed, this conflict has only become more pronounced. Recent events and testimony have demonstrated that Plaintiff has disabling conflicts that, at the very least, merit an evidentiary hearing well in advance of the newly-set January 2 trial date to determine whether Cotter, Jr. has adequate standing and is qualified to continue to serve in his representative capacity.

As the Court is aware, Plaintiff is engaged in litigation in California (the "California Trust Action") against Ellen and Margaret Cotter regarding the James J. Cotter Living Trust (the "Trust") created by their father, one of the largest assets of which is approximately 41.5% of the Class B Voting Common Stock of RDI. Plaintiff has advocated, in the California Trust Action, for a process that could lead to the sale of the RDI stock currently controlled by the Trust—as well as additional Class B voting stock currently held by the Cotter Estate but that is expected to pour over into the Trust—without regard for how such a process might impact the non-Cotter RDI stockholders he purports to represent in the Nevada derivative action. Plaintiff has a direct conflict of interest: his minor children, to whom he owes a legal obligation of support, are three of the five beneficiaries of the Trust. Plaintiff seeks to obtain a sale/control premium for his children in a transaction from which no stockholder unrelated to Plaintiff is likely to receive any benefit, but all of whom will nevertheless share the potential threat of a sale of the largest (and controlling) block of RDI voting stock to an unknown person or persons.

When asked during his most recent deposition session about his efforts to obtain an order causing the sale of certain RDI shares to third parties and effecting a change of control of the Company, Plaintiff was instructed not to answer any such questions based on an improperly-asserted privilege. To the limited extent he answered, [redacted]

[redacted]. An evidentiary hearing is necessary to determine whether Plaintiff's conflicts allow him to continue to serve in the derivative plaintiff role. Plaintiff has failed to disclose in his pleadings or otherwise to this Court or RDI's stockholders essential facts evidencing his conflicts of interest, facts which (due to Plaintiff's refusal to appropriately respond to deposition questions) will only be brought to light in the context of an evidentiary hearing.

Plaintiff, the purported representative of *all* RDI stockholders, cannot take action in a California court to effect a sale of his family's RDI stock (likely for a premium) but then feign ignorance in the Nevada derivative case he initiated and in which he claims to represent more than just his own or his family's interests. The Moving Defendants therefore respectfully request that the Court set an evidentiary hearing and briefing schedule to determine the impact of the actions being taken by Plaintiff in the California Trust Action on his standing to pursue derivative claims in Nevada on behalf of all RDI stockholders.

II. FACTUAL BACKGROUND

A. Plaintiff's Termination and Filing of this Action

After failing to properly manage and lead Reading, Plaintiff was terminated from his position as President and CEO on June 12, 2015. Plaintiff filed a purported stockholder derivative action that same day. Plaintiff filed his First Amended Complaint on October 22, 2015, and he filed his Second Amended Complaint on September 2, 2016. The Second Amended Complaint added allegations regarding supposed breaches of fiduciary duty in connection with the Board of Directors' consideration and evaluation of a third-party (Patton Vision) expression of interest in purchasing RDI shares.

B. The California Trust Action and James Cotter, Jr.'s Attempt to Force a Sale of Certain RDI Shares

On or about February 5, 2015, litigation was initiated in Los Angeles Superior Court (Case No. BP159755) relating to the Trust (the "California Trust Action"). The purpose of that litigation was narrow: to determine the validity of a 2014 amendment to the Trust based on Mr. Cotter, Sr.'s competence (or lack thereof) at the time it was executed. However, from the beginning, Plaintiff

used the California Trust Action as a venue to air his grievances regarding Ellen and Margaret Cotter's management of RDI and to seek their removal as trustees. *See* Helpern Decl., Exh. B (*Ex Parte* Petition of Co-Trustee James J. Cotter, Jr. for Appointment of Trustee *Ad Litem*). Plaintiff claims in the California Trust Action that Ellen and Margaret cannot serve as trustees of the Trust because, according to him, they have sought to "entrench" their "control of the company" by terminating Plaintiff, nominating and then voting in favor of electing Judy Codding and Michael Wrotniak to RDI's Board, making Ellen Cotter President and CEO, and hiring Margaret Cotter in an executive position. *Id*., Exh. C (Second Supplement to *Ex Parte* Petition of Co-Trustee James J. Cotter, Jr. for Appointment of Trustee *Ad Litem*) at 5-6. In short, having failed to achieve the result he wanted on the timeframe he wanted in Nevada—*i.e.*, a removal of Ellen and Margaret Cotter from RDI and his own return to the CEO suite—Plaintiff has used and is using the California Trust Action to realize a sale/control premium for his children and hurt his sisters, all without regard to the possible impact on RDI or its stockholders. *See id*.

On January 23, 2017, Patton Vision—the same purported third-party offeror[1] for whom the RDI Board's conduct is at issue in the Nevada derivative action—issued a third expression of interest in the purchase of RDI stock. *Id*., Exh. D. However, this time—and unlike previous expressions of interest—Patton Vision directed their communication not to Ellen Cotter as CEO of RDI, but to Ellen, Margaret, and Jim Cotter, Jr. as purported co-trustees of the Trust. *See id.* Also unlike its previous offers, Patton Vision offered to purchase *only* the Trust shares instead of acquiring all of the Company's outstanding shares. *See id*.

On or about February 7, 2017, Plaintiff petitioned the California court to appoint a trustee *ad litem* of the James J. Cotter Living Trust to assess this Patton Vision offer to purchase only the Trust shares and granting the trustee *ad item* the powers to communicate and negotiate with Patton

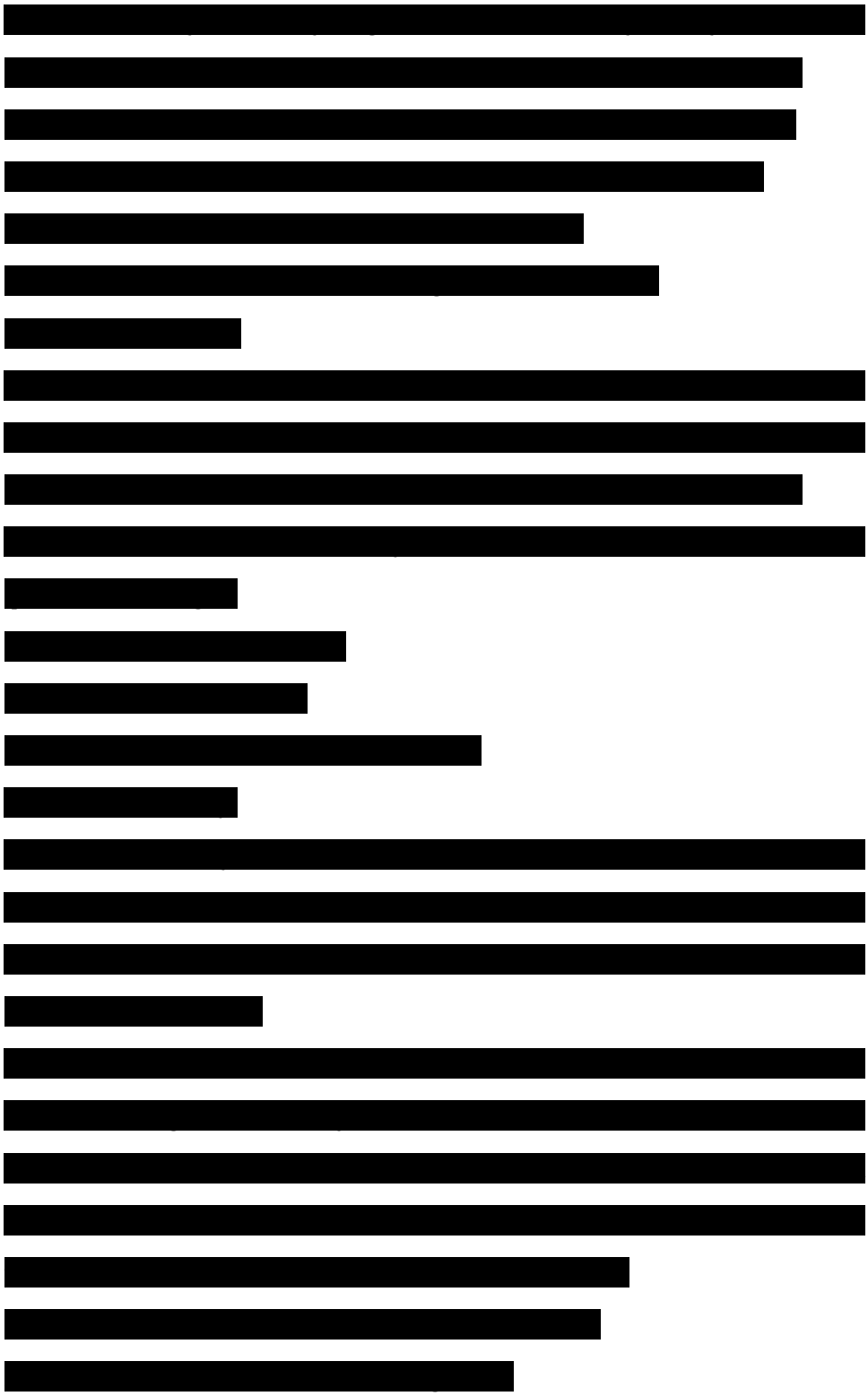
[1] Notwithstanding Plaintiff's insistence on referring to Patton Vision's indication of interest as an "offer," Patton Vision has never made an offer capable of acceptance. Rather, its communications have specifically provided they are non-binding and that no obligation on the part of Patton Vision would exist until such time as a definitive written agreement were to be entered into.

Vision, conduct due diligence, and consummate the sale of the Trust's RDI stock. *See id*., Exh. B. Plaintiff's basis for his request was the same as his basis for the purported breach of fiduciary duty in the derivative action relating to the third-party expression of interest: the supposed offeror "has requested an opportunity to discuss its offer with Margaret and Ellen, but they have refused to respond, to consider the Offer, or to engage in any due diligence." *Id*. at 1. Plaintiff also argued to the Court in the California Trust Action that other supposed breaches of fiduciary duty at issue in the derivative action, such as Ellen and Margaret's compensation and qualifications, should force them to give up control of the Trust: "Given that Ellen lacks the qualifications and experience of CEO's at comparable companies and originally identified and sought by the RDI CEO Search Committee before such process was aborted once Ellen announced her candidacy, Ellen would never hold the CEO position at RDI or any of its peer companies but for Ellen's and Margaret's control of such company's voting stock. This is part and parcel of Ellen's obvious conflict of interest with her duty to represent the grandchildren-beneficiaries in a potential sale of RDI's voting stock or otherwise." *Id*., Exh. C, at 4.

C. James Cotter, Jr. Is Instructed Not to Answer Questions At Deposition About the Sale of the Trust's Stock

The most recent session of Plaintiff's deposition was held on July 1, 2017. During that deposition, Plaintiff was asked about his efforts in the California Trust Action to effect a sale of certain RDI shares in a way that could potentially benefit him and his children over other RDI stockholders he purports to represent in this case. These questions were properly posed in order to ascertain information about the Patton Vision expression of interest (a basis for Plaintiff's purported derivative claims) as well as to assess Plaintiff's conflicts of interest. Plaintiff did not answer these questions. For example, in the below exchange, Plaintiff was told not to answer questions about his attempts to sell of RDI stock in the California Trust Action because such testimony is supposedly irrelevant.

[redacted]

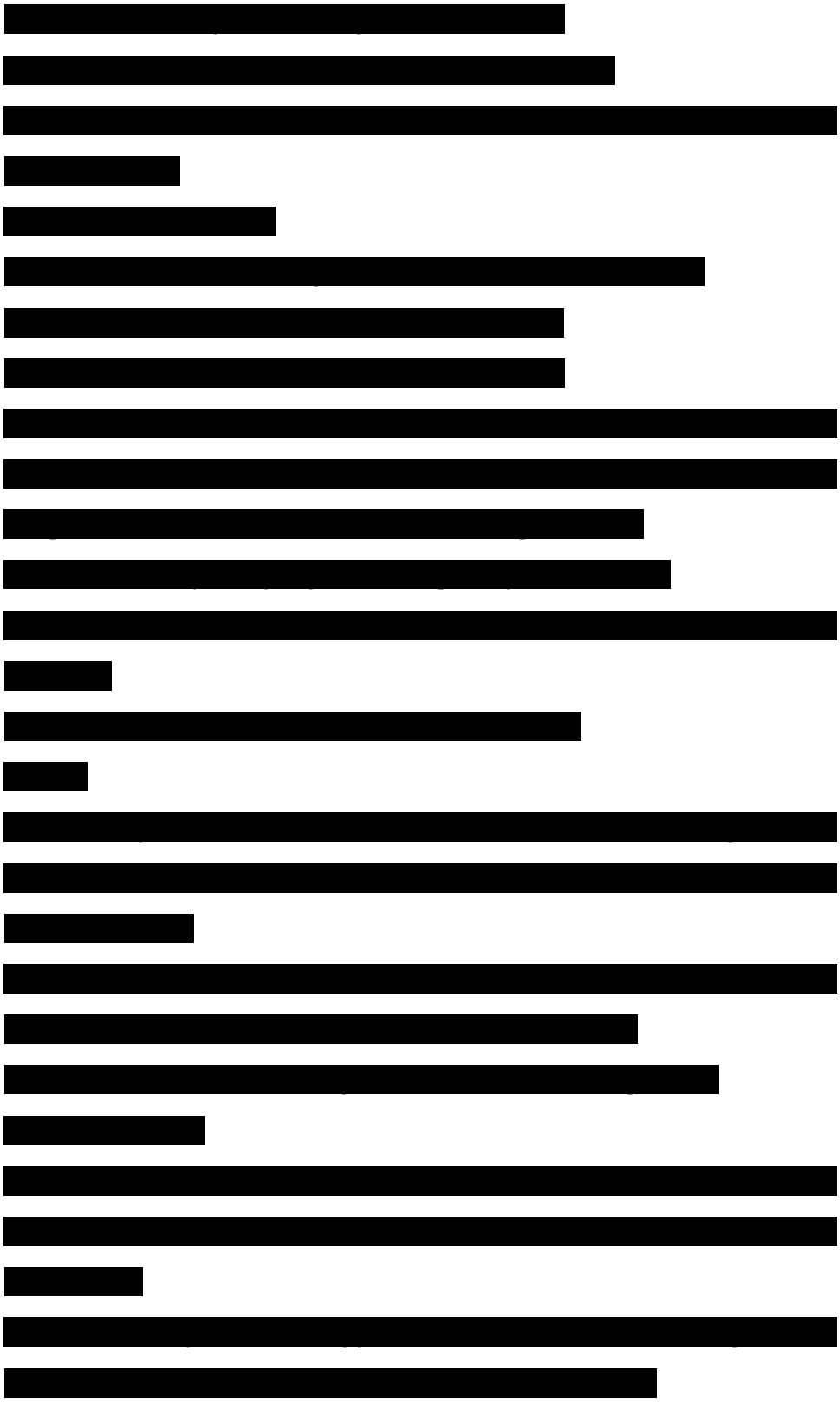


[redacted]

Helpern Decl., Exh. A, at 902:1-904:11.

[redacted] *Id*. at 888-889. Even where Plaintiff was specifically and directly asked about who would benefit from the sale of stock he has advocated for in the California Trust Action—*i.e.*, whether it would benefit all RDI stockholders or only members of the Cotter family—Plaintiff was largely instructed not to answer counsel's questions based on an improperly-asserted claim of privilege. To the extent he was allowed to answer questions about the impact of sale of the Trust's stock, [redacted]

[redacted]



[redacted]

Helpern Decl., Exh. A, at 923:8-926:21.

[redacted]

Id. at 895:13-25.

[redacted]

[redacted]

Id. at 896:13-25.

[redacted]

Id. at 938-9:18.

III. ARGUMENT

This Court has, up to now, allowed Plaintiff to pursue this action with the assumption he has standing to assert a derivative action on behalf of RDI itself and its stockholders with respect to a variety of fiduciary claims.[2] A derivative plaintiff's satisfaction of Rule 23.1 requirements, however, is a issue of law that the Court may address though an evidentiary hearing prior to trial, even if the baseline requirements are met at the pleading stage. *See Shoen v. SAC Holding Corp*., 122 Nev. 621, 645 (2006). Indeed, the elements of standing are not merely pleading requirements

[2] In denying Moving Defendants' and RDI's Petition for Writ of Prohibition or Mandamus on April 14, 2017, the Nevada Supreme Court stated, "it does not appear that the district court has clearly addressed petitioners' NRCP 23.1 argument . . ." *See* Helpern Decl., Exh. E.

but, rather, are an "indispensable part of the plaintiff's case," and "each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992); *see also Parfi Holding AB v. Mirror Image Internet, Inc.*, 954 A.2d 911, 934-42 (Del. Ch. 2008) (finding, based on "evidence that arose during discovery and other developments," that plaintiffs "now lack standing to serve as derivative plaintiffs"). It is now clear, in light of positions taken by Plaintiff in the California Trust Action and his testimony (or lack thereof) regarding such positions, that Plaintiff "does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association," Nev. R. Civ. P. 23.1, in bringing claims relating to RDI directors' fiduciary duty, including in particular their assessment of an offer to sell certain shares of RDI to a third party. An evidentiary hearing is warranted to determine whether Plaintiff can continue in his role as purported representative of *all* RDI stockholders.

In pursuing a derivative action, a plaintiff "must not have ulterior motives and must not be pursuing an external personal agenda." *Energytec, Inc. v. Proctor*, Nos. 3:06-cv-0871 *et al.*, 2008 WL 4131257, at *6 (N.D. Tex. Aug. 29, 2008) (citation omitted) (applying Nevada law). "Because of the fear that shareholder derivative suits could subvert the basic principle of management control over corporate operations, courts have generally characterized shareholder derivative suits as a remedy of last resort." *Quinn v. Anvil Corp.*, 620 F.3d 1005, 1012 (9th Cir. 2010) (citation omitted). In light of "the extraordinary nature of a shareholder derivative suit," a purported derivative plaintiff must satisfy several "stringent conditions" in order to bring such a suit. *Id.* Courts carefully weigh several factors under Rule 23.1 when deciding whether a shareholder is an adequate representative, such as: (1) economic antagonisms between the purported representative and class; (2) the remedy sought by the plaintiff in the derivative action, including the magnitude of the plaintiff's personal interests as compared to his interest in the derivative action itself; (3) other litigation pending between the plaintiff and defendants; (4) the plaintiff's vindictiveness toward the defendants; and (5) the degree of support the plaintiff is receiving from the shareholders he purports to represent. *Energytec*, 2008 WL 4131257, at *7 (citation omitted). "It is possible

that the inadequacy of a plaintiff may be concluded from a strong showing of only one factor," especially if that factor involves "some conflict of interest between the derivative plaintiff and the class." *Khanna v. McMinn*, No. Civ. A. 20545-NC, 2006 WL 1388744, at *41 (Del. Ch. May 9, 2006). An evidentiary hearing is necessary to determine whether the balance of these factors negates Plaintiff's purported derivative standing, as there are irreconcilable conflicts of interest between Plaintiff, other RDI stockholders, and the Company itself.[3]

Economic Antagonism Exists: "[E]conomic antagonism between . . . plaintiff and other shareholders is typically fatal to a shareholder derivative suit." *Pacemaker Plastics Co., Inc. v. AFM Corp.*, 139 F. Supp. 2d 851, 855 (N.D. Ohio 2001). Here, Plaintiff has urged the court in California to cause the sale of Cotter family shares of RDI without understanding how such a sale may impact the RDI stockholders he represents in this action. What is economically beneficial to Plaintiff in the California Trust Action may not be economically advantageous to RDI stockholders.

Plaintiff is in a unique position to put his thumb on the scale in a way that may be in conflict with the interests of stockholders generally; he can broker a sale of control of RDI using his power to either end or continue with litigation against the company, which continues to be a significant drain on Company resources. Plaintiff could, for example, increase the premium that would go to his children through a potential sale of the Trust's stock by assuring a potential buyer that he would drop this derivative action if a sale were consummated and/or that he would drop the demand that he be installed as CEO. Plaintiff could thus clear the way for the buyer to appoint its own candidate(s) for President and CEO. Plaintiff could make similar offers with respect to his employment arbitration with RDI. Plaintiff is on both sides of any change of control transaction, and his role as the leader of this derivative lawsuit lends him an exceptional amount of leverage, particularly as compared to any other RDI stockholder. Plaintiff could impede any sale transaction that does not bring him a *de facto* premium for the resolution of this litigation.

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[3] Other traditional factors, such as "indications that the named plaintiff was not the driving force behind the litigation" and "plaintiff's unfamiliarity with the litigation," *Energytec*, 2008 WL 4131257, at *7, are not at issue here and need not be discussed.

The Remedy Sought In the California Trust Action Is Personal: Even prior to his firing, Plaintiff repeatedly threatened RDI's Board of Directors with a derivative action to entrench his position as the Company's CEO and President. Now, in the California Trust Action, he has sought to potentially force his sisters—who he blames for his firing—to sell off their shares of RDI stock or, at the very least, to give up Cotter family control of RDI. Plaintiff is pursuing scorched earth tactics by whatever means are available. Other courts have found similar conduct to be "personal," and contrary to the type of remedy sought by truly representative plaintiffs in a derivative action. For instance, in *Khanna*, the court found that a suspended general counsel could not maintain a derivative action because of similar threats, which "demonstrate[d] a self-interested motivation that is not consistent with the continued pursuit of a derivative and class action by the plaintiff." 2006 WL 1388744, at *43. As that court noted, the derivative litigation was really "to provide leverage in his attempt to regain (and enhance) his position" after his removal—a result whose "benefit is directed almost exclusively, if not solely, to [plaintiff]." *Id.* Similarly, in *Energytec*, the court concluded that the former CEO's "interest in obtaining the requested relief" of reinstatement "far outweighs that of other shareholders," who did not "share" an interest in his "regain[ing] control" of the company. 2008 WL 4131257, at *7; *see also Tankersley v. Albright*, 80 F.R.D. 441, 444 (N.D. Ill. 1978) ("[W]here it appears that the injury is directly suffered by an individual shareholder or relates directly to an individual's stock ownership, the action is personal."). Here, Plaintiff's personal dispute with his sisters about their father's estate and control of RDI is not a harm suffered by RDI itself or any of its other stockholders, and is not a proper vehicle for a derivative action.

Other Litigation Is Pending: Even without an evidentiary hearing, it is clear this factor weighs against James Cotter, Jr.'s role as a derivative plaintiff. There is no dispute that Plaintiff is also embroiled in the California Trust Action, in which he has advocated for the court to create a process that could force the sale of much of the Cotter family's RDI stock. "Ordinarily, other litigation, in and of itself, may warrant disqualification of a plaintiff from bringing a derivative suit where it appears that the derivative plaintiff instituted the derivative suit only as 'leverage' to further his individual claims." *Scopas Tech. Co. v. Lord*, No. 7559, 1984 WL 8266, at *2 (Del.

Ch. Nov. 20, 1984). Here, Plaintiff is clearly using this "derivative action as leverage to obtain a favorable [resolution]" in these "other actions" currently pending, *Recchion on Behalf of Westinghouse Elec. Corp. v. Kirby,* 637 F. Supp. 1309, 1315 (W.D. Pa. 1986), as he has used the discord caused by his derivative suit in this case as a basis for demanding a stock sale in the California Trust Action. *See* Helpern Decl., Exh. C, at 5-6. "In such circumstances," where the overlap between suits is obvious, "there is substantial likelihood that the derivative action will be used as a weapon in the plaintiff shareholder's arsenal, and not as a device for the protection of all shareholders," and "other courts have properly refused to permit the derivative action to proceed." *Owen v. Diversified Industries, Inc.,* 643 F.2d 441, 443 (6th Cir. 1981) (citations omitted).

Plaintiff Is Driven by Vindictiveness: In addition to his pre-litigation threat to use a derivative suit to "ruin . . . financially" any director that challenged his position, Plaintiff's own allegations demonstrate a strong personal animus at the heart of his action. *See, e.g.*, SAC ¶ 20 (accusing Kane of threatening "Corleone ('Godfather') style family justice"), ¶ 33 (admitting that Plaintiff "alienated his sisters"), ¶ 35 (labeling Margaret Cotter's handling of the STOMP matter, which resulted in a $2.2 million judgment for the Company, a "debacle"), ¶ 70 (insinuating that Adams was not forthcoming in his divorce proceedings); *see also* First Am. Compl. ¶ 75 (alleging that Kane, with Margaret and Ellen Cotter, "launched [a] scheme to extort [Plaintiff]"), ¶ 78 (accusing Adams of consistently engaging in a "search for the next public company victim"). With his efforts to have a California court cause a sale of the Cotter family holdings in RDI, without regard to the impact of RDI's other stockholders, Plaintiff may be further pursuing this personal agenda against his sisters. Indeed, Plaintiff bases his machinations in the California Trust Action on the very same supposed breaches of fiduciary duty that form the basis for the Nevada derivative case. *See* Helpern Decl., Exh. C, at 5-6.

Courts have determined that similar "unmistakable personal" allegations and comparable "vituperative epithets, pugilistic metaphors, and [extreme] descriptions" are indicative of an "emotionally charged feud" that is not the proper subject of a shareholder derivative action. *Smith v. Ayres,* 977 F.2d 946, 949 (5th Cir. 1992); *see also Love v. Wilson,* No. CV 06-06148, 2007 WL 4928035, at *7-8 (C.D. Cal. Nov. 15, 2007) (complaint filled with "gratuitous language" was

indicative of well-known "vindictiveness and animosity" between founders of The Beach Boys, and indication that one cousin could not maintain derivative action against others); *Khanna*, 2006 WL 1388744, at *44 ("the tangential and acrimonious employment dispute" between plaintiff "and his former employer" precluded derivative action).

There Are Questions as to the Extent of Stockholder Support for Plaintiff's Petition in the California Trust Action: An evidentiary hearing may show that Plaintiff does not have shareholder support for the plan he has advocated in the California Trust Action, which involves a sale of Cotter family RDI stock without consideration for if or how that might impact other RDI stockholders and their economic interests. Certain RDI stockholders—including Andrew Shapiro and the group of "T2 Plaintiffs" who were previously plaintiffs in the Nevada derivative case—have submitted filings in the California Trust Action expressing support for part or all of Plaintiff's proposal. These stockholders, however, are the same individuals and entities who previously supported Plaintiff in the Nevada derivative case, only to withdraw their support when the facts became known and the specious nature of Plaintiff's allegations was revealed. Similarly, if these RDI stockholders are presented with full information and facts regarding Plaintiff's maneuvering in the California Trust Action, their views regarding his efforts, and the bases thereof, may change. Moreover, many RDI stockholders have been completely silent as to the process Plaintiff has advocated for in the California Trust Action, and Plaintiff himself stated he has no idea how RDI stockholders will be impacted by his efforts. An evidentiary hearing will serve to inform the RDI stockholders Plaintiff purports to represent in this case whether or not his actions in the California Trust Action present a conflict such that he does not have their support.

An evidentiary hearing will demonstrate that, in their totality, the relevant factors reveal that Plaintiff is an inadequate derivative plaintiff, and that he should not be allowed to maintain a derivative action. *See Aztec Oil & Gas, Inc. v. Fisher*, 152 F. Supp. 3d 832, 859 (S.D. Tex. 2016) (finding similar employment dispute was not a proper derivative action); *cf. CCWIPP v. Alden*, No. Civ. A. 1184, 2006 WL 456786, at *10 (Del. Ch. Feb. 22, 2006) ("discovery" and "[f]urther development of the facts" may prove a plaintiff is "an inadequate derivative plaintiff"). Moving Defendants therefore request that the Court set an evidentiary hearing and briefing schedule to

determine whether Plaintiff can continue to purport to represent all RDI stockholders in this derivative action.

IV. CONCLUSION

Plaintiff is not qualified to continue as a derivative plaintiff. He has numerous personal conflicts of interest and, as clearly displayed in recent testimony and in his actions in the California Trust Action, consistently put the personal interests of himself and his family ahead of the interests of Reading stockholders generally. Moving Defendants respectfully request that the Court grant this Motion and order an evidentiary hearing and briefing schedule regarding Plaintiff's adequacy and standing as a purported derivative plaintiff.

DATED THIS 11TH DAY OF OCTOBER, 2017.

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson

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Exhibit A

FILED UNDER SEAL

Exhibit A

Exhibit B

Exhibit B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

In re the

JAMES J. COTTER LIVING TRUST dated August 1, 2000, as amended

Case No. BP159755

Assigned for All Purposes to:
The Hon. Clifford L. Klein

EX PARTE* PETITION OF CO-TRUSTEE JAMES J. COTTER, JR. FOR APPOINTMENT OF TRUSTEE *AD LITEM

Date: February 9, 2017
Time: 8:30 a.m.
Dept: Room 260

Petitioner James J. Cotter, Jr. ("**Jim Jr.**"), co-trustee of the James J. Cotter Living Trust dated August 1, 2000, as amended (the "**Trust**"), established by James J. Cotter, Sr. ("**Jim Sr.**"), hereby petitions this Court *ex parte* for an order appointing a trustee *ad litem* with full power and authority to consider an offer ("**Offer**") from Patton Vision, LLC ("**Patton Vision**") to buy, at a premium, the Trust's shares of Reading International, Inc. ("**RDI**" or the "**Company**"), and to take all actions the interim trustee deems necessary and appropriate in connection with the Offer, including without limitation, negotiating with Patton Vision, or others, and selling the stock. In support thereof, Jim Jr. respectfully alleges as follows:

I. INTRODUCTION

1. On January 23, 2017, Patton Vision communicated to Margaret Cotter ("**Margaret**"), Ellen Cotter ("**Ellen**"), and Jim Jr., as co-trustees of the Trust under a 2014 Amendment thereto (the "**2014 Amendment**"), the Offer to buy the Trust's shares of RDI for $18.50 a share, representing a significant premium[1] over market value.[2] Patton Vision has requested an opportunity to discuss its offer with Margaret and Ellen, but they have refused to respond, to consider the Offer, or to engage in any due diligence. At this point in the Trust proceedings, the inaction by Margaret and Ellen should come as no surprise to this Court.

2. As counsel for Margaret and Ellen admitted in opening statements at trial of their contest of the 2014 Amendment, and which has become plain during those proceedings, the Cotter sisters will do everything in their power, including advocating for their own disinheritance, in order to control the Company that employs them. As Mark Cuban, owner of approximately 12.37% of RDI's voting stock, recently complained (or warned) in a statement to the press, RDI's "stock is far lower than it should be because it appears to be run like a family piggy bank."[3] What

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[1] The offered $18.50 per share represents a premium of more than 40% over RDI's market value as of May 26, 2016, which date is significant because, as explained in more detail below, that is the date on which Patton Vision first sought to acquire RDI (and before RDI's status as an acquisition target became public).

[2] Patton Vision made a similar offer simultaneously to Margaret and Ellen as co-executors of the Will of Jim Sr. for the RDI shares in the Nevada probate estate which Margaret and Ellen have so far refused to distribute to the Trust as required by the Will.

[3] https://www.thestreet.com/story/13975025/1/heth-continues-run-at-reading-international.html

is even more troubling is that the trustees have a fiduciary duty to manage the Trust's RDI voting stock solely for the benefit of Jim Sr.'s grandchildren, not as their own personal piggy bank. Whether the 2014 Amendment or the 2013 Restated Trust is ultimately held to be the governing instrument, the voting stock of the Trust is to be set aside in a subtrust, the "Voting Trust," for the benefit of Jim Sr.'s grandchildren (three of whom are Jim Jr.'s children, two are Margaret's).

3. Ellen and Margaret have an irreconcilable conflict, which by their actions in response to this and two prior offers by Patton Vision, Ellen and Margaret have shown themselves unwilling to resolve, as legally required of them, in favor of what is in the best interests of the grandchildren, and only the best interests of the grandchildren. Ellen and Margaret, as trustees, are required to act solely in furtherance of the grandchildren's welfare, even if it is not in their own personal pecuniary interest. Thus, even if Patton Vision could discontinue the employment services of Margaret and Ellen upon acquiring the RDI stock, Margaret and Ellen must support a sale to Patton Vision if it were in the ultimate best interests of the grandchildren.

4. In light of the conflict, and Margaret and Ellen's refusal to consider or explore a possible sale, a trustee *ad litem* should be appointed for that purpose who has no personal agenda at stake. Without prejudging how an independent trustee might come out on the Patton Vision Offer, or any other, there is no doubt a compelling reason to believe that a sale would be the only reasonable solution. Currently, the grandchildren's entire inheritance is tied to one stock in one company, which, as noted above, appears to be run as a family piggy bank according to the next largest stockholder. Selling at a premium and investing the proceeds in a diversified portfolio of assets would minimize risk and maximize potential gains, as has been historically proven to be true. In addition, a sale would likely end all of the litigation and conflict since it is all based upon control of RDI. It is also important to note that while Jim Sr. clearly intended all three of his children to be involved in RDI, Margaret and Ellen ensured that Jim Sr.'s intent in that regard would not be carried out by terminating Jim Jr. from the Company and attempting to oust him from the RDI Board, and Margaret and Ellen have argued repeatedly at trial that Jim Sr.'s intent could not be carried out, because Jim Sr. could not tie the hands of the Board of Directors of this

public company. Notwithstanding, the grandchildren are the only beneficiaries of the Voting Trust and their interest is the only interest that counts.

5. This conflict necessitates immediate relief. Patton Vision's principal has recently stated in the press that he is willing to consider a higher offer for RDI if "a valuation path that is greater than our offer that makes sense," but that "other opportunities are presenting themselves, and we're going to proceed where we can execute."[2] In other words, time is of the essence.

6. For these reasons, Jim Jr. respectfully requests that this Court appoint an independent trustee *ad litem* with full authority to consider the Offer, engage in the due diligence necessary to do so, negotiate if the interim trustee deems appropriate and take all actions necessary and appropriate to consummate a transaction in the trustee's reasonable judgment and discretion.

II. JURISDICTIONAL ALLEGATIONS

7. Jim Jr. is a co-trustee of the Trust under the 2014 Amendment, a beneficiary under both the 2014 Amendment and the 2013 complete restatement of the Trust (the "**2013 Trust**"), and an interested person as defined in Section 48 of the Probate Code. Jim Jr. therefore has standing to bring this Petition. Prob. Code §§ 1310, subd. (b), 15642, subd. (e), 17206.

8. Margaret and Ellen are co-trustees under the 2014 Amendment with Jim Jr. (and would be sole trustees of the 2013 Trust if the 2014 Amendment were invalidated). Ellen resides in this County. Margaret resides in New York, New York.

9. The Trust is administered in this County and all three co-trustees have invoked the jurisdiction of this Court on that basis in various other petitions in this proceeding. This Court has jurisdiction over Jim Jr.'s Petition, which concerns the internal affairs of the Trust, pursuant to California Probate Code § 17000(a).

10. Venue is proper pursuant to California Probate Code § 17005(a)(1), because the principal place of the Trust's administration is in Los Angeles County.

III. FACTUAL ALLEGATIONS

A. The Grandchildren's Interest In The RDI Voting Stock.

11. Pending litigation will determine which provisions of which Trust instrument govern. But under either the 2014 Amendment or the 2013 Trust, Jim Sr.'s RDI voting stock is to

be distributed to a sub-trust for the ultimate benefit of Jim Sr.'s grandchildren titled the Reading Voting Trust. Under the terms of the 2014 Amendment, but not the 2013 Trust, Margaret, Ellen and Jim Jr. have what amounts to a theoretical income interest in part of the Reading Voting Trust for some period of time. Margaret, Ellen and Jim Jr. have no interest whatever in the Reading Voting Trust if the 2013 Trust governs and the 2014 Amendment is invalid. The Voting Trust under the 2014 Amendment would be divided into a generation skipping transfer tax ("**GST**") exempt share and a non-GST exempt share. Only under the 2014 Amendment, Margaret, Ellen, and Jim Jr. would be entitled to discretionary payments of net income for their lifetimes from the non-GST exempt share. The sole asset is the RDI voting stock. The only possible income would be dividends, but RDI does not issue dividends nor is there any plan that RDI will ever issue any dividends. Thus, this so-called income interest to part of the Voting Trust under the 2014 Amendment, if it is valid, is non-existent. It is merely theoretical.

12. Under the 2014 Amendment, the entire GST exempt share and the remainder of the non-GST exempt share is to be held for the benefit of the grandchildren. If the 2014 Amendment is found invalid and the 2013 Trust governs, the grandchildren and only the grandchildren have any interest (the children do not even have the theoretical income interest in part as discussed above). Under the 2013 Trust, the Reading Voting Trust is not divided into GST exempt and non-exempt shares and Jim Sr.'s children have no right or interest in the Reading Voting Trust at all. Instead, all of the voting stock is to be held in trust for the sole benefit of Jim Sr.'s grandchildren.[4]

13. Although Margaret and Ellen have no right to ownership of the RDI voting stock under the 2013 Trust or the 2014 Amendment, they are the only ones who have benefitted from the Trust's RDI stock because they have used that voting stock to maintain control of RDI for themselves. Through that control, they ensured the termination of Jim Jr. as CEO, the promotion

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[4] The significant difference between the 2014 Amendment and the 2013 Trust, which has spawned the litigation between the parties, is in the naming of successor trustees for the Trust and trustees for the Reading Voting Trust. Under the 2014 Amendment, Ellen, Margaret and Jim Jr. are successor co-trustees of the Trust, and Jim Jr. and Margaret are co-trustees of the Reading Voting Trust. Whereas, under the 2013 Trust, Ellen and Margaret are the successor co-trustees of the Trust, and Margaret is the sole trustee of the Reading Voting Trust. In other words, the 2013 Trust would give Margaret and Ellen sole control over RDI. It stands to reason that should the voting stock sell, the litigation between the Cotter siblings may finally reach a resolution.

of Ellen to replace Jim Jr. as CEO, and the hiring of Margaret as an employee (she had been for decades merely an independent consultant prior to Jim Sr.'s death). Margaret and Ellen used that control to institute lucrative compensation arrangements for themselves. As long as Margaret and Ellen keep the voting stock in Trust, their positions of control of RDI remain.

B. **The Offer To Buy The Trust's Voting Stock**

14. The Patton Vision Offer provides the grandchildren with an opportunity to profit significantly, and to protect their inheritance from market volatility by allowing the trustee to invest the proceeds of the sale of the voting stock in a diversified portfolio.

15. On May 31, 2016, Patton Vision wrote to Ellen, as RDI's CEO, offering to purchase RDI, both the voting and non-voting stock, for $17 per share, which was a significant premium over the market price of the stock.

16. At a June 2, 2016 meeting, Ellen advised RDI's Board of Directors of the Patton Vision offer.

17. On June 23, 2016, the Board met to discuss the Patton Vision offer. Ellen gave an oral presentation in which she concluded that the $17/share offer did not reflect RDI's true value. Ellen and Margaret also indicated that they did not support a sale of RDI. Jim Jr. reserved judgment, citing insufficient information. In the end, the Board declined to hire an outside independent investment advisor, and declined to pursue the offer. The Board indicated that one of its factors in deciding not to pursue the Patton Vision Offer was that the Company's controlling shareholder, i.e., Ellen and Margaret, were not in favor of doing so.

18. Ellen rejected Patton Vision's May 31, 2016 offer on September 14, 2016 without even attempting to discuss, much less negotiate, with Patton Vision.

19. Patton Vision again wrote to Ellen on September 14, 2016, reiterating its prior offer.

20. On October 31, 2016, Patton Vision sent letters to each member of the RDI Board. In this letter, Patton Vision stated, "I am requesting a meeting in person, or over the phone, to establish a reasonable and appropriate dialogue going forward. ***We are concerned that the executive leadership's unwillingness to engage in a dialogue with Patton Vision, will make it***

impossible for the Board to properly consider our proposal at the upcoming Board of Directors Meeting scheduled for November 7, 2016."

21. Patton vision additionally explained,

> You also may or may not be aware that the CEO and Board Chair of Reading International, Inc., Ms. Ellen Cotter, despite a number of personal written requests over nearly a five month period, has been unwilling to meet with me and representatives of my consortium. I have emphasized to Ms. Cotter in our correspondence that a higher valuation for my offer may be warranted, should there be non-public information about which I am unaware. To my knowledge, she and the executive leadership of the Company have not appointed a subcommittee, or an independent committee of the Reading International Board, to consider my offer to the level of detail that all shareholders of the company and the offer deserves.
>
> Certainly, it is necessary for such a material matter, such as our offer, to be treated with respect and according to the fiduciary responsibilities of you and your colleagues on the Reading International, Inc. Board of Directors. Before any formal discussion of the offer at your Board level, a detailed discussion in person is warranted.
>
> Please let me be very clear, and repeat that our offer is in fact a bona fide, fully-funded, all cash offer, that would provide your shareholders a significant premium to the current publicly listed price of the company's shares.

22. The Board considered Patton Vision's newest offer on November 7, 2016. It still did not engage an outside investment advisor or conduct any diligence on the Patton Vision Offer.

23. In another one-page letter dated November 10, 2016, Ellen again dismissed out-of-hand Patton Vision's proposal, based on the surface-level discussion at the Board's November 7, 2016 meeting.

24. On December 19, 2016, Patton Vision reached out to Ellen yet again, and increased its offer to $18.50 per share, which again represented a significant premium.

25. Ellen did nothing substantive in response.

26. Despite having received no meaningful response from RDI, Patton Vision renewed its offer to buy RDI for $18.50 per share again on January 23, 2017.[5] This time, it directed its

---

[5] The Offer was for RDI's voting stock and for the non-voting stock. That is of no moment here because, according to Margaret and Ellen, the Trust's shares of RDI non-voting stock would go to

offer not to Ellen as CEO of RDI, but to Ellen, Margaret, and Jim Jr. as co-trustees of the Trust under the 2014 Amendment. Patton Vision expressly offered to consider a higher sale price if one could be justified.

27. Patton Vision made the same offer to Margaret and Ellen as the sole executors of Jim Sr.'s Will.[6]

C. The Patton Vision Offer Pits Margaret And Ellen's Personal Interests Against The Interests Of The Grandchildren

28. Margaret and Ellen have not responded to Patton Vision's latest offer to them as trustees and executors, and Jim Jr. is informed and believes that Margaret and Ellen have done nothing to evaluate the Offer. In light of Ellen's refusal to respond meaningfully to the offers made directly to RDI, it stands to reason that she and Margaret will do what has been done since May 2016: dismiss the Offer in order to preserve their control of RDI.

29. Ellen and Margaret's consistent dismissals of Patton Vision's offers—at more than 40% over the market price for RDI's stock—puts them clearly at odds with the grandchildren-beneficiaries of that stock, under either the 2014 Amendment or the 2013 Trust.[7]

30. It is in the grandchildren's best interests for an independent trustee *ad litem* to consider objectively the Patton Vision Offer. As noted above, the grandchildren's shares of RDI voting stock are providing them no present monetary benefit. If Patton Vision's Offer were

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the James J. Cotter Foundation and it, like the grandchildren, are served by considering Patton Vision's above-market offer.

[6] There is no dispute that Jim Sr. owned 1,123,888 shares of RDI voting stock at his death. Because Margaret and Ellen have refused to marshal Trust assets, 427,808 shares of Jim Sr.'s voting stock are being administered in the probate estate and 696,080 shares are currently held in the Trust.

[7] It should be noted that Margaret and Ellen previously objected to the appointment of an independent guardian *ad litem* to represent the grandchildren's interest in this proceeding, alleging that the interests of Margaret and Jim Jr. are aligned with their children's interests, such that the expense of a guardian *ad litem* was not necessary for the Trust. As noted in the main text, there is serious doubt as to whether Margaret's interests align with that of her children. Moreover, as a practical matter, Margaret and Ellen have divested Jim Jr. of any meaningful ability to represent his children's interests by taking the position that they alone have the right to vote the Trust's RDI voting stock because they constitute a majority of trustees, effectively denying any representation to Jim Jr.'s children. Jim Jr. therefore renews his request for the appointment of a guardian *ad litem* by way of a separately filed petition.

accepted, by contrast, the Reading Voting Trust would receive more than $33 million, which could in turn be invested in a diversified portfolio allowing the grandchildren to realize now the benefits of their stock ownership. Moreover, the grandchildren would be able to receive their inheritance outright at age 31, instead of receiving income or principal at the discretion of a trustee.[8]

31. Margaret and Ellen, by contrast, have a personal interest in maintaining control of RDI, which gives them a present benefit, as they currently run the Company, Ellen as its CEO and Margaret as Executive Vice President of Real Estate Management and Development-NYC. They have shown themselves willing to act against their own pecuniary interest to maintain that control (if they win the Trust contest, they lose tens of millions of dollars in inheritance), and there is no reason to believe that they will put the grandchildren's pecuniary interests above their own personal need for control.

IV. CLAIMS

A. Temporary Trustee with Immediate Powers Is Necessary to Prevent Injury and Loss to the Trust

32. Probate Code section 1310(b) provides as follows:

> Notwithstanding that an appeal is taken from the judgment or order, for the purpose of preventing injury or loss to a person or property, the trial court may direct the exercise of the powers of the fiduciary, or may appoint a temporary guardian or conservator of the person or estate, or both, or a special administrator or temporary trustee, to exercise the powers, from time to time, as if no appeal were pending. All acts of the fiduciary pursuant to the directions of the court made under this subdivision are valid, irrespective of the result of the appeal. An appeal of the directions made by the court under this subdivision shall not stay these directions.

Jim Jr. alleges that this Court should appoint a trustee *ad litem* with directions under Probate Code section 1310(b) to evaluate the Patton Vision Offer and take reasonable steps to act on the Offer in the trustee's sole discretion.

---

[8] Jim Jr. recognizes that it was Jim Sr.'s intent to keep RDI in the family and for all three of his children to work together in that endeavor. However, as the years of litigation and infighting have shown, absent a resolution by the three Cotter children to work together, which has proven impossible, Jim Sr.'s vision cannot be fulfilled.

33. A trustee has a duty to exercise reasonable care, skill, and prudence in administering the trust, and to do so solely in the interest of the beneficiaries Prob. Code §§ 16000, 16040, subd. (a). A trustee must act impartially with all trust beneficiaries. Prob. Code § 16003. Margaret's and Ellen's conflicts of interest and unrelenting need to control RDI, no matter the consequences, prevent them from carrying out their fiduciary duties of loyalty, good faith, and impartiality.

34. Under Probate Code section 15642, subdivision (e), "[i]f it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a decision on a petition for removal of a trustee and any appellate review, the court may, on its own motion or on petition of a cotrustee or beneficiary...suspend the powers of the trustee to extent the court deems necessary." *See* Prob. Code § 15642, subd. (b) ("The grounds for removal of a trustee by the court include the following: (3) Where hostility or lack of cooperation among co-trustees impairs the administration of the trust....(4) Where the trustee fails or declines to act....(9) For other good cause"). Pursuant to Probate Code section 17206, the court has discretion "to make any orders and take any other action necessary or proper to dispose of the matters presented by the petition, including appointment of a temporary trustee to administer the trust in whole or in part." Absent an order under Probate Code section 1310(b), Jim Jr. requests that this Court exercise its discretion under Probate Code section 15642, subdivision (e) and Probate Code section 17206 to suspend the powers of the co-trustees with respect to the sale of RDI shares in order to prevent loss or injury to Trust property and to protect the interests of the beneficiaries, particularly the Cotter grandchildren.

B. Nomination of Andrew Wallet, Esq. as Trustee *Ad Litem*

35. Given the irreconcilable conflicts of interests between Margaret and Ellen on the one hand, and the Cotter grandchildren on the other, and the hostility between Jim Jr. and Margaret and Ellen, which has impaired the administration of the Trust, Jim Jr. respectfully nominates Andrew Wallet, Esq. to serve as trustee *ad litem*. Mr. Wallet has the experience and skill to serve as a fiduciary in these circumstances. A true and correct copy of Mr. Wallet's

curriculum vitae is attached hereto as **Exhibit 1**. Mr. Wallet consents to this appointment and his consent is attached hereto as **Exhibit 2**.

VI. PERSONS ENTITLED TO NOTICE

36. The following persons are entitled to notice of this Petition (there have been no requests for special notice):

Margaret G. Lodise, Esq. Kenneth M. Glazier, Esq. Douglas E. Lawson, Esq. SACKS, GLAZIER, FRANKLIN & LODISE LLP 350 South Grand Avenue, Suite 3500 Los Angeles, CA 90071	Attorneys for Petitioners, Ann Margaret Cotter and Ellen Cotter
Harry P. Susman, Esq. SUSMAN GODFREY L.L.P. 1000 Louisiana, Suite 5100 Houston, TX 77002	Attorneys for Petitioners, Ann Margaret Cotter and Ellen Marie Cotter
Glenn Bridgman, Esq. SUSMAN GODFREY L.L.P. 1901 Avenue of the Stars, Suite 950 Los Angeles, CA 90067-6029	Attorneys for Petitioners, Ann Margaret Cotter and Ellen Marie Cotter
James J. Cotter, Jr. 311 Homewood Los Angeles, California 90049	Adult Son; Beneficiary; Successor Co-Trustee
Ellen Marie Cotter 20 East 74th Street, Apt. 5B New York, NY 10021	Adult Daughter; Beneficiary; Successor Co-Trustee; Co-Executor
Ann Margaret Cotter 120 Central Park South Apt. 8A New York, NY 10019	Adult Daughter; Beneficiary; Successor Co-Trustee; Co-Executor
Duffy James Drake 120 Central Park South Apt. 8A New York, NY 10019	Minor Grandson; Beneficiary

Margot James Drake Cotter 120 Central Park South Apt. 8A New York, NY 10019	Minor Granddaughter; Beneficiary
Sophia I. Cotter 311 Homewood Los Angeles, California 90049	Minor Granddaughter; Beneficiary
Brooke E. Cotter 311 Homewood Los Angeles, California 90049	Minor Granddaughter; Beneficiary
James J. Cotter 311 Homewood Los Angeles, California 90049	Minor Grandson; Beneficiary
Gerard Cotter 226 Pondfield Road Bronxville, New York 10708	Beneficiary
Victoria Heinrich 186 Cherrybrook Lane Irvine, California 92613	Beneficiary
Susan Heierman 262 West Pecan Place Tempe, Arizona 85284	Beneficiary
Eva Barragan 13914 Don Julian La Puente, California 91746	Beneficiary
Mary Cotter 2818 Dumfries Road Los Angeles, California 90064	Beneficiary
James J. Cotter Foundation Reading International 6100 Center Drive Suite 900 Los Angeles, California 90045	Beneficiary

V. **PRAYER FOR RELIEF**

WHEREFORE, Jim Jr. prays for an order of this Court granting the Petition as follows:

1. Appointing Andrew Wallet, Esq. as trustee *ad litem*.

2. Granting the trustee *ad litem* with full power, authority, and protections under the Trust and California trust law, as any other named trustee would have, to evaluate the Offer, conduct due diligence, negotiate with Patton Vision or any other potential offerors, and take all actions necessary or appropriate to consummate the sale of the Trust's RDI shares, including but not limited to:

a. Communicate solely with Patton Vision regarding their Offer to purchase the Trust's RDI shares;

b. Receive solely and exclusively all offers for the purchase of the Trust's RDI shares;

c. Enter into purchase and sale agreements with respect to the Trust's RDI shares;

d. Take all actions necessary to carry out the terms, conditions, and obligations of any purchase and sale agreement with respect to the Trust's RDI shares, including negotiating any modifications thereto;

e. Receive all proceeds of sale from the Trust's RDI shares;

f. Return to the co-trustees of the Trust, namely Margaret, Ellen, and Jim Jr., net proceeds of the sale of the Trust's RDI shares to be invested, managed and distributed in accordance with the terms of the Trust;

g. Hire investment advisors, tax advisors, accountants, attorneys, or any other advisors the trustee *ad litem* deems necessary and reasonable, in his sole discretion, to carry out his powers;

3. Temporarily suspending Jim Jr., Margaret, and Ellen's powers with respect to all of the foregoing and within matters until further orders of this Court;

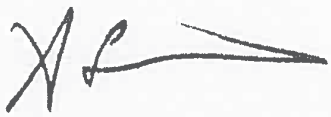
4. Allowing the trustee *ad litem* compensation calculated at his normal hourly rate, and instructing the trustee of the Trust, namely Margaret, Ellen, and Jim Jr., to pay the trustee *ad litem*'s fees on a monthly basis.

5. Instructing the trustee *ad litem* to take all actions consistent with this order notwithstanding any appeal, pursuant to Probate Code section 1310(b), the court finding that such order is necessary to prevent loss or injury to the Trust.

6. Granting such other relief as this Court deems just and proper.

Dated: February 8, 2017

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By 

ADAM F. STREISAND
Attorneys for JAMES J. COTTER, JR.

Exhibit C

FILED UNDER SEAL

Exhibit C

Exhibit D

FILED UNDER SEAL

Exhibit D

Exhibit E

Exhibit E

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARGARET COTTER; ELLEN COTTER; GUY ADAMS; EDWARD KANE; DOUGLAS MCEACHERN; JUDY CODDING; MICHAEL WROTNIAK; AND READING INTERNATIONAL, INC.,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GOFF GONZALEZ, DISTRICT JUDGE,
Respondents,
and
JAMES J. COTTER, JR., INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF READING INTERNATIONAL, INC.,
Real Party In Interest.

No. 72261

FILED

APR 14 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF PROHIBITION OR MANDAMUS

This original petition for a writ of prohibition or mandamus challenges a district court order denying a motion for partial summary judgment in a derivative shareholder action.

Having considered the petition and supporting documents, we are not persuaded that our extraordinary and discretionary intervention is warranted. *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). In particular, even if we were to grant petitioners' requested relief, doing so would not appear to dispose of all the

claims between petitioners and real party in interest James J. Cotter, Jr.[1] *See Moore v. Eighth Judicial Dist. Court*, 96 Nev. 415, 417, 610 P.2d 188, 189 (1980) (determining that mandamus is not an appropriate remedy when resolution of the writ petition would not dispose of the entire controversy). Additionally, we are not persuaded that petitioners lack an adequate remedy in the form of an appeal. *Pan*, 120 Nev. at 224, 228, 88 P.3d at 841, 844. Accordingly, we

ORDER the petition DENIED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Stiglich

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Quinn Emanuel Urquhart & Sullivan, LLP
Cohen Johnson Parker Edwards
Greenberg Traurig, LLP/Las Vegas
Yurko, Salvesen & Remz, P.C.
Eighth District Court Clerk

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[1]Petitioners suggest that "Plaintiff's lack of standing with respect to his derivative action is case-dispositive." However, it does not appear that the district court has clearly addressed petitioners' NRCP 23.1 argument raised in this writ petition, and this petition challenges only one component of Mr. Cotter's claims. Consequently, based on the existing record, we are not persuaded that Mr. Cotter's lack of standing with respect to the challenged component would result in a lack of standing with respect to the non-challenged components.

JOIN
MARK E. FERRARIO, ESQ.
(NV Bar No. 1625)
KARA B. HENDRICKS, ESQ.
(NV Bar No. 7743)
TAMI D. COWDEN, ESQ.
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Counsel for Reading International, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

MARGARET COTTER, et al,

Defendants.

In the Matter of the Estate of

JAMES J. COTTER,

Deceased.

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

Coordinated with:

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

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

READING INTERNATIONAL, INC.'S JOINDER TO MOTION FOR EVIDENTIARY HEARING REGARDING JAMES COTTER, JR.'S ADEQUACY AS A DERIVATIVE PLAINTIFF

Date of Hearing: November 17, 2017
Time: In Chambers

JAMES J. COTTER, JR.,

Plaintiff,

v.

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

Defendants.

READING INTERNATIONAL, INC., by and through its counsel Greenberg Traurig, LLP, hereby submits its *Joinder to Motion for Evidentiary Hearing Regarding James Cotter, Jr.'s Adequacy as Derivative Plaintiff* filed on behalf of Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding and Michael Wrotniak.

DATED: this 18th day of October, 2017.

GREENBERG TRAURIG, LLP

/s/ Mark E. Ferrario
MARK E. FERRARIO, ESQ.
(NV Bar No. 1625)
KARA B. HENDRICKS, ESQ.
(NV Bar No. 7743)
TAMI D. COWDEN, ESQ.
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Facsimile: (702) 792-9002

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing to be filed and served via the Court's Odyssey E-Filing system on all registered and active parties. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 18th day of October, 2017.

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

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Attorneys for Defendant William Gould

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR.,

Plaintiff,

vs.

MARGARET COTTER, et al.,

Defendant.

READING INTERNATIONAL, INC.,

Nominal Defendant.

CASE NO. A-15-719860-B

DEFENDANT WILLIAM GOULD'S JOINDER TO MOTION FOR EVIDENTIARY HEARING REGARDING JAMES COTTER, JR.'S ADEQUACY AS DERIVATIVE PLAINTIFF

Date of Hearing: November 17, 2017
Place of Hearing: In Chambers

Assigned to Hon. Elizabeth Gonzalez, Dept. XI

Trial Date: January 2, 2018

Defendant William Gould hereby joins in the Motion for Evidentiary Hearing Regarding James Cotter, Jr.'s Adequacy as Derivative Plaintiff, filed on behalf of Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding and Michael Wrotniak.

October 17, 2017

BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS, LINCENBERG & RHOW, P.C.

By 

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Attorneys for Defendant William Gould

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Cir. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing **Defendant William Gould's Joinder to Motion for Evidentiary Hearing Regarding James Cotter, Jr.'s Adequacy as Derivative Plaintiff** to be filed and served via the Court's Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 17th day of October, 2017.

Katie Armell
EMPLOYEE

Electronically Filed
11/27/2017 9:46 AM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTION FOR EVIDENTIARY HEARING RE JAMES COTTER, JR. MOTION TO SEAL EXHIBITS 2, 3, AND 5 TO JAMES COTTER'S MOTION IN LIMINE NO. 1

MONDAY, NOVEMBER 20, 2017

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

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

Case Number: A-15-719860-B

APPEARANCES:

FOR THE PLAINTIFF:	MARK G. KRUM, ESQ. STEVE L. MORRIS, ESQ.
FOR THE DEFENDANTS:	H. STANLEY JOHNSON, ESQ. MARSHALL M. SEARCY, ESQ. CHRISTOPHER TAYBACK, ESQ. SHOSHANA E. BANNETT, ESQ. MARK E. FERRARIO, ESQ. KARA B. HENDRICKS, ESQ.

LAS VEGAS, NEVADA, MONDAY, NOVEMBER 20, 2017, 9:47 A.M.

(Court was called to order)

THE COURT: Mr. Ferrario, you cannot leave.

MR. FERRARIO: I'm not.

THE COURT: You're at the defense table.

If I can go to Cotter.

MR. MORRIS: Good morning, Your Honor.

THE COURT: Good morning, Mr. Morris. How are you?

MR. MORRIS: I'm fine. I hope I remain that way.

THE COURT: Good morning, Mr. Krum.

MR. KRUM: Good morning, Your Honor.

THE COURT: I have all counsel here. I'm going to have everyone, starting with Mr. Morris, identify themselves for purposes of the record. If you cannot hear them as we go through this process, please let me know, and then I'll figure out some other option.

Mr. Morris, you're up.

MR. MORRIS: I'm Steve Morris for James Cotter, Jr., and I'm here in association with Mr. Krum, whose motion is -- or our motion, but he is going to speak to it. It's on calendar this morning, the motion for an evidentiary hearing.

THE COURT: When did you become honorary counsel to Germany?

MR. MORRIS: Several weeks ago.

THE COURT: It was a very nice sign.

All right, guys.

MR. MORRIS: You won't hold that against me, will you?

THE COURT: No. I thought it was a nice sign.

MR. MORRIS: All right.

MR. TAYBACK: Good morning, Your Honor. Christopher Tayback on behalf of the individual director defendants, except Mr. Gould, who's separately represented.

MR. SEARCY: Good morning, Your Honor. Marshall Searcy, also here with Mr. Tayback on behalf of certain individual defendants.

MR. FERRARIO: Mark Ferrario for Reading.

MS. HENDRICKS: Kara Hendricks for Reading.

MS. BANNETT: Shoshana Bannett for William Gould.

MR. JOHNSON: Stan Johnson on behalf of the individual defendants.

THE COURT: Mr. Krum, could you hear everyone who identified themselves? Mr. Krum, can you hear me?

MR. KRUM: No.

THE COURT: Mr. Krum, it's your motion.

MR. TAYBACK: It's actually our motion.

MR. FERRARIO: It's actually our motion -- or his motion.

THE COURT: Okay. Well, I've got to make sure he can hear.

MR. KRUM: Okay. Now I can hear you. Thank you.

THE COURT: All right. Now I'm going to have Mr. Tayback argue the motion.

MR. TAYBACK: Good morning, Your Honor. I'll reserve whatever time I have left for whatever questions you have.

I'm going to start by saying that I think the basic principle here is the Nevada Supreme Court has said to their satisfaction, at least, Your Honor has not decided the adequacy of Mr. Cotter, Jr., the plaintiff in this case, to be a class representative on behalf of the other stockholders in Reading. That's obviously a concern, because there is a threshold issue, because Your Honor well knows --

Should we stop? The phone's on the ground. Can I approach?

MR. FERRARIO: That's pretty good, Jill.

THE MARSHAL: Is Mr. Krum still there?

MR. KRUM: Yes, I am. Thanks.

THE COURT: I guess you missed the Three Stooges act from being by telephone. But now we're going to go back to the argument.

MR. TAYBACK: I usually don't get the phone kind of reacting back to my argument, but --

In this case it's a threshold issue to know that the -- and, as Your Honor well knows, the Court has obligations to

the class which include making sure that the plaintiff, whoever's sitting there, is not just pursuing a personal vendetta, a personal issue. What we now know and what we have suspected but we certainly know has been confirmed by the filings in the trust case in California is that this plaintiff, Mr. Cotter, Jr., is using this derivative case to pursue solely personal remedies. One of those --

THE COURT: And you're surprised by the fact that he and his sisters have been fighting this whole time?

MR. TAYBACK: I am not surprised they've been fighting.

THE COURT: Okay. Because we've known that and I've known that when I did not dismiss the derivative portion of the case. It wasn't like this is new.

MR. TAYBACK: That is not new. But what is new is his efforts to seek the sale of a certain subset of stock in the trust case, which --

THE COURT: I'm aware of that. That's new. But how does that impact this decision? I know that you've got something that's not in the briefing that's this nugget that's going to make a light come on for me, and I've been waiting for it all weekend.

MR. TAYBACK: Okay. Well, I'm going to try and find that nugget that I think we tried to communicate and obviously didn't do it clearly enough in the papers. But the nugget

here is this, which is to say there are two different classes of stock, one of which --

THE COURT: Uh-huh. I knew that.

MR. TAYBACK: -- one of which is stock that is called Class B stock, that if it's sold the plaintiff has asked for there to be a control premium. That control premium is something that he's advocating in the trust case be used by the guardian ad litem, by the trustee ad litem in that case, to negotiate for the sale of just that stock, that is to say, just the stock that will inure to the benefit of Mr. Cotter, Jr., and his children. That is a problem when you are a class representative. That is to say, he's advocating in that action that that trustee negotiate the sale of a stock, of a portion of stock, not of all the stock, not of the stock held by all the stockholders that he purports to represent, and that he do so at a premium that would inure to the benefit of his children.

What does that mean for this case? What it means is he is now taking positions that would benefit just himself and that this case is an obvious leverage, obvious issue, proceeding that can be manipulated by a plaintiff who's got private litigation to negotiate something that if he's looking to negotiate a control premium through that trustee, then in fact the status of this derivative case, which is in his control, is something that would be the subject of that

negotiation. Will it be dismissed, will it be proceeded, what remedies will be sought? All of this really just underscores what, yes, Your Honor, we all suspected right away. These siblings fight, and --

THE COURT: Well, and the judge in California is unhappy with this.

MR. TAYBACK: And the plaintiff. I believe that there's language in there that he in fact exercised undue influence. And that's a large part of what the court's decision was.

THE COURT: Yeah. But there were no forgeries.

MR. TAYBACK: I'm sorry, Your Honor?

THE COURT: No forgeries.

MR. TAYBACK: No forgeries. The question is whether or not the case that's here he's an adequate representative, Mr. Cotter, Jr., the plaintiff.

THE COURT: I understand that's the issue. I'm trying to find out where the new information is other than that you guys have all pissed off the judge in California.

MR. TAYBACK: Well, it's true that the judge is unhappy with all the litigants there. But the new information is this. The remedy he's seeking --

THE COURT: The trustee ad litem is your new information.

MR. TAYBACK: No. The imploring by this plaintiff

that the trustee ad litem be empowered to sell a certain subset of stock that inures only to the benefit of this plaintiff and that this proceeding is leverage in that negotiation. And from that one I think has to conclude that he's not situated like all the other shareholders. All the other shareholders he purports to represent who aren't here, none of whom have joined his action, stand to benefit from that.

THE COURT: Well, there were some who joined, but they settled with you.

MR. TAYBACK: They walked away. And that's the way that that settlement played out. But they are not here now. They certainly could join if they felt that the sale of stock that would benefit solely this plaintiff was advantageous to them. They have not.

THE COURT: Well, but that's not the whole allegations that he's made as part of his derivative claim. You understand that.

MR. TAYBACK: I certainly understand that. But it's not -- but it is reflective of his status as it relates to the other stockholders.

THE COURT: I understand. Anything else you want to tell me to try and shine that light so I'm going to realize that something new has occurred that I don't know?

MR. TAYBACK: No, Your Honor. But I will reserve

the rest of my time to respond.

THE COURT: Thank you. Mr. Krum.

MR. KRUM: Thank you, Your Honor. I don't really have anything to add to what we've said in our papers. And you saw from those papers what actually transpired, and it transpiring in a California trust action is far different than the moving papers and Mr. Tayback's argument depicts it. But I don't need to repeat what we wrote and what you read, so I will wait, volunteer to answer any questions you have.

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

Anything else?

MR. TAYBACK: Any questions for me, Your Honor?

THE COURT: No.

The motion's denied.

Mr. Ferrario, what happened with the settlement in California? It didn't happen, did it? I told you we would be surprised if it occurred.

MR. FERRARIO: Well, I -- well, can we -- let me just put it to you this way. It isn't dead yet, I don't think.

THE COURT: Well, we've got a trial in January, first and second week of January.

MR. FERRARIO: Your Honor, when we caucused with -- no, we want the trial. When we caucused with all the lawyers and called the Court and we had asked if we could go starting

I think mid January --

THE COURT: And I said no.

MR. FERRARIO: No, you didn't say no.

THE COURT: I said probably not.

MR. FERRARIO: No, you didn't say that, either.

THE COURT: What'd I say?

MR. FERRARIO: You said that would work, that probably will work. And then we ended up on the January 2nd stack.

THE COURT: Well, that is the stack.

MR. FERRARIO: I know. It would help everybody for a variety of reasons, not the least of which since I just had a Supreme Court argument set on -- what's the first day we're back?

THE COURT: January 2.

MR. FERRARIO: Yeah. They set an argument in Carson on the 2nd.

THE COURT: Cool.

MR. MORRIS: On January the 3rd.

MR. FERRARIO: January the 3rd?

MR. MORRIS: Yes.

MR. FERRARIO: The 3rd?

THE COURT: It'll be snowy then.

MR. FERRARIO: I know. I'm not --

THE COURT: And really cold.

MR. FERRARIO: -- really happy about this. But there's nothing I can do.

So now what I would ask, and I think Shoshana is --

You've got problems early January; right?

THE COURT: Well, they had problems forever. They had problems the whole spring.

MR. FERRARIO: I called the Court -- this isn't a heavy stack. It would help us all if we could --

THE COURT: So that would be number one.

MR. FERRARIO: -- like go on the 15th or whatever the --

THE COURT: But here's the problem with that. And I think I've told you guys this a little bit. I have no courtroom.

MR. FERRARIO: I know that.

THE COURT: I've got to beg for a courtroom to try and get space. This is a jury trial, so I need a jury-suitable courtroom. And that means sometimes my days aren't as long as I would hope they are. I have Mental Health Court on Tuesday afternoons where my staff supports Mental Health Court unless I can get coverage, and I have to go down and do any terminations that have to occur.

MR. FERRARIO: So we don't go Tuesday afternoons?

THE COURT: Well, unless we can get coverage and unless there's no orders to show cause, which I haven't had an

order to show cause in four weeks. Everybody's been doing really well in Mental Health Court, which is good.

But the problem is my weeks aren't like they were when I had a courtroom that was my own and I could manage my schedule. Right now I'm at the whim of other judges. Last week I was lucky enough to be able to take the courtroom of a judge who was at an educational thing, and so I got the courtroom full days for three days, and it was great, I got done. But the problem is I can't count on that.

MR. FERRARIO: I understand.

THE COURT: So what I'm trying to tell you is, yes, I will try and work with your schedule as I get closer. But my recollection is it got worse the later we went on in January, and I do not trust you guys to be able, given my limited schedule that I think I can get a courtroom, to be able to get done in three or four weeks.

MR. FERRARIO: And the only fallback I would ask -- because, again, I just got the argument on --

THE COURT: I'm going to let you guys go to Carson City and argue this case.

MR. FERRARIO: If we could -- if we could -- no, that's not the argument.

MR. TAYBACK: It is on the 3rd.

MR. FERRARIO: That is the one.

MR. TAYBACK: Yeah.

MR. FERRARIO: And I've got another one, too.

THE COURT: It's been a long morning, Mr. Ferrario.

MR. FERRARIO: It has. It's been a long couple weeks. But actually I had some fun in there, too. If we could start the first -- what's the next week? What's the next Monday?

MR. TAYBACK: The 9th.

THE COURT: That's the 8th, January 8th.

MR. FERRARIO: I think that would help everybody if we could know that was it. Then we could go to Carson City, we could come back, we could do our trial prep, and show up on the 8th, and that'll help everybody.

THE COURT: I need you all as a group to give me an estimate on the number of hours you need for the presentation of your case and cross-examination of the other side.

MR. FERRARIO: Okay.

THE COURT: I'm then going to do math to try and figure out how long that is so that I can do an analysis as to how long this is going to take so I can see how late I can start and still get you done.

MR. FERRARIO: Okay. We'll --

THE COURT: How's that?

MR. FERRARIO: That's great.

Mark?

MR. KRUM: Yes.

MR. FERRARIO: Can you be available to do that today?

MR. KRUM: Probably not. But let's try. Let's get it started.

MR. FERRARIO: Well, we another -- we have that other call today, so this dovetails into that nicely.

MR. KRUM: Right. That's what I meant.

MR. FERRARIO: Okay. Then I misunderstood. Okay. So I guess we are going to do it today. Good. Thank you.

THE COURT: He said he's not going to know the answer today, but he's going to start the process with you. That's what he said.

MR. FERRARIO: We have another call that relates to your pretrial order, and it will all -- this will all fit nicely within that.

THE COURT: So I'm going to ask you the same question I'm going to ask Wynn in a couple of weeks. Are you going to do electronic of exhibits?

MR. FERRARIO: Yes.

THE COURT: I'll do the draft protocol and send it over to you guys.

MR. FERRARIO: Okay.

THE COURT: Anything else?

Mr. Morris, it's a pleasure seeing you.

MR. MORRIS: Thank you, Your Honor. It's a pleasure

to be here.

THE COURT: Mr. Krum, sorry the phone flew off.

MR. MORRIS: There is another matter --

MR. KRUM: Well, no apologies necessary. Thank you, Your Honor.

THE COURT: Mr. Morris has something else. What?

MR. MORRIS: There are actually two. But the one -- the first one I'm want to address is the motion practice that has yet to resolve that is scheduled for mid December, the motions for summary judgment or the renewed partial motions for summary judgment and motions in limine. Those have -- the outcome on those motions will have a -- I believe a substantial impact on the evidence that is going to be presented at trial. And that's of special concern to me, because we're the plaintiff.

So what I'm prefacing is this request. With respect to the identification of exhibits, a topic we briefly discussed at our last joint counsel conference under Rule 2.67 or trying to reach accommodation of Rule 2.67 could we have an extension of the time to identify exhibits until the motions that are pending are decided?

THE COURT: When are they scheduled for decision?

MR. MORRIS: I believe they're scheduled for argument on --

MS. BANNETT: December 11.

MR. MORRIS: Yes.

THE COURT: Are you guys going to need a special setting for that?

MR. FERRARIO: You mean so we have a little more time?

THE COURT: That's what I asked, yes.

MR. FERRARIO: I think that might be prudent so nobody has to sit through that.

THE COURT: Okay. So how about we move it to a couple days after that hearing, the 13th. Would that be enough time?

MR. FERRARIO: That would be good for us.

MR. MORRIS: I assume you're going to make a decision on the 11th.

THE COURT: Oh, absolutely.

MR. MORRIS: All right. So --

THE COURT: You know me. I make a decision. Right or wrong, I make it, and then you guys go to Carson if you want.

MR. MORRIS: We're going to be going to Carson in any event on the 3rd.

THE COURT: On a different issue.

So let me see what time I can put it there. The issue's going to be whether Randall Jones finishes his bench trial the week before. I do not know if he's going to finish.

But even if he doesn't finish, since it's a bench trial, I can carve out about an hour for you guys.

MR. FERRARIO: That'd be great.

MR. MORRIS: That would be good.

THE COURT: Okay. I've got to see if I have a settlement conference that morning. So let me look on the 11th and see what time I have that day for you.

MR. MORRIS: So we can have until the --

MR. KRUM: We're scheduled to be back on the 18th for the calendar call.

THE COURT: Yes. I may be done with you for the calendar call at the 11th, but we'll know that then and we may be able to cancel that.

Anything else?

MR. MORRIS: There's one other item, but it's not contested, and that is our motion to seal our first motion in limine. We have some documents that should be sealed or partially sealed. We presented a motion to that effect. There's been no opposition. I have an order I'd like you to sign unless they --

THE COURT: Be happy to. Be happy to sign it.

MR. TAYBACK: No objection.

MR. MORRIS: Okay.

THE COURT: So I have two homework assignments for me. One, I'm going to get the electronic exhibit protocol

tuned up for you, get it distributed to see if you have any comments before we enter it, and then find a special time for you on December 11th for the argument of your motions.

Anything else?

MR. TAYBACK: Nothing, Your Honor.

THE COURT: Have a lovely Thanksgiving.

MR. FERRARIO: Thank you, Your Honor.

MR. KRUM: You likewise.

THE COURT: Mr. Morris.

MR. MORRIS: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 9:04 A.M.

* * * * *

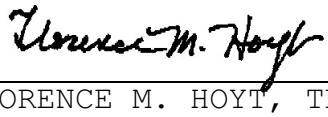
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

11/20/17

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

AND

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

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

Related and Coordinated Cases

BUSINESS COURT

DEFENDANTS MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

DEFENDANTS' ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak ("Defendants") hereby set forth the following Answer to the Second Amended Verified Complaint, filed by Plaintiff James Cotter, Jr. ("Plaintiff") on September 2, 2016 ("Complaint"). Any allegation, averment, contention or statement in the Complaint not specifically and unequivocally admitted is denied. Defendants respond to each of the paragraphs of the Complaint as follows:

RESPONSE TO "NATURE OF THE CASE"

1. Defendants deny the allegations of paragraph 1 of the Complaint.

2. Defendants deny the allegations of paragraph 2 of the Complaint.

3. Defendants deny the allegations of paragraph 3 of the Complaint.

4. Defendants admit that Ellen Cotter correctly asserted that Plaintiff's employment agreement required him to resign from the Board of Directors ("Board") of Reading International, Inc. ("RDI" or the "Company") upon his termination. To the extent that the allegations of paragraph 4 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 4 of the Complaint in all other respects.

5. Defendants admit that Ellen Cotter and Margaret Cotter have referred to Edward Kane as "Uncle Ed." Defendants admit that "family disputes" between Ellen Cotter and Margaret Cotter, on the one hand, and James Cotter, Jr., on the other hand, included certain trust and estate litigation commenced by Ellen Cotter and Margaret Cotter against James Cotter, Jr. following the passing of their father, James J. Cotter, Sr., in September 2014. Defendants deny the allegations of paragraph 5 of the Complaint in all other respects.

6. Defendants admit that Ellen Cotter was appointed CEO in January 2016 and Margaret Cotter was appointed Executive Vice President-Real Estate Management and Development-NYC in March 2016. Defendants deny the allegations of paragraph 6 of the Complaint in all other respects.

///

7. Defendants deny the allegations of paragraph 7 of the Complaint.

8. Defendants admit that Ellen Cotter, Margaret Cotter, Edward Kane, and Guy Adams are members of RDI's Executive Committee. Defendants admit that, pursuant to its Charter, the Executive Committee is authorized, to the fullest extent permitted by Nevada law and RDI's Bylaws, to take any and all actions that could have been taken by the full Board between meetings of the full Board. Defendants deny the allegations of paragraph 8 of the Complaint in all other respects.

9. Defendants deny the allegations of paragraph 9 of the Complaint.

10. Defendants admit that Ellen Cotter and Margaret Cotter, acting in the capacities as the Co-Executors of the Estate of James J. Cotter, Sr. (the "Cotter Estate"), exercised on behalf of the Cotter Estate an option held by the Cotter Estate to acquire 100,000 shares of RDI Class B voting stock. Defendants admit that the use of Class A shares to effect such exercise was approved by the Compensation Committee. Defendants deny the allegations of paragraph 10 of the Complaint in all other respects.

11. Defendants admit that, on or about October 5, 2015, Ellen Cotter proposed adding Judy Codding to RDI's Board of Directors. Defendants admit that Mary Cotter knows Ms. Codding. Defendants admit that Mary Cotter is the mother of Plaintiff, Ellen Cotter, and Margaret Cotter. Defendants admit that Judy Codding had not previously served on the board of directors of a public company. Defendants deny the allegations of paragraph 11 of the Complaint in all other respects.

12. Defendants admit that Timothy Storey retired from the RDI Board. Defendants admit that Edward Kane, Guy Adams, and Douglas McEachern were members of RDI's nominating committee. Defendants admit that RDI's Annual Stockholder Meeting was scheduled for November 10, 2015. Defendants admit that Michael Wrotniak had not previously served on the board of directors of a public company. Defendants admit that Michael Wrotniak's wife is a friend of Margaret Cotter. Defendants deny the allegations of paragraph 12 of the Complaint in all other respects.

///

13. Defendants deny the allegations of paragraph 13 of the Complaint.

14. Defendants admit that Ellen Cotter was appointed interim CEO after Plaintiff was terminated. Defendants admit that Ellen Cotter selected Korn Ferry to be the outside search firm the Company would use to search for a permanent CEO. Defendants admit that Ellen Cotter, Margaret Cotter, Douglas McEachern, and William Gould were members of the CEO search committee ("Search Committee"). Defendants admit that members of the Search Committee and others provided input to Korn Ferry, which prepared a position specification. Defendants admit that, prior to initial interviews of candidates, Ellen Cotter announced that she would be a candidate for President and CEO and resigned from the Search Committee. Defendants admit that Margaret Cotter remained on the Search Committee. Defendants admit that Korn Ferry was instructed to cease its services. Defendants admit that after interviewing six external candidates and Ellen Cotter, the Search Committee recommended to the RDI Board that Ellen Cotter be appointed CEO. Defendants admit that the RDI Board appointed Ellen Cotter as CEO. Defendants deny the allegations of paragraph 14 of the Complaint in all other respects.

15. Defendants admit that Margaret Cotter became Executive Vice President-Real Estate Management and Development-NYC on or about March 10, 2016. Defendants admit that Margaret Cotter is responsible for the development of RDI's properties in New York City. Defendants admit that the RDI Board approved a compensation package for Margaret Cotter that includes a base salary of $350,000, a target bonus of $105,000 (30% of her base salary), and a long-term incentive of a stock option for 19,921 shares of Class A common stock and 4,184 restricted stock units under the Company's 2010 Stock Incentive Plan, as amended, which long term incentives vest over a four year period. Defendants admit that, in or about March 2016, the Compensation Committee, consisting of Guy Adams, Edward Kane, and Judy Codding, and the Audit Committee, comprised of Edward Kane, Douglas McEachern, and Michael Wrotniak, approved an additional consulting fee compensation of $200,000 to Margaret Cotter. Defendants admit that the RDI Board of Directors approved payment of $50,000 to Guy Adams for extraordinary services provided to the Company and devotion of time in providing such services. Defendants deny the allegations of paragraph 15 of the Complaint in all other respects.

16. Defendants admit that on or about May 31, 2016, the Company received an unsolicited, non-binding indication of interest in purchasing all of the outstanding stock of RDI at a price of $17 per share from third parties unrelated to the Cotters. Defendants admit that they did not engage a financial advisor with respect to the non-binding indication of interest. Defendants admit that RDI's management presented a conservative valuation of the Company at a value greater than the value suggested by the non-binding indication of interest. Defendants admit that they agreed the $17 per share price indicated in the non-binding indication of interest was inadequate. Defendants deny the allegations of paragraph 16 of the Complaint in all other respects.

RESPONSE TO "PARTIES"

17. Defendants admit that, at all times relevant hereto, James Cotter, Jr. was a stockholder of RDI. Defendants admit that James Cotter, Jr. has been a director of RDI. Defendants admit that James Cotter, Jr. was appointed Vice Chairman of RDI's Board of Directors, then later President of RDI. Defendants admit that James Cotter, Jr. was appointed CEO by RDI's Board of Directors after James Cotter, Sr. resigned from that position. Defendants admit that James Cotter, Jr. is the son of the late James Cotter, Sr. and the brother of Ellen Cotter and Margaret Cotter. Defendants admit that the James J. Cotter Living Trust became irrevocable upon the passing of James Cotter, Sr. in September 2014. Defendants deny the allegations of paragraph 17 of the Complaint in all other respects.

18. Defendants admit that Margaret Cotter is engaged in trust and estate litigation against James Cotter, Jr. Defendants admit that Margaret Cotter is a director of RDI. Defendants admit that Margaret Cotter was the owner and President of OBI, LLC, a company that provided theater management services to live theaters indirectly owned by RDI through Liberty Theatres, LLC, of which Margaret Cotter is President. Defendants admit that Margaret Cotter wanted to become an employee of RDI. Defendants admit that Margaret Cotter was involved in development of real estate in New York owned directly or indirectly by RDI. Defendants admit that Margaret Cotter wanted to be, and now is, responsible for the development of RDI's real estate in New York City. Defendants admit that Margaret Cotter was appointed Executive Vice President-Real Estate

Management and Development-NYC on or about March 10, 2016. Defendants deny the allegations of paragraph 18 of the Complaint in all other respects.

19. Defendants admit that Ellen Cotter is and at all times relevant hereto was a director of RDI. Defendants admit that Ellen Cotter is engaged in trust and estate litigation against James Cotter, Jr. Defendants admit that Ellen Cotter served as the Chief Operating Officer of RDI's domestic cinema operations. Defendants admit that Ellen Cotter was appointed interim CEO on or about June 12, 2015 and was appointed CEO in January 2016. Defendants deny the allegations of paragraph 19 of the Complaint in all other respects.

20. Defendants admit that Edward Kane is an outside director of RDI. Defendants admit that Edward Kane has been a director of RDI since approximately October 15, 2009. Defendants admit that Edward Kane was a friend of James Cotter, Sr. Defendants deny the allegations of paragraph 20 of the Complaint in all other respects.

21. Defendants admit that Guy Adams is an outside director of RDI. Defendants admit that Guy Adams became a director of RDI in January 2014. Defendants admit that Guy Adams was granted stock options in or about January 2016. Defendants admit that, in or about March 2016, Guy Adams was paid $50,000 for extraordinary services provided to the Company and devotion in time in providing such services. Defendants admit that Guy Adams was a member of RDI's Compensation Committee until he resigned in or about May 2016. Defendants deny the allegations of paragraph 21 of the Complaint in all other respects.

22. Defendants admit that Douglas McEachern is an outside director of RDI. Defendants admit that Douglas McEachern became a director of RDI in May 2012. Defendants deny the allegations of paragraph 22 of the Complaint in all other respects.

23. Defendants admit that William Gould is an outside director of RDI. Defendants admit that William Gould became a director of RDI in October 2004. Defendants deny the allegations of paragraph 23 of the Complaint in all other respects.

24. Defendants admit that Judy Codding is an outside director of RDI. Defendants admit that Judy Codding became a director on October 5, 2015. Defendants admit that Judy Codding had not previously served as a director of a public company. Defendants admit that Mary

Cotter knows Ms. Codding. Defendants admit that Judy Codding voted to appoint Ellen Cotter as CEO and Margaret Cotter as Executive Vice President-Real Estate Management and Development-NYC. Defendants deny the allegations of paragraph 24 of the Complaint in all other respects.

25. Defendants admit that Michael Wrotniak is an outside director of RDI. Defendants admit that Michael Wrotniak became a director of RDI on October 12, 2015. Defendants admit that Michael Wrotniak had not previously served as a director of a public company. Defendants admit that Michael Wrotniak is not an expert in real estate development or cinemas. Defendants admit that Michael Wrotniak voted to appoint Ellen Cotter as CEO and Margaret Cotter as Executive Vice President-Real Estate Management and Development-NYC. Defendants deny the allegations of paragraph 25 of the Complaint in all other respects.

26. Defendants admit that RDI is a Nevada corporation. Defendants admit that RDI has two classes of stock—Class A stock and Class B stock. The other allegations of paragraph 26 of the Complaint are purportedly based on written documents, which speak for themselves. Defendants deny the remaining allegations of paragraph 26 of the Complaint.

27. Defendants deny the allegations of paragraph 27 of the Complaint.

RESPONSE TO "ALLEGATIONS COMMON TO ALL CLAIMS"

28. Defendants admit that, since approximately 2000 and until he resigned as Chairman and CEO of RDI, James J. Cotter, Sr. was the CEO and Chairman of the Board of Directors of RDI. Defendants deny the allegations of paragraph 28 of the Complaint in all other respects.

29. Defendants deny the allegations of paragraph 29 of the Complaint.

30. Defendants deny the allegations of paragraph 30 of the Complaint.

31. Defendants admit that James Cotter, Jr. was appointed Vice Chairman of the RDI Board in 2007. Defendants admit that the RDI Board appointed James Cotter, Jr. President of RDI on or about June 1, 2013. Defendants deny the allegations of paragraph 31 of the Complaint in all other respects.

32. Defendants admit that James J. Cotter, Sr. passed away in September 2014. Defendants admit that Ellen Cotter and Margaret Cotter are in litigation with James Cotter, Jr. Defendants deny the allegations of paragraph 32 of the Complaint in all other respects.

33. Defendants admit that, as President and CEO of RDI, James Cotter, Jr. worked to push his sisters out of RDI. Defendants deny the allegations of paragraph 33 of the Complaint in all other respects.

34. Defendants deny the allegations of paragraph 34 of the Complaint.

35. Defendants deny the allegations of paragraph 35 of the Complaint.

36. Defendants deny the allegations of paragraph 36 of the Complaint.

37. Defendants admit that Ellen Cotter sought an employment agreement. Defendants admit that Ellen Cotter believed that James Cotter, Jr. would try to fire her without cause. Defendants deny the allegations of paragraph 37 of the Complaint in all other respects.

38. Defendants admit that Margaret Cotter and Ellen Cotter have called Edward Kane "Uncle Ed." To the extent that the allegations of paragraph 38 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 38 of the Complaint in all other respects.

39. Defendants admit that, in October 2014, RDI reimbursed Ellen Cotter $50,000 for income taxes she incurred as a result of her exercise of stock options as further detailed in RDI's public filings. Defendants deny the allegations of paragraph 39 of the Complaint in all other respects.

40. Defendants admit that, on or about November 2014, RDI's Board of Directors approved an increase in compensation for each nonemployee director. Defendants deny the allegations of paragraph 40 of the Complaint in all other respects.

41. Defendants admit that, in 2014, Ellen Cotter proposed that Ellen Cotter and Margaret Cotter report to an executive committee, rather than Plaintiff. Defendants deny the allegations of paragraph 41 of the Complaint in all other respects.

42. Defendants admit that, on or about January 15, 2015, RDI's Board of Directors approved purchase of a directors and officers insurance policy. Defendants deny the allegations of paragraph 42 of the Complaint in all other respects.

43. Defendants admit that the quoted resolution was approved. Defendants deny the allegations of paragraph 43 of the Complaint in all other respects.

44. Defendants deny that Plaintiff's work as CEO was recognized as successful by the stock market. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 44 of the Complaint, and therefore deny them.

45. To the extent that the allegations of paragraph 45 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45 of the Complaint, and therefore deny them.

46. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 46 of the Complaint, and therefore deny them.

47. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 47 of the Complaint, and therefore deny them.

48. Defendants deny the allegations of paragraph 48 of the Complaint.

49. Defendants deny the allegations of paragraph 49 of the Complaint.

50. Defendants admit that Timothy Storey was appointed to function as ombudsman to work with James Cotter, Jr. Defendants deny the allegations of paragraph 50 of the Complaint in all other respects.

51. Defendants deny the allegations of paragraph 51 of the Complaint.

52. Defendants deny the allegations of paragraph 52 of the Complaint.

53. Defendants admit that Margaret Cotter asked for an employment agreement with RDI. To the extent that the allegations of paragraph 53 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 53 of the Complaint in all other respects.

54. Defendants admit that the non-Cotter directors sought additional compensation for time expended on RDI matters. Defendants deny the allegations of paragraph 54 of the Complaint in all other respects.

55. Defendants admit that director Timothy Storey resides in New Zealand and that he took trips to Los Angeles on RDI business. Defendants deny the allegations of paragraph 55 of the Complaint in all other respects.

56. Defendants deny the allegations of paragraph 56 of the Complaint.

57. The allegations of paragraph 57 of the Complaint are purportedly based on written documents, which speak for themselves. Defendants deny the remaining allegations of paragraph 57 of the Complaint.

58. Defendants admit that the Stomp Producers gave notice of termination of Stomp's lease at the Orpheum Theatre on or about April 23, 2015. Defendants deny the allegations of paragraph 58 of the Complaint in all other respects.

59. To the extent that the allegations of paragraph 59 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 59 of the Complaint in all other respects.

60. Defendants deny the allegations of paragraph 60 of the Complaint.

61. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 61 of the Complaint, and therefore deny them.

62. Defendants deny the allegations of paragraph 62 of the Complaint.

63. Defendants deny the allegations of paragraph 63 of the Complaint.

64. Defendants admit that Guy Adams has testified: "I took a sabbatical, basically." To the extent that the allegations of paragraph 64 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 64 of the Complaint in all other respects.

65. Defendants deny the allegations of paragraph 65 of the Complaint.

66. Defendants admit that Guy Adams has been paid and is paid $1,000 per week from the Cotter Family Farms. Defendants admit that Guy Adams received carried interests in certain

real estate projects, including in Shadow View. Defendants deny the allegations of paragraph 66 of the Complaint in all other respects.

67. To the extent that the allegations of paragraph 67 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 67 of the Complaint in all other respects.

68. Defendants deny the allegations of paragraph 68 of the Complaint.

69. Defendants deny the allegations of paragraph 69 of the Complaint.

70. Defendants admit that on March 26, 2015, Guy Adams sold all RDI options he then had. To the extent that the allegations of paragraph 70 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 70 of the Complaint in all other respects.

71. Defendants admit that Guy Adams resigned from the Compensation Committee on or about May 14, 2016. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 71, and therefore deny them.

72. Defendants admit that Ellen Cotter distributed an agenda for the May 21, 2015 RDI Board meeting on or about May 19, 2015, and that the first action item on the agenda was entitled "Status of President and CEO." Defendants deny the allegations of paragraph 72 of the Complaint in all other respects.

73. Defendants deny the allegations of paragraph 73 of the Complaint.

74. Defendants admit there was a request that the non-Cotter directors meet before the RDI Board meeting on May 21, 2015. Defendants deny the allegations of paragraph 74 of the Complaint in all other respects.

75. Defendants admit that Akin Gump attended the RDI Board meeting on May 21, 2015 at the request of Chairperson Ellen Cotter. Defendants deny the allegations of paragraph 75 of the Complaint in all other respects.

76. Defendants deny the allegations of paragraph 76 of the Complaint.

77. Defendants admit that the RDI Board did not vote on the termination of Plaintiff at the RDI Board meeting on May 21, 2015. Defendants deny the allegations of paragraph 77 of the Complaint in all other respects.

78. Defendants admit that Harry Susman transmitted a settlement offer to Adam Streisand. Defendants deny the allegations of paragraph 78 of the Complaint in all other respects.

79. To the extent that the allegations of paragraph 79 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 79 of the Complaint in all other respects.

80. Defendants deny the allegations of paragraph 80 of the Complaint.

81. The allegations of paragraph 81 of the Complaint are purportedly based on written documents, which speak for themselves. Defendants deny the remaining allegations of paragraph 81 of the Complaint.

82. Defendants deny the allegations of paragraph 82 of the Complaint.

83. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 83 of the Complaint, and therefore deny them.

84. Defendants admit that Plaintiff was present at the RDI Board meeting on May 29, 2015. Defendants admit that Guy Adams made a motion to remove Plaintiff from his position as President and CEO of RDI. Defendants admit that Plaintiff questioned the independence of Guy Adams. Defendants deny the allegations of paragraph 84 of the Complaint in all other respects.

85. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 85 of the Complaint, and therefore deny them.

86. Defendants deny the allegations of paragraph 86 of the Complaint.

87. Defendants admit that James Cotter, Jr. was advised that the RDI Board meeting would be adjourned until about 6:00 p.m. that evening. Defendants deny the allegations of paragraph 87 of the Complaint in all other respects.

88. Defendants admit that the RDI Board meeting reconvened at approximately 6:00 p.m. Defendants admit that Ellen Cotter reported that she, Margaret Cotter, and Plaintiff had reached an "agreement-in-principle." Defendants admit that Ellen Cotter read some of the

"agreement-in-principle" to the RDI Board. Defendants admit that the RDI Board did not vote on the termination of Plaintiff at the RDI Board meeting on May 29, 2015. Defendants admit that the RDI Board meeting was adjourned. Defendants deny the allegations of paragraph 88 of the Complaint in all other respects.

89. Defendants admit that on or about June 3, 2015, Harry Susman transmitted a document to counsel for James Cotter, Jr., Adam Streisand. Defendants deny the allegations of paragraph 89 of the Complaint in all other respects.

90. Defendants deny the allegations of paragraph 90 of the Complaint.

91. Defendants deny the allegations of paragraph 91 of the Complaint.

92. To the extent that the allegations of paragraph 92 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 92 of the Complaint in all other respects.

93. To the extent that the allegations of paragraph 93 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the remaining allegations of paragraph 93 of the Complaint.

94. Defendants admit an RDI Board meeting was held on June 12, 2015. Defendants admit that Guy Adams, Edward Kane, and Douglas McEachern voted to terminate Plaintiff. Defendants admit that Timothy Storey and William Gould voted against terminating Plaintiff. Defendants admit that Ellen Cotter was elected interim CEO. Defendants deny the allegations of paragraph 94 of the Complaint in all other respects.

95. Defendants admit that no candidate was offered the position of Director of Real Estate. Defendants admit that the Company decided to put the search for a Director of Real Estate on hold. Defendants deny the allegations of paragraph 95 of the Complaint in all other respects.

96. Defendants deny the allegations of paragraph 96 of the Complaint.

97. Defendants deny the allegations of paragraph 97 of the Complaint.

98. Defendants deny the allegations of paragraph 98 of the Complaint.

99. Defendants deny the allegations of paragraph 99 of the Complaint.

100. Defendants deny the allegations of paragraph 100 of the Complaint.

101. To the extent that the allegations of paragraph 101 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 101 of the Complaint in all other respects.

102. Defendants admit that at least forty one percent (41%) of RDI's Class B voting stock is held in the name of the James J. Cotter Living Trust. Defendants admit that the James J. Cotter Living Trust became irrevocable upon James J. Cotter, Sr.'s death in September 2014. Defendants admit that who has authority to vote the RDI Class B voting stock held in the name of the James J. Cotter Living Trust is a subject of dispute in the California trust and estate litigation between Ellen Cotter and Margaret Cotter, on one hand, and Plaintiff, on the other hand. The allegations of paragraph 102 of the Complaint related to Section 15620 of the California Probate Code constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 102 of the Complaint related to Section 15620 of the California Probate Code are denied. Defendants deny the allegations of paragraph 102 of the Complaint in all other respects.

103. Defendants deny the allegations of paragraph 103 of the Complaint.

104. Defendants admit that in April 2015, Ellen Cotter and Margaret Cotter exercised options to acquire 50,000 and 35,100 shares of RDI Class B stock, respectively. Defendants admit that in September 2015, Ellen Cotter and Margaret Cotter, acting in the capacities as the Co-Executors of the Cotter Estate, exercised on behalf of the Cotter Estate an option held by the Cotter Estate to acquire 100,000 shares of RDI Class B voting stock. Defendants admit that Class A shares were used to pay for the exercise of the Cotter Estate's option. Defendants deny the allegations of paragraph 104 of the Complaint in all other respects.

105. Defendants deny the allegations of paragraph 105 of the Complaint.

106. Defendants deny the allegations of paragraph 106 of the Complaint.

107. Defendants admit that Edward Kane is and Guy Adams was a member of the Compensation Committee. Defendants admit that the Compensation Committee authorized the use of Class A shares to pay for the exercise the Cotter Estate's option to acquire 100,000 shares of Class B stock. Defendants admit that Edward Kane and Guy Adams have acknowledged

receiving advice from legal counsel, including in-house counsel Craig Tompkins, regarding Compensation Committee decision-making. Defendants admit that Timothy Storey was a member of the Compensation Committee. Defendants admit that Timothy Storey did not attend a meeting of the Compensation Committee. Defendants deny the allegations of paragraph 107 of the Complaint in all other respects.

108. Defendants deny the allegations of paragraph 108 of the Complaint.

109. To the extent that the allegations of paragraph 109 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the remaining allegations of paragraph 109 of the Complaint.

110. Defendants admit that in December 2014, the District Court of Clark County, Nevada, appointed Ellen Cotter and Margaret Cotter as co-executors of the Cotter Estate. Defendants deny the allegations of paragraph 110 of the Complaint in all other respects.

111. To the extent that the allegations of paragraph 111 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the remaining allegations of paragraph 111 of the Complaint.

112. Defendants admit that in April 2015, Ellen Cotter exercised an option to acquire 50,000 shares of RDI Class B stock. Defendants admit that Class A shares were used to pay for the exercise. To the extent that the allegations of paragraph 112 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 112 of the Complaint in all other respects.

113. Defendants admit that in April 2015, Margaret Cotter exercised options to acquire 35,100 shares of RDI Class B stock. Defendants admit that Class A shares were used to pay for the exercise. To the extent that the allegations of paragraph 113 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 113 of the Complaint in all other respects.

114. Defendants deny the allegations of paragraph 114 of the Complaint.

115. To the extent that the allegations of paragraph 115 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 115 of the Complaint in all other respects.

116. To the extent that the allegations of paragraph 116 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the remaining allegations of paragraph 116 of the Complaint.

117. To the extent that the allegations of paragraph 117 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the remaining allegations of paragraph 117 of the Complaint.

118. Defendants deny the allegations of paragraph 118 of the Complaint.

119. Defendants deny the allegations of paragraph 119 of the Complaint.

120. Defendants deny the allegations of paragraph 120 of the Complaint.

121. Defendants deny the allegations of paragraph 121 of the Complaint.

122. Defendants admit that a candidate for RDI's Board withdrew from consideration. Defendants admit that Ellen Cotter also knows the candidate's wife and child. Defendants admit that the candidate had done business with RDI and that Ellen Cotter had known the candidate for years. To the extent that the allegations of paragraph 122 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 122 of the Complaint in all other respects.

123. Defendants admit that Ellen Cotter proposed Judy Codding as a candidate for RDI's Board of Directors. Defendants admit that Judy Codding had not previously served as a director of a public company. Defendants deny the allegations of paragraph 123 of the Complaint in all other respects.

124. Defendants admit that Mary Cotter knows Judy Codding. Defendants admit that Mary Cotter is the mother of Plaintiff, Ellen Cotter, and Margaret Cotter. Defendants deny the allegations of paragraph 124 of the Complaint in all other respects.

125. Defendants admit that, with the exception of James Cotter, Jr. and Timothy Storey, RDI's directors voted to add Ms. Codding to RDI's Board of Directors on October 5, 2015. Defendants deny the allegations of paragraph 125 of the Complaint in all other respects.

126. Defendants admit that Edward Kane, Guy Adams, Douglas McEachern, and William Gould had not personally performed a background check regarding Judy Codding. Defendants admit that Edward Kane, Guy Adams, and Douglas McEachern were initially not aware of the alleged violations by Judy Codding's employer. Defendants admit that Ellen Cotter was generally aware of certain of the alleged violations by Judy Codding's employer. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 126 of the Complaint related to one of RDI's shareholder representatives, and therefore deny them. Defendants deny the allegations of paragraph 126 of the Complaint in all other respects.

127. Defendants deny the allegations of paragraph 127 of the Complaint.

128. Defendants deny the allegations of paragraph 128 of the Complaint.

129. Defendants deny the allegations of paragraph 129 of the Complaint.

130. Defendants deny the allegations of paragraph 130 of the Complaint.

131. Defendants admit that RDI's Board of Directors voted to elect Michael Wrotniak to fill the vacancy on the Board of Directors. Defendants deny the allegations of paragraph 131 of the Complaint in all other respects.

132. Defendants admit that Michael Wrotniak is not an expert in cinema operations and real estate development. Defendants admit that Michael Wrotniak had not previously been a director of a public company. Defendants admit that Michael Wrotniak's wife is a friend of Margaret Cotter. Defendants deny the allegations of paragraph 132 of the Complaint in all other respects.

133. Defendants admit that the Special Nominating Committee voted to nominate Michael Wrotniak to the RDI Board for nomination. Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 133 of the Complaint, and therefore deny them.

134. Defendants deny the allegations of paragraph 134 of the Complaint.

135. To the extent that the allegations of paragraph 135 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 135 of the Complaint in all other respects.

136. To the extent that the allegations of paragraph 136 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 136 of the Complaint in all other respects.

137. Defendants admit that the selection of the search firm was delegated by the RDI Board to Ellen Cotter. Defendants admit that the Search Committee consisted of William Gould, Douglas McEachern, Margaret Cotter, and Ellen Cotter. Defendants admit that Ellen Cotter functioned as the chair of the Search Committee until she resigned from the Search Committee. Defendants deny the allegations of paragraph 137 of the Complaint in all other respects.

138. Defendants admit that on August 4, 2015, Ellen Cotter advised that the Company had retained Korn Ferry to assist the Company in the CEO search. Defendants deny the allegations of paragraph 138 of the Complaint in all other respects.

139. Defendants admit that Korn Ferry interviewed each of the members of the Search Committee. Defendants admit that Korn Ferry spoke with Craig Tompkins. Defendants admit that Korn Ferry created a "position specification." To the extent that the allegations of paragraph 139 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 139 of the Complaint in all other respects.

140. Defendants admit that an initial set of interviews of candidates was set to occur on November 13, 2015. Defendants admit that before the interviews commenced, Ellen Cotter informed the Search Committee that she wanted to be a candidate and resigned from the Search Committee. Defendants deny the allegations of paragraph 140 of the Complaint in all other respects.

141. Defendants admit that when Ellen Cotter informed the Search Committee that she wanted to be a candidate, the other Search Committee members did not discuss whether Margaret

Cotter should continue to serve on the Search Committee. Defendants admit that the Search Committee did not seek the advice of counsel in connection with Ellen Cotter's announcement. Defendants deny the allegations of paragraph 141 of the Complaint in all other respects.

142. Defendants deny the allegations of paragraph 142 of the Complaint.

143. Defendants admit that in November and December, the Search Committee interviewed several candidates, including Ellen Cotter. Defendants admit that after the candidates were interviewed, the Search Committee reached a consensus that Ellen Cotter would likely be the Search Committee's recommended candidate. Defendants deny the allegations of paragraph 143 of the Complaint in all other respects.

144. Defendants admit that the Search Committee held a meeting on December 29, 2015. Defendants admit that after discussion, the Search Committee resolved to recommend to the RDI Board Ellen Cotter as CEO and President. Defendants admit that Craig Tompkins was directed to prepare a draft report of the Search Committee's actions and determinations for review and approval by the Search Committee and submission to the RDI Board. To the extent that the allegations of paragraph 144 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the allegations of paragraph 144 of the Complaint in all other respects.

145. Defendants admit the allegations of paragraph 145 of the Complaint.

146. Defendants admit that William Gould reviewed with the RDI Board the Search Committee's recommendation that the RDI Board appoint Ellen Cotter as President and CEO. Defendants admit that seven of the nine RDI directors voted to appoint Ellen Cotter as President and CEO. Defendants admit that Plaintiff voted against the motion and Ellen Cotter did not participate. Defendants deny the allegations of paragraph 146 of the Complaint in all other respects.

147. To the extent that the allegations of paragraph 147 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the remaining allegations of paragraph 147 of the Complaint.

148. Defendants deny the allegations of paragraph 148 of the Complaint.

149. Defendants admit that on March 10, 2016, the RDI Board appointed Margaret Cotter as Executive Vice President-Real Estate Management and Development-NYC. Defendants admit that Margaret Cotter is responsible for the development of RDI's properties in New York City. Defendants deny the allegations of paragraph 149 of the Complaint in all other respects.

150. Defendants admit that Margaret Cotter was awarded a compensation package that included a base salary of $350,000, and a short term incentive target bonus opportunity of $105,000 (30% of her base salary). Defendants admit that Margaret Cotter was granted a long term incentive of a stock option for 19,921 shares of Class A common stock and 4,184 restricted stock units under the Company's 2010 Stock Incentive Plan, as amended, which long term incentives vest over a four year period. Defendants deny the allegations of paragraph 150 of the Complaint in all other respects.

151. Defendants admit that the Compensation Committee, comprised of Edward Kane, Judy Codding, and Guy Adams, and the Audit and Conflicts Committee, comprised of Douglas McEachern, Edward Kane, and Michael Wrotniak, each approved an additional one-time payment to Margaret Cotter totaling $200,000 for services rendered by her to the Company in recent years outside of the scope of the Theater Management Agreement, including, but not limited to: (i) predevelopment work on the Company's Union Square and Cinemas 1,2 & 3 properties, (ii) management of the New York properties, and (iii) management of Union Square tenant matters. Defendants deny the remaining allegations of paragraph 151 of the Complaint in all other respects.

152. Defendants admit that the Compensation Committee evaluated the Company's compensation policy for executive officers and outside directors and established a plan that encompasses sound corporate practices consistent with the best interests of the Company. Defendants deny the allegations of paragraph 152 of the Complaint in all other respects.

153. Defendants admit that the RDI Board adopted a resolution providing that Guy Adams be compensated $50,000 in recognition of extraordinary services to the Board of Directors. Defendants deny the allegations of paragraph 153 of the Complaint in all other respects.

154. To the extent that the allegations of paragraph 154 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants admit that the price

proposed in the non-binding indication of interest was approximately 34% and 33% greater than the prices at which RDI's Class A and Class B stock opened on May 31, 2016. Defendants deny the allegations of paragraph 154 of the Complaint in all other respects.

155. To the extent that the allegations of paragraph 155 of the Complaint are purportedly based on written documents, the documents speak for themselves. Defendants deny the remaining allegations of paragraph 155 of the Complaint.

156. Defendants admit that two days after Ellen Cotter received the unsolicited letter, the RDI Board discussed the non-binding indication of interest at a duly noticed regular meeting of the Board held on June 2, 2016. Defendants admit that copies of the unsolicited letter were distributed to the RDI Board prior to the RDI Board meeting. Defendants deny the allegations of paragraph 156 of the Complaint in all other respects.

157. Defendants admit that on June 23, 2016, a duly noticed telephonic meeting of the RDI Board was held for the sole purpose of discussing the unsolicited letter. Defendants admit that Ellen Cotter presented management's view that $17 per share was an inadequate price for the Company. Defendants admit that Ellen Cotter advised that adding together the existing value of the Company's cinemas and the appraised value of the Company's real estate, and subtracting RDI's debt, suggested an net asset value greater than the total equity value indicated in the unsolicited letter. Defendants admit that Ellen Cotter concluded that, in management's view, the interests of the Company and its stockholders would best be served by continuing with the implementation of the Company's business plan and long-term strategic objectives. Defendants admit that, with the exception of Plaintiff, who abstained, each of the other eight directors voted in favor of a resolution that stated that the value proposed for the Company in the indication of interest was inadequate. Defendants deny the allegations of paragraph 157 of the Complaint in all other respects.

158. Defendants deny the allegations of paragraph 158 of the Complaint.

159. Defendants admit that they did not consult with outside independent financial advisors in connection with the non-binding indication of interest. Defendants deny the allegations of paragraph 159 of the Complaint in all other respects.

160. Defendants deny the allegations of paragraph 160 of the Complaint.

161. Defendants admit that Ellen Cotter and Margaret Cotter did not consult with outside independent financial advisors in connection with the non-binding indication of interest. Defendants deny the allegations of paragraph 161 of the Complaint in all other respects.

162. Defendants deny the allegations of paragraph 162 of the Complaint.

163. Defendants deny the allegations of paragraph 163 of the Complaint.

164. Defendants deny the allegations of paragraph 164 of the Complaint.

165. Defendants deny the allegations of paragraph 165 of the Complaint.

166. To the extent the allegations of paragraph 166 of the Complaint constitute conclusions of law, no responsive pleading is required. To the extent a response is deemed required, such allegations of paragraph 166 of the Complaint are denied. Defendants deny the allegations of paragraph 166 of the Complaint in all other respects.

167. To the extent the allegations of paragraph 167 of the Complaint constitute conclusions of law, no responsive pleading is required. To the extent a response is deemed required, such allegations of paragraph 167 of the Complaint are denied. Defendants deny the allegations of paragraph 167 of the Complaint in all other respects.

168. Defendants deny the allegations of paragraph 168 of the Complaint.

169. Defendants deny the allegations of paragraph 169 of the Complaint.

170. Defendants deny the allegations of paragraph 170 of the Complaint.

171. Defendants deny the allegations of paragraph 171 of the Complaint.

172. Defendants deny the allegations of paragraph 172 of the Complaint.

RESPONSE TO "FIRST CAUSE OF ACTION

(For Breach of Fiduciary Duty – Against All Defendants)"

173. Defendants reassert and incorporate their responses to paragraphs 1 through 172 of the Complaint.

174. Defendants admit that they are directors of RDI. To the extent the allegations of paragraph 174 of the Complaint constitute conclusions of law, no responsive pleading is required.

To the extent a response is deemed required, the allegations of paragraph 174 of the Complaint are denied. Defendants deny the allegations of paragraph 174 of the Complaint in all other respects.

175. The allegations of paragraph 175 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 175 of the Complaint are denied. Defendants deny the allegations of paragraph 175 of the Complaint in all other respects.

176. The allegations of paragraph 176 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 176 of the Complaint are denied. Defendants deny the allegations of paragraph 176 of the Complaint in all other respects.

177. Defendants deny the allegations of paragraph 177 of the Complaint.

178. Defendants deny the allegations of paragraph 178 of the Complaint.

179. Defendants deny that Plaintiff, RDI, or its stockholders have suffered any damages by virtue of Defendants' conduct.

RESPONSE TO "SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty – Against All Defendants)"

180. Defendants reassert and incorporate their responses to paragraphs 1 through 179 of the Complaint.

181. Defendants admit that they are directors of RDI. To the extent the allegations of paragraph 181 of the Complaint constitute conclusions of law, no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 181 of the Complaint are denied. Defendants deny the allegations of paragraph 181 of the Complaint in all other respects.

182. The allegations of paragraph 182 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 182 of the Complaint are denied. Defendants deny the allegations of paragraph 182 of the Complaint in all other respects.

183. Defendants deny the allegations of paragraph 183 of the Complaint.

184. Defendants deny the allegations of paragraph 184 of the Complaint.

185. Defendants deny the allegations of paragraph 185 of the Complaint.

186. Defendants deny the allegations of paragraph 186 of the Complaint.

RESPONSE TO "THIRD CAUSE OF ACTION

(Breach of Fiduciary Duty – Against All Defendants)"

187. Defendants reassert and incorporate their responses to paragraphs 1 through 186 of the Complaint.

188. Defendants admit that they are directors of RDI. To the extent the allegations of paragraph 188 of the Complaint constitute conclusions of law, no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 188 of the Complaint are denied. Defendants deny the allegations of paragraph 188 of the Complaint in all other respects.

189. The allegations of paragraph 189 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 189 of the Complaint are denied. Defendants deny the allegations of paragraph 189 of the Complaint in all other respects.

190. Defendants deny the allegations of paragraph 190 of the Complaint.

191. Defendants deny the allegations of paragraph 191 of the Complaint.

192. Defendants deny the allegations of paragraph 192 of the Complaint.

RESPONSE TO "FOURTH CAUSE OF ACTION

(Aiding and Abetting Breach of Fiduciary Duty – Against MC and EC)"

193. Defendants reassert and incorporate their responses to paragraphs 1 through 192 of the Complaint.

194. Defendants deny the allegations of paragraph 194 of the Complaint.

195. Defendants deny the allegations of paragraph 195 of the Complaint.

196. Defendants deny the allegations of paragraph 196 of the Complaint.

197. Defendants deny the allegations of paragraph 197 of the Complaint.

198. To the extent the allegations of paragraph 198 of the Complaint constitute conclusions of law, no responsive pleading is required. To the extent a response is deemed

required, the allegations of paragraph 198 of the Complaint are denied. Defendants deny the allegations of paragraph 198 of the Complaint in all other respects.

199. Defendants deny the allegations of paragraph 199 of the Complaint.

200. Defendants deny the allegations of paragraph 200 of the Complaint.

RESPONSE TO "IRREPARABLE HARM"

201. Defendants deny the allegations of paragraph 201 of the Complaint.

202. Defendants deny the allegations of paragraph 202 of the Complaint.

RESPONSE TO "PRAYER FOR RELIEF"

203. Responding to the unnumbered WHEREFORE paragraph following paragraph 202 of the Complaint, Defendants admit that Plaintiff demands and prays for judgment as set forth therein, but deny that Defendants caused or contributed to Plaintiff's or RDI's alleged injuries and further deny that Defendants are liable for damages or any other relief sought in the Complaint.

AFFIRMATIVE DEFENSES

204. Subject to the responses above, Defendants allege and assert the following defenses in response to the allegations, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the affirmative defenses described below, subject to their responses above, Defendants specifically reserve all rights to allege additional affirmative defenses that become known through the course of discovery.

FIRST DEFENSE – FAILURE TO STATE A CAUSE OF ACTION

205. The Complaint, and each purported cause of action therein, is barred, in whole or in part, for failure to state a cause of action against Defendants under any legal theory.

SECOND DEFENSE – STATUTES OF LIMITATIONS AND REPOSE

206. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the applicable statutes of limitations and/or statutes of repose.

THIRD DEFENSE – LACHES

207. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the doctrine of laches, in that Plaintiff waited an unreasonable period of time to file this action and this prejudicial delay has worked to the detriment of Defendants.

FOURTH DEFENSE – UNCLEAN HANDS

208. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the doctrine of unclean hands.

FIFTH DEFENSE – SPOLIATION

209. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by Plaintiff's spoliation of evidence and obstruction of justice.

SIXTH DEFENSE – ILLEGAL CONDUCT AND FRAUD

210. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by Plaintiff's own illegal conduct and/or fraud.

SEVENTH DEFENSE – WAIVER, ESTOPPEL, AND ACQUIESCENCE

211. The Complaint, and each purported cause of action therein, is barred, in whole or in part, by the doctrines of waiver, estoppel, and acquiescence because Plaintiff's acts, conduct, and/or omissions are inconsistent with his requests for relief.

EIGHTH DEFENSE – RATIFICATION AND CONSENT

212. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because any purportedly improper acts by Defendants, if any, were ratified by Plaintiff and his agents, and/or because Plaintiff consented to the same.

NINTH DEFENSE – NO UNLAWFUL ACTIVITY

213. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because, to the extent any of the activities alleged in the Complaint actually occurred, those activities were not unlawful.

TENTH DEFENSE – NO RELIANCE

214. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because Plaintiff did not justifiably rely on any alleged misrepresentation of Defendants.

ELEVENTH DEFENSE – FAILURE TO PLEAD FRAUD WITH PARTICULARITY

215. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because Plaintiff failed to plead the alleged fraud with particularity, including but not limited to identification of the alleged misrepresentations.

TWELFTH DEFENSE – UNCERTAIN AND AMBIGUOUS

216. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because it is uncertain and ambiguous as it relates to Defendants.

THIRTEENTH DEFENSE – PRIVILEGE AND JUSTIFICATION

217. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because the actions complained of, if taken, were at all times reasonable, privileged, and justified.

FOURTEENTH DEFENSE – GOOD FAITH AND LACK OF FAULT

218. The Complaint, and each purported cause of action therein, is barred, in whole or in part, because, at all times material to the Complaint, Defendants acted in good faith and with innocent intent.

FIFTEENTH DEFENSE – NO ENTITLEMENT TO INJUNCTIVE RELIEF

219. Plaintiff is not entitled to injunctive relief because, among other things, he has not suffered irreparable harm, he has an adequate remedy at law, and injunctive relief is not supported by any purported cause of action alleged in the Complaint and is not warranted by the balance of the hardships and/or any other equitable factors.

SIXTEENTH DEFENSE – DAMAGES TOO SPECULATIVE

220. Plaintiff is not entitled to damages of any kind or in any sum or amount whatsoever as a result of Defendants' acts or omissions alleged in the Complaint because any damages sought are speculative, uncertain, and not recoverable.

SEVENTEENTH DEFENSE – NO ENTITLEMENT TO PUNITIVE DAMAGES

221. The Complaint, and each purported cause of action alleged therein, fails to support the recovery of punitive, exemplary, or enhanced damages from Defendants, including because such damages are not recoverable under applicable Nevada statutory and common law

requirements and are barred by the constitutional limitations, including the Due Process Clause of the Fourteenth Amendment and the Eighth Amendment to the United States Constitution.

EIGHTEENTH DEFENSE – MITIGATION OF DAMAGES

222. Plaintiff has failed to properly mitigate the damages, if any, he has sustained, and by virtue thereof, Plaintiff is barred, in whole or in part, from maintaining the causes of action asserted in the Complaint against Defendant.

NINETEENTH DEFENSE – COMPARATIVE FAULT

223. Plaintiff's recovery against Defendants is barred, in whole or in part, based on principles of comparative fault, including Plaintiff's own comparative fault.

TWENTIETH DEFENSE – BUSINESS JUDGMENT RULE

224. The Complaint, and each purported cause of action alleged therein, is barred, in whole or part, by the business judgment rule.

TWENTY-FIRST DEFENSE – EQUITABLE ESTOPPEL

225. The Complaint, and each purported cause of action alleged therein, is barred, in whole or part, by the doctrine of equitable estoppel.

TWENTY-SECOND DEFENSE – ELECTION OF REMEDIES

226. Plaintiff is barred, in whole or in part, from obtaining relief under the Complaint, or any of the causes of action or claims therein, that are based on inconsistent positions and/or remedies, including but not limited to inconsistent and duplicative claims for equitable and legal relief.

TWENTY-THIRD DEFENSE – NEVADA REVISED STATUTE 78.138

227. The Complaint, and each purported cause of action alleged therein, is barred, in whole or part, by Nevada Revised Statute 78.138, which provides that a director or officer is not individually liable to the corporation or its stockholders or creditors for any damages as a result of any act or failure to act in his or her capacity as a director or officer unless it is proven that: (a) the director's or officer's act or failure to act constituted a breach of his or her fiduciary duties as a director or officer; and (b) the breach of those duties involved intentional misconduct, fraud or a knowing violation of law.

TWENTY-FOURTH DEFENSE – FAILURE TO MAKE APPROPRIATE DEMAND

228. The Complaint, and each purported cause of action alleged therein, is barred, in whole or part, for failure to make a demand on RDI's Board of Directors.

TWENTY-FIFTH DEFENSE – CONFLICT OF INTEREST AND UNSUITABILITY TO SERVE AS DERIVATIVE REPRESENTATIVE

229. The Complaint, and each purported cause of action alleged therein, is barred, in whole or part, because Plaintiff has conflicts of interest and is unsuitable to serve as a derivative representative.

WHEREFORE, Defendants request that Plaintiff's Second Amended Complaint be dismissed in its entirety with prejudice, that judgment be entered in favor of Defendants, that Defendants be awarded costs and, to the extent provided by law, attorneys' fees, and any such other relief as the Court may deem proper.

Dated this 28th day of November, 2017.

COHEN|JOHNSON|PARKER|EDWARDS

By /s/ H. Stan Johnson
H. Stan Johnson, Esq.

Christopher Tayback
Marshall M. Searcy
QUINN EMANUEL URQUHART & SULLIVAN, LLP
Attorneys for Defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding, and Michael Wrotniak

CERTIFICATE OF SERVICE

I hereby certify that, on November 28, 2017, I caused a true and correct copy of the foregoing **DEFENDANTS MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

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

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER. JR, Plaintiff, vs. MARGARET COTTER, et al., Defendant.	CASE NO. A-15-719860-B **REQUEST FOR HEARING ON DEFENDANT WILLIAM GOULD'S PREVIOUSLY FILED MOTION FOR SUMMARY JUDGMENT** Assigned to Hon. Elizabeth Gonzalez, Dept. XI
READING INTERNATIONAL, INC., Nominal Defendant.	Trial Date: January 2, 2018

TO ALL PARTIES, COUNSEL, AND THE COURT:

Pursuant to Nevada Rule of Civil Procedure 56, Defendant William Gould, by and through his counsel of record, hereby submits this Request for Hearing Date on his previously-filed Motion for Summary Judgment. In particular, Gould requests that the hearing on the previously-filed Motion for Summary Judgment (filed on September 23, 2016) be set for **December 11, 2017**, when the Court is hearing motions for summary judgment filed by the other defendants in this matter.

This Request is based upon the following Memorandum of Points and Authorities, the accompanying Declaration of Shoshana E. Bannett and exhibits thereto, the previously filed Motion for Summary Judgment and Reply, the pleadings and papers on file, and any oral argument at the time of the hearing on Gould's Motion for Summary Judgment.

December 1, 2017

BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS, LINCENBERG & RHOW, P.C.

By 

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NOTICE OF MOTION

TO: YURKO, SALVESON & REMZ, P.C., Attorneys for Plaintiff:

PLEASE TAKE NOTICE that Gould's Previously-filed Motion for Summary Judgment will be heard the 08 day of January, 2018, at 8:30 AM in Department XI of the above-designated Court, or as soon thereafter as counsel can be heard.

December 1, 2017

BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS, LINCENBERG & RHOW, P.C.

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Attorneys for Defendant William Gould

CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2017, I caused a true and correct copy of the forgoing ***Request for Hearing on Defendant William Gould's Previously Filed Motion for Summary Judgment*** to be served on all interest parties, as registered with the Court's E-Filing and E-Service System:

Kaitlin Ascuaga

An Employee of Maupin, Cox & LeGoy

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant William Gould filed a Motion for Summary Judgment ("Motion") on September 23, 2016. The Court never heard argument on Mr. Gould's Motion and never issued a decision on Mr. Gould's Motion. *See* Ex. 1 at 151:20-152:6 (10.26.16 Hrg. Tr.) . Mr. Gould hereby requests that the Court set a hearing on his Motion on **December 11, 2017**, which is the same day that the motions for summary judgment filed by the other individual defendants will be heard.

Since Mr. Gould's Motion and reply brief were filed last year, the parties have taken additional depositions—including another session of Cotter, Jr.'s deposition. There has also been a change to the statute that governs director conduct in Nevada. Also, and importantly, the parties received final deposition transcripts from depositions taken just days before reply briefs were filed, including from the deposition of the Plaintiff's own expert—where he differentiated Mr. Gould from the other defendants, and testified that Gould was entitled to the protections of the business judgment rule and therefore there should be no further inquiry as to Gould's conduct. Given this additional evidence and change in law, Mr. Gould briefly summarizes below how his Motion is impacted by these events.

II. ARGUMENT

A. Under Nevada Law, The Court Does Not Undertake A Substantive Evaluation Of The Decisions Of An Independent And Disinterested Director.

Nevada recently amended the statute that governs the conduct and liability of individual directors. Among other changes, the law now makes clear that out-of-state authority cannot supplant or modify the plain meaning of the fiduciary duties and liability of directors under Nevada law. Nev. Rev. Stat. § 78.138(2). Moreover, the law specifies that the failure or refusal of a director to conform to the laws or judicial decisions of another jurisdiction does not indicate a breach of fiduciary duty. *Id.*

Under current Nevada law, individual directors are given broad protections when facing breach of fiduciary duty claims. First, directors, "in deciding upon matters of business, are

presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." Nev. Rev. Stat. § 78.138(4)(3). This is known as the business judgment rule presumption. *Wynn Resorts, Ltd v. The Eighth Judicial Dist. Ct. in and for Cty of Clark,* 399 P.3d 334, 341-42 (2017). As a threshold matter, a plaintiff cannot hold an individual director liable for damages unless he first rebuts the business judgment rule presumption. Nev. Rev. Stat. § 78.138(4)(7). In particular, the way that "the business judgment rule presumption operates" is that "only disinterested directors can claim its protections. Then, if that threshold is met, the business judgment rule presumes that the directors have complied with their duties to reasonably inform themselves of all relevant material information and have acted with the requisite, care in making the business decision." *Shoen,* 122 Nev. at 636. "[E]ven a bad decision is generally protected by the business judgment rule's presumption that the directors acted in good faith, with knowledge of the pertinent information." *Shoen,* 122 Nev. at 636. Nevada, unlike some other states, has rejected a substantive evaluation of director conduct. *Wynn,* 399 P.3d at 343.

As a practical matter, as Plaintiff's own expert explained, application of the business judgment rule presumption is a two-step inquiry. "In the first step, if there are no facts sufficiently pleaded to suggest a lack of independence and [ ] interestedness, then you get—don't go to the next inquiry and reach any decision about whether there was a breach of fiduciary duty because they get the benefit of the business judgment rule." Ex. 2 at 150:22-151:5 (Steele Dep.).

And even if Cotter, Jr. were somehow able to rebut this presumption with respect to Gould (and, as discussed below, he cannot), he must overcome two additional hurdles. Under Nevada law, the burden remains on Cotter, Jr. to prove both (1) the director's act or failure to act constituted a breach of fiduciary duty; and (2) the breach of fiduciary duty involved intentional misconduct, fraud, or a knowing violation of law. *Shoen,* 122 Nev. at 640; Nev. Rev. Stat. § 78.138(7)(b)

Here, as discussed below, all the relevant evidence proves that Gould was an independent and disinterested director entitled to the protections of the business judgment rule, who merely attempted to make the best decisions for Reading under extremely difficult circumstances—nothing more and nothing less. Moreover, there is no admissible evidence from which

a fact-finder could infer that Gould breached his fiduciary duty, much less acted with intentional misconduct, fraud, or a knowing violation of the law.

B. Plaintiff's Own Expert Agrees That Mr. Gould is Entitled To The Protection Of The Business Judgment Rule.

Mr. Gould is entitled to the protections of the business judgment rule because there is no evidence whatsoever that Mr. Gould is interested in any of the matters at issue or that he lacks independence. Mr. Gould is only ***interested*** in a matter if he will receive a specific financial benefit from his action or lack of action on the matter (or stands on both sides of a transaction) and he lacks ***independence*** only if his decision resulted from him being controlled by another. *See Shoen,* 122 Nev. at 637-38; *See also* Ex. 8 at 23 (Steele Rep.) (citing *Orman v. Cullman*, 794 A.2d 5, 24, 25 n.50 (Del. Ch. 2002). If the director makes his decision on the merits of the matter at hand, rather than extraneous influences, he is independent. Ex. 8 at 24 (Steele Rep.) (citing *Frank v. Elgamal*, 2014 WL 957550, at *22 (Del. Ch. March 10, 2014)).

The facts simply do not show that Mr. Gould received any material benefit from his Board votes, that he is controlled by anyone else or that he made his decisions based on any extraneous influences. This is not merely some partisan view of the evidence. To the contrary, after reading the fact depositions and reviewing the pleadings in this matter, ***Cotter, Jr's own paid expert witness*** in this case, conceded that "***there are insufficient facts to suggest to me that there was a reasonable doubt about [Gould's] independence or his disinterestedness***." Ex. 2 at 148:25-149:4 (Steele Dep.) And the Plaintiff himself admitted that he is not aware of any financial relationship that Mr. Gould had with Ellen or Margaret Cotter or any other member of the Reading Board. Ex. 3 at 1021:12-1025:18 (Cotter, Jr. Dep. Vol IV).[1] Cotter, Jr. has also failed to identify any personal

[1] Cotter, Jr. speculates that on the occasions when Gould's votes aligned with the votes of Ellen and Margaret Cotter , it "curried favor with Ellen and Margaret" and would allow Gould to "continue his service on the board of RDI." Ex. 3 at 1026:7-1027:12 (Cotter, Jr. Dep. Vol IV). This speculation is not evidence that Gould was not independent and was appropriately rejected as such by Cotter, Jr.'s expert. *First*, the same could be said of any director voting in line with a controlling shareholder, which means that it would be impossible to have any independent directors. *Second,* there is no evidence that Gould—an expert in corporate governance and fiduciary duties of directors, who has been cited by the Nevada Supreme Court—had such a strong interest in staying on Reading's board that he would abandon his fiduciary duties. Gould is

relationship between Mr. Gould and the Cotter sisters, for the obvious reason that none exists. Finally, each of the independent stockholders who were deposed in connection with this action differentiated Mr. Gould from the other directors and testified that they had no reason to believe that Mr. Gould was not independent or disinterested. Ex. 5 at 194:2-194:8 (Glaser Dep.) (testifying he believed Gould was independent); Ex. 6 at 160:11-161:4 (Tilson Dep.) (testifying that he would not seek to have Gould removed from the Board); Ex. 7 at 292:14-292:18 (Shapiro Dep.) (testifying that Gould was socially independent and that he had no problem with Gould).

Here, as Plaintiff's expert noted, because "there are no facts sufficiently pleaded to suggest a lack of independence and [ ] interestedness, than you [ ] don't go to the next inquiry and reach any decision about whether there as a breach of fiduciary duty because they get the benefit of the business judgment rule." Ex. 2 at 150:22-151:3 (Steele Dep.). Steele explained, "there's no reason for me to carry the analysis of Mr. Gould any farther than that." *Id.* at 151:4-5. The facts just "don't support the second step" in Mr. Gould's case. *Id.* at 151:7-8.[2]

In sum, because there is no evidence that Mr. Gould lacked independence or was interested, he is entitled to the benefit of the business judgment rule and the case against him must be summarily adjudicated in Mr. Gould's favor.

C. There Is No Evidence Of That Mr. Gould Breached His Fiduciary Duties, Let Alone With The Required Mindset Of Intentional Misconduct, Fraud Or A Knowing Violation Of Law.

Given that Plaintiff's own expert and all of the independent shareholders agree that there is no case against Mr. Gould, there is no reason to go any further. But even if Mr. Gould were not the beneficiary of the business judgment rule, the case against him should still be summarily adjudicated in his favor. That is because, as discussed in Gould's Motion, Plaintiff has adduced

---

a successful lawyer who is a partner in an eponymous 34-lawyer firm in Los Angeles, and he has stepped down from the Reading board on previous occasions. Ex. 4 at 15:1-15 (Gould Dep.). Finally, Cotter, Jr. himself admitted that Mr. Gould could vote in line with the Cotter sisters and still be voting for what he believed was in the best interests of Reading. Ex. 3 at 1029:11-18 (Cotter, Jr. Dep. Vol. IV)

[2] Justice Steele further explained that his opinions about the other director-defendants do not apply to Mr. Gould. Ex. 2. at 149:22-150:1 (Steele Dep.).

no evidence to meet his burden of proof to establish that (1) Mr. Gould breached his fiduciary duty; and (2) the breach involved intentional misconduct fraud or a knowing violation of law. Because Gould has extensively addressed this matter in his Motion and Reply, Gould only briefly points out new information with respect to each of Plaintiffs' separate claims.

1. There is no evidence to support a separate claim against Mr. Gould for breach of fiduciary duty relating to Cotter, Jr.'s termination.

Plaintiff cannot maintain a separate claim against Mr. Gould for breach of fiduciary duty relating to Cotter, Jr.'s termination. As discussed in Mr. Gould's prior briefs, Mr. Gould voted against Cotter, Jr.'s termination. Cotter, Jr. admits that Mr. Gould's vote against his termination was done with the best interests of Reading in mind and he is not aware of any director that had any financial influence over Mr. Gould's vote. (Ex. 3 at 1017:14-24; 1026:21-1027:12 (Cotter, Jr. Dep. Vol IV)). Given that Mr. Gould voted against Mr. Cotter's termination, the claim against him for breach of fiduciary duty based on Mr. Cotter's termination must be summarily adjudicated in Mr. Gould's favor. *See, e.g., In re Tri-Star Pictures, Inc., Litig.,* No. CIV. A. 9477, 1995 WL 106520, at *2 (Del. Ch. Mar. 9, 1995)) (refusing to hold director liable for board decision where director abstained from vote); *In Re Wheelabrator Technologies, Inc. Shareholders Litigation,* C.A. No. 11495, 1992 WL 212595, at *10 (Del. Ch. Sept. 1, 1992) (same); *Citron v. E.I. du Pont de Nemours & Co.*, 584 A.2d 490, 499 (Del. Ch. 1990) (same).

Cotter, Jr. is apparently pursuing this absurd claim against one of his only supporters because he is upset that Mr. Gould did not launch an investigation into whether Guy Adams had a conflict of interest when Cotter, Jr. raised it at the meeting when he was terminated. Not only is this a completely separate issue than the vote on his termination (and therefore irrelevant to a claim of breach of fiduciary duty based on Cotter, Jr.'s termination), there is simply no evidence that Mr. Gould breached his fiduciary duty by not immediately investigating Mr. Adams' finances. As discussed in detail in Mr. Gould's Motion, Cotter, Jr. claimed to have known about Mr. Adams' alleged conflict for eight months, but said nothing when Mr. Adams voted in Cotter, Jr.'s favor. He raised the issue only when Mr. Adams was prepared to vote against him, which thoroughly undermined Cotter, Jr.'s credibility. Mot. at 28. Moreover, Mr. Gould testified that he

relied on company counsel to vet financial independence. *Id.* Nevada law makes clear that directors are entitled to rely on counsel on issues within the attorney's professional competence. Nev. Rev. Stat. § 78.138(4)(2)(b). As such, Mr. Gould acted appropriately and did not breach his fiduciary duty with respect to allowing Mr. Adams to participate in the vote.[3]

In short, there is simply no basis to hold Mr. Gould liable for breach of fiduciary duty relating to the Plaintiff's termination where he voted ***against*** that termination. This claim must be summarily adjudicated in Mr. Gould's favor.

2. There is no evidence to support a separate claim against Mr. Gould for breach of the duty of candor with respect to SEC filings and press releases.

Cotter, Jr. contends that Mr. Gould breached the duty of candor with respect to certain SEC filings and press releases issued by Reading. In particular, Cotter, Jr. contends that Mr. Gould breached the duty of candor when Reading attached a press release to its 8-K with a quote from Mr. Gould describing the CEO search process as thorough. He also contends that Mr. Gould breached the duty of candor by failing to prevent Reading from issuing several others 8-Ks that Cotter, Jr. contends are misleading (and which are described in Gould's motion for summary judgment). *See* Mot. at 28-30.

The problem with Cotter, Jr.'s breach of duty of candor claims is that Nevada does not recognize the duty of candor as one of a director's fiduciary duties (outside of the merger context). Indeed, the Nevada Supreme Court has explicitly laid out the extent of a director's ordinary fiduciary duties: "[T]he directors' fiduciary relationship with the corporation and its shareholders [] imparts upon the directors duties of care and loyalty." *Shoen*, 122 Nev. at 632. The Nevada Supreme Court has further explained that it is only in the limited context of the merger process, that the duty of candor and disclosure is imposed upon directors—and it results in an application of higher scrutiny in such situations. *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 18 (2003). And while Delaware law may provide a duty of candor under broader circumstances, the Nevada

[3] Moreover, in any event, Cotter, Jr. has pointed to no evidence whatsoever that Mr. Gould acted with the requisite mental state of intentional misconduct, fraud or a knowing violation of law

legislature has made clear that out-of-state authority cannot supplant the fiduciary duties of directors under Nevada law and that the failure to conform to the laws of another jurisdiction, such as Delaware, does not indicate a breach of fiduciary duty. Nev. Rev. Stat. § 78.138(2). In other words, Mr. Gould cannot be liable for breach of the duty of candor relating to non-merger disclosures because Nevada law does not recognize such a duty.[4] As such, Cotter, Jr.'s claims for breach of the duty of candor must be summarily adjudicated in Mr. Gould's favor.

3. There is no evidence to support a separate claim against Mr. Gould for breach of fiduciary duty relating to the appointment of Codding and Wrotniak to Reading's Board of Directors.

In his Motion, Mr. Gould explained that there are no requirements to serve on a board of directors in Nevada other than that the director is over 18 and a natural person, that under NASDAQ listing rules, a controlling shareholder has the right to select directors, and that there were legitimate reasons to select including their business experience and Board harmony, and that Codding and Wrotniak's personal "relationships" with the Cotter sisters were tangential at best. Mot. at 16-20. Cotter, Jr. has since conceded that Board harmony is a legitimate consideration. Ex. 3 at 1055:6-14 (Cotter, Jr. Dep.). And his expert witness agreed that it was appropriate to take into account. Ex. 2 at 154:21-155:1 (Steele Dep.) Given that that Gould took into account appropriate considerations and that both Codding and Wrotniak are qualified to be directors under Nevada law, there is no evidence that Mr. Gould breached his fiduciary duty in voting in favor of

[4] Mr. Gould addressed additional problems with the claims against him pertaining to the SEC filings and press releases in his motion for summary judgment, namely that: (1) alleging the public filings do not contain enough information does not demonstrate that a defendant engaged in fraud and (2) the evidence shows that Gould provided comments on the parts of the filings he had knowledge of and relied on Reading's counsel and executives as to matters he was not involved with, which is consistent with a director's fiduciary duties. Mot. at 28-30. Since that time, Cotter, Jr. also conceded Gould did not have unilateral authority to correct SEC disclosures. Ex. 3 at 1080:4-10. He also admitted that Cotter, Jr, has no evidence that Mr. Gould did not believe "[a]fter conducting a thorough search process, it is clear that Ellen is best suited to lead Reading moving forward" and that Cotter, Jr. is solely relying on naked belief that Mr. Gould could not believe his sister to be the best person to lead Reading. Ex. 3 at 1069:11-25:1070:1; 1071:11-1073:9 (Cotter, Jr. Dep. Vol. IV). As detailed in Gould's motion, Ellen Cotter (who had been acting CEO) was selected after interviewing seven candidates, and based on her performance in that role and her other experience at Reading, Gould thought Ellen Cotter was intelligent and had the right personality to lead the company forward during a difficult time. Mot. at 9-10; 20-25.

their appointments, let alone that he acted with the requisite mindset of fraud, intentional misconduct or a knowing violation of law when he accepted the recommendation of the Special Nominating Committee and voted to appoint two experienced business people to the Reading Board.

4. There is no evidence to support a separate claim against Mr. Gould relating to the appointment of Ellen Cotter as permanent CEO.

Mr. Gould's Motion explained in detail the steps undertaken by the CEO search committee to find a CEO, including engaging an executive search firm and interviewing seven candidates. Mot. at 21-22. The Motion explained that the Search Committee moved away from the initial search criteria after determining that there was too great a focus on real estate experience and that even Cotter, Jr. believed the position specification was initially too focused on real estate experience. Mot. at 22-23. And the Motion also explained why Mr. Gould decided to recommend Ellen Cotter once she threw her hat in the ring—noting that the Board knew Ellen Cotter well, believed her to be intelligent, with an extensive knowledge of Reading and the right personality to lead the company through a difficult transition, and that she had performed well as interim CEO (among other factors). Mot. at 23-24. Cotter, Jr.'s complaints about the CEO search process amount to nothing more than nitpicking a process that lead to a conclusion he did not like—the appointment of his rival and sister, Ellen Cotter to the role of CEO. Indeed, Cotter, Jr.'s recent deposition makes clear that he was able to voice all of his concerns regarding process to the other Board members before the vote, and that Mr. Gould did not refuse to answer any of Cotter, Jr.'s questions. Ex. 3 at 1083:21-1084:3 (Cotter, Jr. Dep. Vol IV). Moreover, Cotter, Jr. conceded that directors could have different views and vote differently and still both be fulfilling their fiduciary duty. Ex. 3 at 1055:21-1056:3 (Cotter, Jr. Dep. Vol IV). That is precisely the case here. All of the evidence demonstrates that Mr. Gould conducted a CEO search that was completely open about its process, that he interviewed numerous candidates, and that he ultimately recommended the serving interim CEO, who had also been a successful executive at Reading for many years, for the permanent position, because he believed she was the best candidate for the job under the particular circumstances facing Reading. Under these circumstances, the claims against

Mr. Gould for breach of fiduciary duty relating to the CEO search must be summarily adjudicated in his favor.

5. There is no evidence to support a separate claim against Mr. Gould relating to the approval of compensation and other pay.

As discussed in Mr. Gould's Motion, Mr. Gould voted in favor of a salary raise for Ellen Cotter, a $50,000 payment to Guy Adams and a one-time payment to Margaret Cotter upon the windup of her consulting agreement because these payments all served legitimate business purposes and Mr. Gould appropriately relied on the work of committees and experts to determine whether and in what amount to make the payments. Mot. at 25-27. Cotter, Jr. now concedes that he has no evidence that Mr. Gould breached his fiduciary duty in voting in favor of these payments and is relying solely on the fact that Mr. Gould voted "yes". Ex. 3 at 1090:22-25 (Cotter, Jr. Dep. Vol IV). Given the legitimate business reasons for these payments, Mr. Gould's "yes" vote does not show that he breached his fiduciary duty, let alone that he acted with intentional misconduct, fraud or a knowing violation of law. This claim, too, must be summarily adjudicated in Gould's favor.

III. CONCLUSION

Mr. Gould requests that the Court set a December 11, 2017 hearing date for the Motion for Summary Judgment he filed on September 23, 2016. For the foregoing reasons, and the reasons stated in Gould's Motion for Summary Judgment, and the Reply in Support of Gould's Motion for Summary Judgment, and the Individual Defendants' Motion for Partial Summary Judgment No. 3 on Plaintiff's Claims Related to the Purported Unsolicited Offer, Mr. Gould further requests that all of Plaintiff's claims against Mr. Gould be summarily adjudicated in his favor.

December 1, 2017

BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS, LINCENBERG & RHOW, P.C.

By 

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Attorneys for Defendant William Gould

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS IN LIMINE AND PRETRIAL CONFERENCE

MONDAY, DECEMBER 11, 2017

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

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

APPEARANCES:

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

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

(Court was called to order)

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

MS. HENDRICKS: I just have a question.

THE COURT: On what?

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

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

MS. HENDRICKS: Okay.

THE COURT: Who are you looking for?

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

(Pause in the proceedings)

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

Right, Ms. Hendricks?

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

THE COURT: Okay. So before we start on your

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

When was that, Mr. Ferrario?

MR. FERRARIO: It was 2013.

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

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

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

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

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

unless we finish building out the seventeenth floor by then.

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

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

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

Mike, you're up.

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

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

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

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

So, Mike, what did I miss?

MR. DOAN: That's it.

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

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

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

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

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

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

What else?

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

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

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

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

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

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

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

THE COURT: It's not a good idea.

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

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

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

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

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

MR. TAYBACK: Yes.

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

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

MS. WENDELL: Okay.

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

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

MR. DOAN: Yeah.

THE COURT: Oh. Look at that.

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

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

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

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

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

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

Any more questions?

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

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

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

MR. KRUM: Yes.

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

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

THE COURT: 1999 [sic]?

MR. SEARCY: Yeah, that would be perfect.

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

Mr. Ferrario, how many do you need?

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

THE COURT: 20000 to 2499 [sic].

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

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

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

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

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

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

THE COURT: All right, Mr. --

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

THE COURT: Okay.

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

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

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

MR. RHOW: I see.

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

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

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

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

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

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

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

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

MS. WENDELL: Yes.

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

All right. So anybody else have more stuff?

Yeah. Your history will never die.

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

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

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

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

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

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

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

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

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

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

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

MR. DOAN: We'll make it work.

THE COURT: Some of them will be here.

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

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

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

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

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

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

MR. KRUM: Understood.

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

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

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

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

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

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

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

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

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

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

MR. KRUM: Okay.

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

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

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

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

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

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

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

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

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

THE COURT: Whatever you want to do.

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

MR. FERRARIO: Are we on the clock?

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

(Pause in the proceedings)

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

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

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

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

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

MS. LEVIN: Okay.

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

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

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

MS. LEVIN: Right.

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

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

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

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

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

MR. TAYBACK: It'll be Summary Judgment Motion

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

THE COURT: Okay.

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

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

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

Right, Mr. Morris?

MR. MORRIS: Yes.

THE COURT: See, so we all know.

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

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

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

THE COURT: Are we supposed to be calling somebody?

MR. FERRARIO: No.

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

(Pause in the proceedings)

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

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

THE COURT: Oh. It was you?

MR. RHOW: Not necessary.

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

call you.

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

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

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

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

MR. TAYBACK: Correct.

THE COURT: Okay.

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

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

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

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

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

THE COURT: Yes.

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

motion.

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

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

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

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

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

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

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

THE COURT: You mean for personal liability?

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

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

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

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

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

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

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

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

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

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

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

MR. TAYBACK: Yes.

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

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

THE COURT: Okay.

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

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

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

judgment rule by saying a director is biased, a director has some family connection, a director has income that's attributable to the company. And that's really what this case comes down to. Where the facts here are frankly undisputed summary judgment is warranted.

That's it for Summary Judgment 1 and 2, Your Honor, unless you have any questions.

THE COURT: No. It's okay.

Mr. Krum, Mr. Morris?

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

So I have some argument to make about what are pervasive misstatements of the law that were made with respect to Number 1, as well as the other ones. That said, if I'm listening, you're prepared to deny Number 1, just as you did previously, nothing has changed, including the law; and if that's the case, I'll just defer those comments till we get to something else.

THE COURT: Well, then let me ask you a question. Because when I read all these I have notes all over them, because some of them are interrelated and the disinterestedness issue is an issue that is involved in some of the motions in limine, as well as this.

Can you tell me what evidence, other than what is listed on page -- you had -- in your brief you had a list of all of the company activities that you believe show decisions

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

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

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

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

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

MR. KRUM: Yes.

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

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

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

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

behalf of.

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

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

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

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

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

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

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

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

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

direct financial relationship, even if it's not on both sides of the transaction, or we have a very close personal or familial relationship with the people who are subject to the transaction. And simply believing you understand Sr.'s plan -- estate plan does not, I don't think, rise to that same level to show a lack of disinterestedness; but I'm waiting for you to give me a spin on that argument I may not have thought of.

MR. KRUM: Sure, Your Honor. The answer is -- and I say this because I appreciate what the finder of fact -- what the Court has to do now and what the finder of fact has to do. The evidence has to be assessed collectively, not individually. And you understand that. We've cited cases for that. The other side disputes that. There's "The complaint of acts and omissions upon which plaintiff's claims are based must be viewed and assessed collectively, not separately in isolation." That's the Ebix case that we've cited. And there are other cases for that proposition. The point, Your Honor, is "assessing whether a director was independent and in a particular instance acted independently or whether the director was disinterested as required or whether -- and made the decision based entirely on the corporate merits, not influence by personal or extraneous considerations," that was CVV Technicolor, that's the test. And so, Your Honor, in Shoen, just to go back to that, "Independence can be

challenged by showing that the directors' execution of their duties is unduly influenced." If Kane made a decision based in any respect on his view that Sr. intended for one or both of the sisters to have something and Jr. was in the way of that, that, Your Honor, at a minimum survives summary judgment so the finder of fact can make a determination after considering all the evidence whether the director acted and decided in that particular instance entirely on the corporate merits. So what is --

THE COURT: Let's skip ahead, then. Mr. McEachern. What evidence of disinterestedness do you have for Mr. McEachern? And if you could tell me where in the briefing it is, I will look at it again. But, as I've said, other than Mr. Adams I did not see evidence of disinterestedness as opposed to allegations of breach of fiduciary duty.

MR. KRUM: Mr. McEachern attempted to extort Mr. Cotter. Along with Mr. Kane and Mr. Adams he told Mr. Cotter, you need to go resolve your disputes with your sisters and we're going to reconvene at 6:00 o'clock and if you don't you'll be terminated. Now, there's no dispute about that. We have in evidence the testimony --

THE COURT: I understand that that's one of your claims of breach of fiduciary duty. But I'm trying to determine if there was any additional evidence, other than those items that are those bullet points you put in the brief,

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

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

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

up, they aborted the CEO search. So, Your Honor, that's squarely within the Shoen language of manifesting a direction of corporate conduct in such a way as to comport with the wishes or interests of the person doing the controlling.

Now, I heard you. You view that as a fiduciary breach.

THE COURT: An allegation of a fiduciary duty breach.

MR. KRUM: Allegation of fiduciary duty breach, right. But that's -- if proven, that rebuts the presumption, and off we go.

I skipped over Mr. McEachern's role in involuntarily retiring Mr. Storey. Mr. McEachern, together with Mr. Adams and Mr. Kane, in October and November -- September or October I guess it was of 2015 comprised the ad hoc first time one time special nominating committee. That committee had two roles. One was to tell noncompliant director Timothy Storey that he wasn't going to be renominated, and they explained to him that the sisters, who controlled the vote, had told him they weren't going to vote to elect him so he could either resign and get a year's benefits of some sort or just be left off.

What else did that committee do? They approved Judy Codding and Michael Wrotniak. Did they undertake to search for candidates? No. Did they do anything that one would do

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

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

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

MR. KRUM: Okay. Certainly, Your Honor.

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

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

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

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

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

MR. KRUM: Understood.

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

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

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

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

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

MR. TAYBACK: Correct.

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

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

MR. TAYBACK: Yes, Your Honor.

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

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

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

THE COURT: Briefly.

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

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

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

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

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

THE COURT: No, it is not.

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

the directors' execution of their duties is unduly influenced, manifesting a direction of corporate conduct in such a way as to comport with the wishes or interests of the person doing the controlling."

Now, we know that's a demand case, but that doesn't change the law, it just changes the application of the law. And so the point isn't any more complicated than what it said elsewhere in Shoen, and that is "Directors' discretion must be free from the influence of other interested persons."

So Motion Number 2 is -- it's nonsensical, because that has to be assessed based on facts and based on the particular application. You just did it with respect to Number 1. And so it doesn't work that way. And the -- in Rails the court said, of which Shoen is cited with approval, "Directorial interest exists whenever divided loyalties are present." And we have this ongoing set of transactions that entail furthering and protecting the interests of the Cotter sisters. That, Your Honor, is a perfect example of circumstances that show divided loyalties. Thank you.

THE COURT: Thank you.

Motion for Summary Judgment Number 2 is granted in part. To the extent that you asked me to make a determination as to whether there has been a showing of a lack of disinterestedness there is a lack of disinterestedness for Margaret Cotter, Ellen Cotter, and Guy Adams.

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

Okay. That takes you to Number 3.

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

THE COURT: Yeah.

MR. TAYBACK: -- there are --

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

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

THE COURT: Eh, you know.

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

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

MR. TAYBACK: And I did know that.

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

MR. KRUM: I'm sorry.

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

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

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

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

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

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

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

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

THE COURT: Anything else?

MR. KRUM: No.

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

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

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

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

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

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

THE COURT: Ready for me to say denied?

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

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

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

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

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

were selected by the search firm Korn Ferry, and they were considered along with internal candidates. The board -- or the committee, rather, interviewed Ellen Cotter and decided that she was the best candidate, and the board agreed with that decision. And in the context of the law here you have a majority of disinterested directors who agreed with that decision. There's a presumption that all of this was conducted in good faith. There hasn't been a rebuttal of the presumption here, Your Honor, and, as a result, the motion should be granted.

Are there particular issues, though, that I can address for Your Honor?

THE COURT: Not that will cause you to be able to get me to change my mind on denied.

MR. SEARCY: Okay. Are there any that I can at least make an effort on, Your Honor?

THE COURT: Nope.

MR. SEARCY: Thank you, Your Honor.

THE COURT: All right. So that motion is denied.

Can we go to Number 6.

MR. SEARCY: Number 6 is mine, as well.

THE COURT: This has to do with the special bonus to Mr. Adams.

MR. SEARCY: That's correct, Your Honor. There are three main issues here. One has to do with the exercise of

options, and in that case there was an executive committee that considered those options. There's no doubt, no dispute that that was an existing plan, that the committee received advice from counsel, and approved of the -- approved of the exercise of the options.

THE COURT: Okay. Anything else?

MR. SEARCY: In addition to that -- and that's -- again, that is an exercise that is presumed to be done in good faith and especially here, where the statute provides that you can obtain information. And that's what the committee did.

In addition to that, Your Honor, there's the issue of the payment to Mr. Adams that you just raised. That again was approved by the board, approved by unanimous board who were disinterested in the subject and are entitled to business judgment on that subject.

And finally, with respect to Margaret Cotter's appointment it's certainly within the board's discretion to decide that someone who's worked for the company and been affiliated with the company for approximately 20 years or so has the qualifications to take on that job. And as Mr. Tayback said, hiring someone to fill a role is certainly -- that's an operational decision that's within the discretion of a board of directors, and certainly they're entitled to be able to exercise the business judgment when it comes to that, especially here. And with all of these decisions, Your Honor,

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

THE COURT: Some directors I found to be disinterested.

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

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

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

THE COURT: Okay. Anything else?

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

THE COURT: Denied.

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

MR. TAYBACK: Your Honor, you --

MR. KRUM: You ruled on it previously.

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

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

THE COURT: It's your motion.

MR. RHOW: Thank you, Your Honor.

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

MR. RHOW: I feel honored to actually --

THE COURT: Here's my first question.

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

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

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

THE COURT: You know, we have a rule.

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

MR. RHOW: Oh. I'm sorry.

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

THE COURT: Oh. Okay. All right.

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

THE COURT: Because usually -- usually I get a

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

MR. RHOW: Correct.

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

MR. RHOW: Thank you, Your Honor.

I think the motion was short and sweet on purpose. During the deposition of Mr. Cotter, Jr., and it lasted days and days and days, and throughout the questioning it was quite clear that he was testifying based on not what he saw, what he heard, what he observed; he was literally saying, here's what I think -- thought at the time, here's what I was thinking Mr. Gould was thinking and others were thinking and so therefore I believe the claim is sufficient because of my subjective belief as to what other directors were thinking. If that's going to be part of this trial, first, this trial's not going to be four weeks, it's going to be eight weeks; but, second, there's nothing in the law, there's nothing based on common sense that tells you that what the subjective beliefs of the plaintiff are none of that is relevant, none of that is relevant under the law, none that is relevant under common sense. So to streamline this case, if he's going to talk about what he saw, what he heard, certainly that's admissible. But if he's going to talk about what he believes, that's subjective and should not be part of this trial.

THE COURT: Thank you.

Ms. Levin, is this your motion?

MS. LEVIN: Yes, Your Honor.

As we said in our opposition, we believe this is an improper and premature motion just because Mr. Cotter obviously will be here at trial testifying.

THE COURT: So you want me to rule on the questions and answers as they're given. So if somebody asks him, well, did you talk to Mr. Adams about what he was going to do, he can then tell me what he said.

MS. LEVIN: Correct, Your Honor.

THE COURT: Well, what did you think he meant? That's speculation.

MS. LEVIN: Unless, of course, he's got a basis for his belief. And I think that some of the deposition testimony, those responses were invited by the very questions. So to the extent that he has a basis to believe -- you know, to state his belief I think that, again, it should be determined on the question by question.

THE COURT: Okay. So the motion is denied. It's premature. It's an issue that has to be handled at trial based upon the foundation that is laid related to the issue.

So -- and plus you won't be here. You won't be here; right?

MR. RHOW: I'm sorry?

THE COURT: You won't be here; right?

MR. RHOW: I don't know. I hope not. Is Your Honor saying I should not be here or that my client won't be here then?

THE COURT: That's what the business judgment ruling deals with; right? So I granted your client's business judgment rule motion. Well, you know, he may be a witness.

MR. KRUM: I'm sorry, Your Honor. Did I miss something?

THE COURT: What?

MR. KRUM: We haven't had that motion argued yet, Mr. Gould's motion.

THE COURT: I included Mr. Gould because you briefed it relate to all of the motions for summary judgment and I asked you questions about all the directors, except Mr. Adams.

MR. KRUM: I'm sorry. I didn't understand that, Your Honor. I didn't answer as to Mr. Gould.

THE COURT: Do you want to tell me an answer to Mr. Gould?

MR. KRUM: I do, because we have a hearing set for the 8th on his motion, which is why misunderstood that.

THE COURT: I used it because it was included in your opposition, the supplement to those motions.

MR. KRUM: That was confusion that we created, and I apologize. The reason we did that, Your Honor, is that we

didn't have an opportunity to prepare a Gould brief, but we didn't want to be accused of doing nothing. And some of the evidence in those motions in our view did relate to Gould, and we therefore put him on there.

That said, he filed two pieces of paper, they asked me if we could have the hearing today. I told them no, I wanted to respond. So -- but let me try to answer your question with respect to Mr. Gould. So we start, Your Honor, as we do, with the threat to terminate and the termination. And I respectfully submit --

THE COURT: I will tell you that on your Mr. Gould you've got the same list that we've already talked about. What I'm trying to find out is -- and I understand the threat is part of what you've alleged related to Mr. Gould along with the other six or seven bullet points that are on pages 5 and 6 of the opposition. Is there something else related to Mr. Gould, something like you have with Mr. Adams that would establish a lack of disinterestedness?

MR. KRUM: Let me answer, and then you'll decide.

THE COURT: Yeah. That's what I'm trying to pull out of you.

MR. KRUM: So, for example, with respect to the termination Mr. Cotter raised the question of Mr. Adams's independence before a vote was taken, and Mr. Gould asked Mr. Adams, well, can you tell us about that. And Mr. Adams got

mad and said in words or substance, no. And Mr. Gould said, okay. That, Your Honor, is a perfect example of a failure to act in the face of a known duty to act. We're not talking about someone who is unfamiliar with fiduciary obligations here. Mr. Gould is a corporate lawyer.

So we get to the -- we get to the executive committee, same meeting, June 12. Ellen Cotter says, I want to repopulate the executive committee, Mr. Gould, would you like to be on it. His testimony, his deposition testimony was that he declined because he knew that it would take a lot of time. Now, if he knew that it would take a lot of time, Your Honor, how is it that it didn't occur to him that this was what the sisters were doing in October of 2014 when they were trying to circumvent the board?

THE COURT: These are all on your list of bullet points.

MR. KRUM: Okay.

THE COURT: What I'm trying to find out is if there's anything that's not on the list of bullet points that are on pages 5 and 6 of your supplemental opposition that relate to Mr. Gould. Because when I made my ruling I was including Mr. Gould as someone because I specifically excluded Mr. Adams and the two Ms. Cotters.

MR. KRUM: Bear with me. I'm mentally working.

THE COURT: I'm watching you. I'm watching him

work.

MR. KRUM: So I don't think we had the executive committee there, but I just said that.

So then, Your Honor, the composition of the board. So Mr. Gould was not a member of the nominating committee. His testimony was that, on a Friday Ellen Cotter called me and asked me if she could come to my office and she and Craig Tompkins came to my office and showed me Judy Codding's resume and said we were going to have a board meeting on Monday to put Ms. Codding on the board. And Bill Gould said, this isn't sufficient time, I can't do my job. But he voted for her nonetheless. That, Your Honor, is the same thing that happens over and over and over again with Mr. Gould. That is, in the face of a known duty to act he chooses not to do so. That is intentional misconduct. Your Honor, you've denied the motion with respect to the CEO search. That is Mr. Gould. It is Mr. Gould and Mr. McEachern who are the ones who together with Margaret Cotter aborted the CEO search. Literally the last time they spoke to Korn Ferry was the day Ellen Cotter declared her candidacy. After the what did they do? They told Craig Tompkins to tell Korn Ferry to do no more work. And Mr. Gould, he was the one whose name was on a press release saying, Ellen Cotter was made CEO following a thorough search. She was not made CEO as a result of that search. She was made CEO in spite of that search.

THE COURT: Okay. So all of those are issues that I'm aware of considered when I had previously included Mr. Gould in the granting of the summary judgment related to the business judgment rule. The fact that I am denying certain issues related to other summary judgments does not diminish the fact that the directors that I found there was not evidence of a lack of disinterestedness have the protection the statute provides to them.

Okay. So let's go back to Mr. Cotter's Motion Number 3. This is related to the coach.

MS. LEVIN: Your Honor, this motion should be denied because the hiring of High Point, that's post hoc --

THE COURT: It's your motion. You wanted it granted.

MS. LEVIN: I'm sorry. You know, the Court -- I'm sorry. The Court should exclude the after-acquired evidence on the -- in the form of any testimony or documents relating to the hiring of High Point, because the breach of fiduciary duty claims, they are -- they concern what the directors did and knew at the time that they decided to fire the plaintiff. So we cited the Smith versus Van Gorkom case, which holds post hoc data is not relevant to the decision.

So at the time that they made this decision they did not have nor did they rely on the High Point evidence. So therefore the after-acquired evidence cannot be as a matter of

law relevant to their decision to terminate the plaintiff. That would amount to a retroactive assessment of his ability, which are not at issue. And I think that that's the -- you know, the --

THE COURT: The problem I have with that is part of what your client's position has been in this case is he is suitable to be acting as the CEO, and if there is information that is relevant to that suitability, that's where I have the problem on this. I certainly understand from a decision-making process that that information was not in the possession of anyone who was making the decisions at the time. But given the affirmative proposition by your client that he is suitable to CEO, I have concerns about granting the motion at this stage.

MS. LEVIN: Well -- okay. So -- but with respect to the decision which you can agree that they could not use that evidence to show that after the fact they made the right decision because of the after --

THE COURT: No. That's a problem if your client is saying he's suitable and therefore he should be able to be CEO. Because part of what he originally asked for was to make them make him be CEO.

MS. LEVIN: All right. And here at issue I believe it's the -- we're seeking to void the termination.

THE COURT: I know.

MS. LEVIN: So -- but I think that even -- and I think that in that respect if you were inclined to allow it on his suitability, the problem then becomes first of all the hiring of consultant doesn't necessary mean that somebody is unsuitable.

THE COURT: Absolutely. It may mean they're trying to get better.

MS. LEVIN: Exactly. And I was thinking -- when I read these facts I was thinking about the analogy. If you were a professional runner and you hire a runner coach --

THE COURT: Coach.

MS. LEVIN: -- doesn't mean that you're not a good runner. You may --

THE COURT: You want to be better.

MS. LEVIN: Exactly. So that was --

THE COURT: I understand.

MS. LEVIN: So and the other thing is that, you know, the opposition argues, well, but it looks like in his own assessment he wasn't good for it. And that, of course, again doesn't follow from that. And so then we get into the category of even if there's a remote relevance, Your Honor, then whatever that relevance is would be substantially outweighed by the unfair prejudicial effect that that would cause. Because, again, his assumed thoughts, then the jury could think like, well, you know, he thinks he's not qualified

because he hired a coach. So all in all I believe that it's unfairly prejudicial.

Just on the point of the unclean hands defense, again they are citing the Fetish, Las Vegas Fetish case. But, again, the unclean hands defense requires egregious misconduct and serious harm caused by it. And they haven't further substantiated that. So with that being said, our position is to exclude it for those reasons.

THE COURT: Thank you.

MS. LEVIN: Thank you.

THE COURT: Mr. Searcy --

MR. SEARCY: I'll address that.

THE COURT: -- I am inclined to deny the motion. But if the evidence is admitted at trial, to admit it with a limiting instruction that says that it only goes to suitability.

MR. SEARCY: And, Your Honor, I think that we're okay with that.

THE COURT: Okay.

MR. SEARCY: I just want to clarify that we can certainly ask Mr. Cotter about the Alderton documents --

THE COURT: You ask him about it, then I'm going to give the limiting instruction, and we'll probably give it five times or six times, and it'll be a written instruction, so it's part of it. And if the plaintiff doesn't want me to give

the limiting instruction because they believe that calls to much attention to it, they can, of course, waive that request.

MR. SEARCY: Thank you, Your Honor.

THE COURT: Okay. So think about whether you really want the limiting instruction, come up with your text for the limiting instruction, and then we'll talk about it when we have our final pretrial conference as to whether you think you really want it.

That takes me to the last motion in limine by Mr. Cotter, which relates to the ability of Mr. Ferrario to participate at trial, also known as Motion in Limine Number 2.

MR. KRUM: Thank you, Your Honor. I enjoy this very much, showing that perhaps I've spent too many years in the corporate governance jurisprudence. Three points, and it's not complicated. First, as a general rule a nominal defendant is not allowed to introduce evidence and defend the merits of claims against the director defendants.

Second, the handful of exceptions to that are exceptions where it's a serious fundamental corporate interest that is challenged by the derivative suit, a reorganization or restructuring, an effort to appoint a receiver. None of those exist here.

Third, if you disagree with us on all of that, there's a question of unfair prejudice and waste of time. And, you know, the individual defendants are represented by

capable counsel. They don't need a second lawyer carrying their water. And for a jury to have someone who represents the company asking questions that imply conclusions adverse to the plaintiff is, if not unfairly prejudicial, something beyond that.

So that's the argument in a nutshell, Your Honor. If you have any questions, I'd be happy to answer them.

THE COURT: Nope. Motion's denied.

All right. So let's go to your Motion in Limine Number 1 regarding advice of counsel. I forgot we need to hit that one. Ms. Levin.

And then we're going to go to the Chief Justice Steel that I'm not going to really hear, because I didn't give you permission to refile.

MS. LEVIN: Your Honor is familiar with the share options, so if I talk about the share option, I don't --

THE COURT: I am.

MS. LEVIN: Okay. Well --

THE COURT: And also with the drama related to the production and the creation and all the stuff about the advice of counsel issue.

MS. LEVIN: Okay. I'll just --

THE COURT: But I also am aware the Nevada Supreme Court has told us on a business judgment issue we cannot reach behind the advice of counsel except to make a determination as

to essentially process issues, how the attorney was hired, what the scope of the retention was, and those kind of issues, as opposed to the actual advice.

MS. LEVIN: That's true, Your Honor. And so our arguments are really twofold. Number one is that Adams and Kane, who were two of the three directors on the compensation committee, they testified, as the Court found in its October 27, 2016, hearing, that they relied solely on the substance of advice of counsel to determine whether the authorization decision to authorize the estate to invoke the option was proper. So, unlike in Wynn or in Comverge, on which the defendants rely, they did not rely on anything else. So if they are asked at trial to explain why they authorized the option, they must rely on that legal advice.

So the second point is that the defendants waived the attorney-client privilege by partially disclosing attorney-client privileged information. Now, they're saying -- or RDI says in the opposition that individual directors cannot waive the privilege.

THE COURT: That's the Jacobs versus Sands case.

MS. LEVIN: Exact, Your Honor. And I agree with that. But, of course, RDI can only act through its officers and directors.

THE COURT: That's the Jacobs versus Sands case.

MS. LEVIN: And the current officer -- and I think

in particular if you look at the Exhibit 4 that we attached to our motion, is that that email was produced by Ellen Cotter, who is a current CEO and is an officer and director, and she --

THE COURT: I understand.

MS. LEVIN: So, in other words --

THE COURT: And then Mr. Ferrario clawed it back.

MS. LEVIN: Right. So she produced it, and so there's a Supreme Court case that says, "The power to waive the corporate attorney-client privilege rests with the corporation's management and is usually -- and is normally exercised by its officers and directors." And that's what happened here.

So I think especially Exhibit 4, but even Exhibit 2 and 3, the 2 and 3 they raise the legal issues. 2 and 3 identify the legal issues of whether there was a reason why Ellen Cotter could not exercise the option and whether enough -- whether the trust documents did not pour over -- the share option didn't pour over into the trust. But Exhibit 4 specifically seeks legal advice from the company attorney and as to the legal rights of the estate to exercise the option in light of the proxy language. So that is -- under our statute is an attorney-client communication for the purpose of obtaining legal advice. So they partially disclosed that, so we believe there's a waiver issue. And under Wardleigh you

cannot use the attorney privilege both as a shield and a sword, which is what they're now doing, is because what they're going to say is, well, we partially disclosed but you cannot find out what it was. But even the very --

THE COURT: But that's the Nevada Supreme Court who's made that decision, not the rest of us. They were very clear that we're not allowed to get behind that.

MS. LEVIN: Correct. But one thing that the Wynn decision did not decide was the waiver issue. And that was in Footnote 3 of the decision.

THE COURT: I made that decision separately after that came back. But that's a case by case, and I haven't made that decision in this case. In fact, my belief is you guys have a writ pending on this issue still. Right?

MR. KRUM: I think the writ pending is on a different privilege issue, Your Honor.

THE COURT: Okay.

MS. HENDRICKS: Your Honor, the writ relating to this issue was filed by RDI, and the Supreme Court actually came back and said the facts were analogous to Wynn and it needed to make a decision, and that was shortly after you did make the decision when we were back before you on it.

THE COURT: Yeah. We had a hearing.

MS. HENDRICKS: And we had the supplemental briefing.

THE COURT: Yep. Okay. So anything else on this one?

MS. LEVIN: Only -- the only thing is that the partially disclosed privileged emails themselves show that the board had information that would cause reliance on advice to be improper. So that would --

THE COURT: Okay. So your motion's denied. Come up here. I'm going to give you these. These are your I believe documents you actually want sealed. Since I granted your motion, it was on the calendar today, hopefully you can work out with the Clerk's Office so they will actually take the sealed documents and put them so they're part of the record in some way.

MS. LEVIN: And I brought them with me, too.

THE COURT: Yeah. Good luck. You've got to do it at the counter.

MS. LEVIN: Okay. Thank you.

THE COURT: Okay. So I am declining to hear again the motion in limine on Chief Justice Steel. I've previously made a ruling on that. I've reviewed your brief, and there's nothing in it that causes me to change my mind.

I have already granted your motions to seal and redact. It was on calendar for today.

And now we need to set our final pretrial conference. I usually do it the week before.

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

(Pause in the proceedings)

THE COURT: The week before is fine?

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

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

MR. TAYBACK: That's the 3rd.

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

MR. TAYBACK: 4th?

THE CLERK: [Inaudible].

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

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

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

MR. KRUM: Perfect.

MR. FERRARIO: Thank you, Judge.

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

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

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

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

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

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

All right. Anything else that I missed?

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

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

MR. TAYBACK: Yeah, that's fine.

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

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

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

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

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

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

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

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

MR. RHOW: Understood, Your Honor.

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

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

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

MR. TAYBACK: Thank you, Your Honor.

MR. KRUM: Thank you.

MR. EDWARDS: Your Honor --

THE COURT: Yes, Jim.

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

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

MR. EDWARDS: Okay.

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

Anything else?

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

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

MR. FERRARIO: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 12:00 NOON

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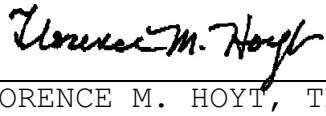
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

12/12/17

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