IN THE SUPREME COURT OF THE STATE OF NEVADA

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Aug 30 2019 11:41 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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

Appellant,

v.

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

Respondents.

Supreme Court Case No. 75053
Consolidated with Case Nos.
76981, 77648 & 77733

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

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

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

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

Volume VII
JA1501 – JA1750

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Docket 75053 Document 2019-36447

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

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Tensions between Plaintiff and Ellen and Margaret Cotter were further aggravated by trust and estate litigation initiated in February 2015, after the death of Jim J. Cotter, Sr., which involved the issue of whether Margaret Cotter, separately or together with Plaintiff, controlled the RDI stock previously held by their father. (*Id.* ¶¶ 6(a); 12(b); 25; 27; 34.) As a result, the non-Cotter directors were forced to spend "an inordinate amount of time" trying to ameliorate the interactions between Plaintiff and his sisters. (*Id.* ¶ 6(a).)

2. Plaintiff Acted in a Violent, Abusive Manner to Both Employees and Fellow Board Members

In addition to his problems with certain key executives, the RDI Board of Directors was made aware of allegations that Plaintiff, as CEO, had acted in an abusive, physically threatening manner toward several employees and/or outside workers, including Linda Pham, Debbie Watson, and Ellen Cotter, by yelling, behaving very critically, and going through their files behind closed doors. (*Id.* ¶¶ 4(a); 5(a)-(b); 8(g); 12(e); 16.) Certain female employees stated that they were "physically afraid" of Plaintiff and concerned for their "actual physical safety" around him; one resorted to "carrying mace to the office" due to Plaintiff's perceived "violent temper" and "anger management problem[s]." (*Id.*) Plaintiff's violent outbursts even extended to his relations with fellow members of the Board, such as Guy Adams. (*Id.* ¶¶ 4(e); 12(g).) As a result of these incidents, the non-Cotter Board members had multiple conversations regarding Plaintiff's weak interpersonal skills in which they contemplated sending Plaintiff to anger management classes in early 2015. (*Id.* ¶¶ 4(b)-(c); 7(a); 36(c).)

3. Plaintiff Lacked an Understanding of Key Components of RDI's Business

During Plaintiff's tenure as CEO, the Board also identified significant problems with his understanding of costs and margins pertinent to RDI's cinema business, including his failure to adjust his analysis to account for lower film rentals in Australia/New Zealand when comparing margins there with U.S. theatres, and his lack of comprehension with respect to the different labor cost allocations utilized by the Company in each region. (*Id.* ¶ 3(e).) Moreover, during the 11 months that he served as CEO, Plaintiff never presented—or even drafted—a business plan. (*Id.* ¶¶ 11(f)-(h).) And various directors were troubled by the fact that Plaintiff, upon becoming

CEO, failed to visit RDI's operations in Australia and New Zealand for the first six months of his tenure, despite their outsized importance to the company's financial health. (*Id.* ¶ 8(s).)

D. <u>The RDI Board Attempts to Address Plaintiff's Deficiencies</u>

Due to the need to help Plaintiff develop in the role as CEO and to lessen intra-family tensions, the non-Cotter directors appointed director Storey as an "ombudsman" in March 2015 to work with and coach Plaintiff, and mediate any disputes between him and other executives. (*Id.* ¶¶ 3(a); 5(e); 15(c); 29; 33(b) 35; 36(a).) Around this time, several non-Cotter directors also considered engaging an outside consultant to perform an assessment of RDI and provide recommendations regarding improvements in the Company's management. (*Id.* ¶ 12(c).) The non-Cotter directors, concerned with their duty "to all the shareholders and not just to the Cotter family," were attempting to address what they perceived to be "a dysfunctional management team," with "'thermonuclear' hostility currently existing" between Plaintiff and his sisters. (*Id.* ¶ 36(b).) Plaintiff did not disagree; as he testified, the tensions between Plaintiff and his sisters had become so intense that RDI was unable to function, such that drastic reform in behavior or potential termination(s) were required to get beyond the current paralysis. (*Id.* ¶¶ 13(a)-(b).)

In taking these steps in March 2015, the Board was specifically focused on "getting to a position where the company is operating more harmoniously and with a clear direction," with the idea that "if certain people were chronic offenders," the Board would "have to consider terminating them" in the event that "the situation did not correct itself within a reasonable period of time." (*Id.* ¶¶ 15(f); 38(a).) Some non-Cotter directors anticipated that an assessment would be made at the June 2015 Board meeting regarding the progress of the Company and management situation under Plaintiff; absent sufficient improvement, the non-Cotter directors expected to take whatever actions they deemed appropriate. (*Id.* ¶¶ 15(e); 36(c); 37.)

Initially, Plaintiff was not supportive of the idea of utilizing an ombudsman, but ultimately came to believe that it would be efficacious to have "an adult in the room" to assist him as CEO and "let[] this play out until the end of June or whatever date agreed to and revisit." (*Id.* ¶¶ 12(a); 39.) By mid-April 2015, however, director Storey concluded that Plaintiff "needs to make progress in the business and with Ellen and Margaret [Cotter] quickly, or the board will

need to look to alternatives to protect the interests of the company." (*Id.* ¶ 38(a)-(b).) The hoped-for progress did not occur. By May 2015, multiple members of RDI's Board had concluded that Plaintiff was not correcting his deficiencies or ameliorating his inexperience, and that his behavior as CEO was hindering the company. (*Id.* ¶¶ 3(c); 8(e), (h), (x).)

1. The Reasoned Review Process Begins at the May 21, 2015 Board Meeting, as Plaintiff Threatens Each Director With a Lawsuit

Despite months-long efforts to address and alleviate ongoing conflicts and concerns regarding Plaintiff's performance, no resolution was in sight; as such, Plaintiff's continuing role as President and CEO was put on the agenda for the Board's May 21, 2015 meeting as an item for discussion. (*Id.* ¶ 40.) At the outset of the May 21, 2015 meeting, Plaintiff—through his personal attorney—threatened to file a lawsuit based on purported breaches of the fiduciary duties of care and loyalty against each Board member in the event that they decided to terminate his employment. (*Id.* ¶ 30(b).) In addition to this threat of litigation made during the May 21, 2015 board meeting itself, Plaintiff separately threatened various Board members personally, stating that they could "not fire him as C.E.O." and intimidating them by claiming that if they were "to vote to fire him, he would sue [them] and ruin them financially." (*Id.* ¶¶ 4(d); 8(f).)

Once the May 21, 2015 meeting began, both RDI's full Board as well as a session of the non-Cotter directors discussed Plaintiff's performance as CEO and the possibility of his termination for nearly five hours, during which Plaintiff was permitted to speak at length regarding his tenure. (*Id.* ¶¶ 30(a); 43(a).) Plaintiff was specifically asked to present his Business Plan (the presentation of which had been added to the agenda for the meeting at Plaintiff's request), but declined. (*Id.* ¶ 30(a).) Outside counsel retained by the Company also attended the May 21, 2015 Board meeting to provide corporate law advice, where appropriate. (*Id.* ¶¶ 14; 30(a).) While various directors, including Adams, Kane, Margaret Cotter, and Ellen Cotter, reviewed their assessment of observed "deficiencies" in Plaintiff's "leadership, understanding of the Company's business, temperament, managerial skills, decision-making and other attributes in the role of Chief Executive Officer," ultimately the Board chose to take no action with respect to Plaintiff's position at the May 21, 2015 meeting, determining instead to

take additional time to consider what had been said and "reconvene the meeting on May 29, 2015 to continue its deliberations." (*Id.* ¶ 30(c).)

2. Continued Discussion at the May 29, 2015 Board Meeting

As anticipated, the Board again discussed the possibility of Plaintiff's termination at a Board meeting held on May 29, 2015. (*Id.* ¶¶ 31(a); 43(b).) Once again, the Board was informed at the outset of its meeting by outside counsel, separately retained by the non-Cotter directors, that Plaintiff planned to serve them with a lawsuit in the event that they voted to terminate his positions as President and CEO of RDI. (*Id.* ¶ 31(a).) Once the May 29, 2015 meeting began, Plaintiff explicitly rejected a suggestion, made at the previous meeting, that, in order for him to have more time to develop, he continue as President of RDI under a new CEO, for whom a search would commence. (*Id.* ¶¶ 10(c); 30(d); 31(b).) Director Adams made a formal motion, seconded by director McEachern, to remove Plaintiff from his position as President and CEO, "principally based on Plaintiff's lack of leadership skills, understanding of the Company's business, temperament, managerial skills, decision-making and other attributes"; although Adams "believe[d] we may have cause in this situation" to terminate for cause, his motion sought termination "'without cause' under the terms" of Plaintiff's Employment Contract in order to "provide him with the benefit of the contractual severance pay." (*Id.* ¶ 31(c).)

After the interested positions of Plaintiff and Ellen and Margaret Cotter were noted for the record, the Board engaged in extensive discussions about Plaintiff's performance as CEO and President of RDI, both in and outside of the presence of Plaintiff and the Cotter sisters. (*Id.* ¶ 31(d).) During a break at the May 29, 2015 meeting, Ellen and Margaret Cotter reached a tentative "agreement-in-principle" with Plaintiff regarding various litigation matters existing between the three Cotters individually and related trusts and estates. (*Id.* ¶ 31(e).) This "agreement-in-principle," which was subject to review by counsel, documentation to the Cotters' mutual satisfaction, and approval by the Board as to certain issues, had the potential to resolve some of the underlying issues affecting the Company and Plaintiff's performance as CEO. (*Id.* ¶¶ 31(e); 41.) In particular, the "agreement-in-principle" provided for a new executive structure at RDI—Plaintiff would remain as CEO, but his decisions would be subject to oversight by an

Executive Committee composed of Ellen Cotter, Margaret Cotter, and Guy Adams. (*Id.* ¶ 41.) Encouraged by the prospect of the Cotter siblings coming to a cooperative resolution, the Board agreed to adjourn the May 29, 2015 meeting without resolving the pending motion to terminate Plaintiff in order to see if the issues could be finally resolved in a manner acceptable to the non-Cotter directors and to have additional data from which the Board could evaluate the continuation of Plaintiff as CEO and President of RDI. (*Id.* ¶ 31(f).)

3. Plaintiff Is Terminated at the June 12, 2015 Board Meeting

The "agreement-in-principle," struck between the three Cotters on May 29, 2015, ultimately broke down by early June 2015 when the sides attempted to paper the final form of the agreement. (*Id.* ¶¶ 9; 10(d).) In view of the failed break-through, Plaintiff's continuing role as President and CEO of RDI was placed back on the agenda as an item for discussion at the Board of Directors' June 12, 2015 meeting. (*Id.* ¶ 42.)

RDI's Board discussed the possibility of Plaintiff's termination for the final time on June 12, 2015. (*Id.* ¶¶ 32(a); 43(c).) As the meeting began, Plaintiff asked to defer a vote on his status until the next scheduled Board meeting (to be held on June 15, 2015), but there was little support for his proposal, and no motion with respect to such a continuance was made. (*Id.* ¶ 32(b).) The Company's directors proceeded to discuss Plaintiff's management skills and experience, following which directors Adams, Kane, and McEachern, as well as Ellen and Margaret Cotter, voted in favor of the pending motion to remove Plaintiff as the Company's CEO and President; directors Gould and Storey voted against the removal motion, while Plaintiff abstained. (*Id.* ¶ 32(a).) Director Storey voted against Plaintiff's termination on June 12, 2015 because he wanted to wait until the latter part of June to make a final assessment, while director Gould thought that the Board should delay until all of the pending litigation between the Cotters was resolved. (*Id.* ¶¶ 2(a); 6(b); 8(i), (m).) The majority of the non-Cotter directors, however, concluded that further delay was not "in the best interests of the shareholders" because, due to Plaintiff, "the company was not moving forward," "[t]here was polarization in the office," and the issue "had to be resolved one way or another." (*Id.*) None of the directors—including Storey and Gould—believed that Plaintiff's failure to settle the trust and estate litigation between him

and Ellen and Margaret Cotter caused his termination as CEO and President of the Company. (*Id.* ¶¶ 2(b)-(c); 15(b), (d).)

Plaintiff was therefore terminated as CEO and President of the Company based on a majority vote of the full Board and by a majority vote of the non-Cotter directors. (*Id.* ¶¶ 15(a); 32(a).) After Plaintiff's termination, Ellen Cotter was appointed interim CEO and President of RDI. (*Id.* ¶ 26(a).) Plaintiff subsequently filed the above-captioned derivative action against the other members of the Company's Board of Directors on June 12, 2015. (*Id.* ¶ 26(b).)

E. <u>No Shareholder Support Exists for Plaintiff's Reinstatement</u>

As part of Plaintiff's attempted derivative action, he seeks "a determination that the purported termination of Plaintiff as President and CEO of RDI was legally ineffectual and is of no force and effect," and—despite the passage of over fifteen months since his termination—demands reinstatement in his former positions with the Company. (SAC at 53 ("Relief").) But support for Plaintiff's requested relief is nonexistent among his fellow shareholders.

Jonathan Glaser, the managing member of both JMG Capital Management, LLC and Pacific Capital Management, LLC (owners of approximately 526,000 shares of Class A RDI stock and approximately 1,000 Class B shares), has testified that he would not seek the reinstatement of Plaintiff, that "it's just not a high priority to put [Plaintiff] back," that he is "personally comfortable with Ellen Cotter as CEO," and he did not "think it would make much difference" to the "shareholders of Reading" if Plaintiff was CEO. (*Id.* ¶¶ 18(a)-(b), (e); 44(b).) Glaser also has emphasized his view that a CEO could properly be terminated for not getting along with the employees and other executives within a company. (*Id.* ¶ 18(d).) Whitney Tilson, hedge fund manager of T2 Partners Management, L.P., which controls various funds owning approximately 519,242 shares of Class A RDI stock and 901 Class B shares, has similarly confirmed that he would not reinstate Plaintiff if he had the opportunity because "the well has been poisoned" following Plaintiff's conflicts with Ellen and Margaret Cotter, his reinstatement would merely perpetuate a "divided company," there is a "reasonable likelihood" that Plaintiff is not "the single best qualified person to run" RDI, and Tilson's general concern that Plaintiff's advancement within RDI was purely the product of "nepotism." (*Id.* ¶¶ 17(a)-(c); 44(b).) And

Andrew Shapiro, the president of Lawndale Capital Management, which owns approximately $13 million in RDI's Class A stock and $30,000 in Class B stock, likewise has testified that he "was not necessarily in pursuit of, of any and all of those remedies" sought by Plaintiff, he "wasn't committed one way or the other than [Plaintiff] should be reinstated," and he did not "think necessarily [Plaintiff] is the best adequate representative of mine or other shareholder interests." (*Id.* ¶¶ 19(d), (f)-(g).)

Moreover, when questioned, these key investors in RDI could not predict whether reinstating Plaintiff would affect the Company's share price, as many believed that the overall performance of the Company, along with its business plan, have remained entirely consistent and appropriate since Plaintiff's termination. (*Id.* ¶¶ 17(a), (d); 18(c), (f)-(g); 19(a)-(c), (e).)

III. LEGAL STANDARD

Summary judgment is warranted under Nevada Rule of Civil Procedure 56 whenever the "pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005). "The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.*; *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) ("Factual disputes that are irrelevant or unnecessary will not be counted."). A factual dispute is "genuine" only "when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." *Holcomb v. Ga. Pac., LLC*, 289 P.3d 188, 192 (Nev. 2012) (citation omitted).

While the pleadings and other proof are "construed in the light most favorable to the nonmoving party," *LaMantia v. Redisi*, 118 Nev. 27, 29 (2002), that party "bears the burden to more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment." *Wood*, 121 Nev. at 732 (citation and internal quotation marks omitted) (rejecting the "slightest doubt" standard). The nonmoving party "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture," *id.* (citation omitted), but instead must identify "admissible evidence" showing "a genuine issue for trial." *Posadas v.*

City of Reno, 109 Nev. 448, 452 (1993); *Shuck v. Signature Flight Support of Nev., Inc.*, 126 Nev. 434, 436 (2010) ("bald allegations without supporting facts" are insufficient); *LaMantia*, 118 Nev. at 29 (nonmovant must "show specific facts, rather than general allegations and conclusions"). A nonmoving party that fails to make this showing will "have summary judgment entered against him." *Wood*, 121 Nev. at 732 (citation omitted).

IV. ARGUMENT

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

It is well-settled that the only fiduciary duties owed by directors are "to the corporation itself," not to its employees. *Byington v. Vega Biotech., Inc.*, 869 F. Supp. 338, 345 (D. Md. 1994). Traditionally, courts have been wary of plaintiffs' attempts to use "an appeal to general fiduciary law" to transform cases involving the dismissal of an employee or officer into claims that a company's directors "breached a fiduciary duty as corporate officers" when effecting a termination. *Ingle v. Glamore Motor Sales, Inc.*, 73 N.Y.2d 183, 190 (1989) (rejecting effort by operating manager and minority shareholder, upon his firing, to assert fiduciary duty violations); *Hackett v. Marquardt & Roche/Meditz & Hackett, Inc.*, Civ. No. 02-990166881S, 2002 WL 31304216, at *2 (Conn. Sup. Ct. Sept. 17, 2002) (rejecting breach of fiduciary duty claim, and holding that "the law of employment relations seems to provide sufficient protection for any civil wrongs" in the event of a purportedly unlawful termination). To thread the narrow needle necessary to avoid summary judgment on his termination and reinstatement claims, Plaintiff must produce cognizable evidence showing (1) "the existence of a fiduciary duty"; (2) the decision by the RDI Board of Directors to terminate him as CEO and President of the Company represented a "breach of that duty" to RDI itself as a matter of law; and (3) "that the breach proximately caused the damages" to the Company alleged. *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008). Under NRS 78.138(7), in order for the Individual Defendants to be liable, Plaintiff must prove that the fiduciary breach "involved intentional misconduct, fraud or a knowing violation of the law." Plaintiff cannot meet ***any***—let alone all—of these requirements.

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

"Ordinarily, under Nevada's corporations laws, a corporation's board of directors has full control over the affairs of the corporation." *Shoen*, 122 Nev. at 632 (citation and internal quotation marks omitted); NRS 78.120(1) ("Subject only to such limitations as may be provided by this chapter, or the articles of the corporation, the board of directors has full control over the affairs of the corporation."). All officers "hold their offices for such terms and have such powers and duties as may be prescribed by the bylaws or determined by the board of directors," and may remain in office until the "expiration of his or her term" or "until the officer's resignation or removal before the expiration of his or her term." NRS 78.130(3)-(4). "[T]here is no vested right to retain one's office in the face of a properly executed removal." *Cooper v. Anderson-Stokes, Inc.*, 571 A.2d 786, 1990 WL 17756, at *2 (Del. 1989) (table); *see also Roven v. Cotter*, 547 A.2d 603, 609 (Del. Ch. 1988) (director had "no vested vest right to hold office in defiance of a properly expressed will of the majority").

RDI's Amended and Restated Bylaws mirror NRS 78.130, and provide that Plaintiff, upon his election as CEO on August 7, 2014, could hold office only until the appointment of his successor, his death, or "until he shall resign or is removed in the manner as hereinafter provided for such term as may be prescribed by the Board of Directors." (HD ¶ 20(a).) The Company's Bylaws further emphasize that Plaintiff served solely "at the pleasure of the Board of Directors," and that he could "be removed at any time, with or without cause, by the Board of Directors by a vote of not less than a majority of the entire Board at any meeting thereof." (*Id.* ¶ 20(b).)

In light of Board's unrestricted right to terminate Plaintiff at any time, for any reason, Plaintiff's attempt to utilize fiduciary duty law—via this derivative action—to challenge the propriety of his termination is untenable. Courts have rejected similar attempts by other terminated officers to assert fiduciary duty claims as a "novel argument," finding that there was "no case in support." *Carlson v. Hallinan*, 925 A.2d 506, 540 (Del. Ch. 2006) (plaintiff could not "articulate a theory as to how Carlson's removal as President . . . could be a breach of fiduciary duty"); *see also Datto Inc. v. Braband*, 856 F. Supp. 2d 354, 384 (D. Conn. 2012)

(plaintiff's allegations of "breach of fiduciary duty" based "on her allegedly wrongful termination . . . fail to state a claim"). Instead, it typically has been the case that "[q]uestions of policy or management . . . are left solely to the honest decision of the directors, if their powers are without limitation and free from restraint." *Treadway Cos., Inc. v. Care Corp.*, 638 F.2d 357, 381 (2d Cir. 1980) (citation omitted); 2 Fletcher Cyc. Corp. § 363 (2015) ("Thus, where a bylaw provided that any officer might be removed by a majority vote of the entire board whenever the best interests of the company require it, it was for the directors to determine what was in the best interests of the company; the courts will not interfere unless for fraud or illegality.").

The leading treatise on the subject emphasizes that "a court has no right or jurisdiction to review the discretionary action of the board in removing an officer, unless the contract rights of the person removed are involved," 2 Fletcher Cyc. Corp. § 360 (2015),[3] and numerous other decisions have stressed that, if the removal power within a corporation's bylaws allowed the termination, "[t]he motives for the acts of a board of directors, when lawful, are not properly the subject of judicial inquiry." *Zannis v. Lake Shore Radiologists, Ltd.*, 432 N.E.2d 1108, 1110 (Ill. Ct. App. 1982); *see also Mannix v. Butte Water Co.*, 854 P.2d 834, 842 (Mont. 1993) ("the determination to terminate an officer is a *subjective* one for the *board of directors* to make," not the court) (emphasis in original); *New Founded Indus. Missionary Baptist Ass'n v. Anderson*, 49 So.2d 342, 344 (La. Ct. App. 1950) (holding, where plaintiff sought a review of the merits of his removal as president, "a court has no right or jurisdiction to review the discretionary action of the board in removing an officer, unless the contract rights of the person removed are involved").

The reason for this deferential approach to boards in the context of their decision to terminate an officer is clear: "Often it is said that a board's most important task is to hire, monitor, and fire the CEO." *Klaassen v. Allegro Dev. Corp.*, C.A. Case No. 8262-VCL, 2013 WL 5967028, at *15 (Del. Ch. Nov. 7, 2013). It is the board, rather than a court, that is "optimally suited . . . to selecting, monitoring, and removing members of the chief executive's

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[3] The contract rights of Plaintiff under the Employment Contract are, of course, being adjudicated in an arbitration concurrent with this action.

office" so that it may "replace an underperformer in a timely fashion." *Id.* at *15 n.8 (citations omitted). The kind of action attempted by Plaintiff threatens to transform ***every*** termination of an executive from a personal dispute into a derivative attack on a board's exercise of its fiduciary duties, and would force Nevada courts to become frequent arbiters months (or, in this case, years) after the fact of the unique judgments a board must make regarding the effectiveness of its officers. Given that Plaintiff could be fired "at any time, with or without cause," under RDI's Bylaws, and both a majority of the entire Board ***and*** a majority of the non-Cotter directors voted to remove Plaintiff, the Court need not even engage in the business judgment analysis: Plaintiff's fiduciary duty claim arising from his termination is unsupportable.

2. The RDI Board's Termination of Plaintiff Fell Well Within the Protection of the Business Judgment Rule

Even reviewed on the merits, the RDI Board's decision to terminate Plaintiff as CEO and President of the Company was entirely appropriate. Under Nevada law, "[w]here a director is charged with breach of his fiduciary obligation, the 'business judgment rule' applies." *Horwitz v. SW. Forest Indus., Inc.*, 604 F. Supp. 1130, 1134 (D. Nev. 1985). The business judgment rule is a "presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Shoen*, 122 Nev. at 632 (citation omitted); *see also* NRS 78.138(3) (codifying the rule under Nevada law). "The business judgment rule postulates that if directors' actions can arguably be taken to have been done for the benefit of the corporation, then the directors are presumed to have been exercising their sound business judgment rather than to have been responding to self-interest motivation." *Horwitz*, 604 F. Supp. at 1135.

"[T]he business judgment rule applies" to the "decision to remove an officer" absent "gross negligence" or "proof that the action was not taken in an honest attempt to foster the corporation's welfare," *In re Dwight's Piano Co.*, 424 B.R. 260, 284 (S.D. Ohio 2009), and "[c]ourts are reluctant to second-guess such business judgments absent demonstrable bad faith on the part of the Board." *Franklin v. Tex. Int'l Petroleum Corp.*, 324 F. Supp. 808, 813 (W.D. La. 1971). "[E]ven a bad decision is generally protected by the business judgment rule," *Shoen*, 122

Nev. at 636, and the "burden of showing bad faith or abuse of discretion rests upon the plaintiff." *Horwitz*, 604 F. Supp. at 1135. Nevada is particularly strict with respect to plaintiffs who attempt to circumvent the business judgment rule: in the event that a director's action (or failure to act) is ultimately held to "constitute[] a breach of his or her fiduciary duties," the director faces individual liability only if "[t]he breach of those duties involved intentional misconduct, fraud or a knowing violation of the law." NRS 78.138(7)(a)-(b).

In light of the broad protections afforded under Nevada law to RDI's directors, Plaintiff cannot meet the showing required to avoid summary judgment for two reasons.

(a) Plaintiffs' Termination Was Justified on the Merits and a Proper Exercise of Business Judgment

First, the RDI Board's decision to terminate Plaintiff was justified on the merits and was an appropriate exercise of their business judgment—there was a "legitimate business reason" for Plaintiff's firing, the decision was "neither false, whimsical, arbitrary or capricious," and it had "some logical connection to the needs of the business." *Mannix*, 854 P.2d at 846; NRS 78.138(1) (directors are to "exercise their powers in good faith and with a view to the interests of the corporation"). Plaintiff's bald allegation that personal motivations may have influenced some directors is not sufficient to justify a trial on the merits of the Board's final decision. Nevada requires "intentional misconduct, fraud or a knowing violation of the law" to maintain an actionable fiduciary duty claim—not just the potential that personal animus or self-interested considerations played a role in a board's decision. NRS 78.138(7); *see also Franklin*, 324 F. Supp. at 813 ("intra- and intercorporate maneuvering" affecting termination decision did not disturb board's business judgment where other legitimate reasons justified firing). Purported "self-interest" will not forestall application of the business judgment rule unless "that motive is the sole or predominant reason" for a decision. *Horwitz*, 604 F. Supp. at 1135. It was not here.

With respect to Plaintiff, the RDI Board faced a CEO that was "young," chosen on "short notice," and lacked significant hands-on experience in numerous, highly relevant business areas. RDI's Board and shareholders recognized that "nepotism" may have benefitted Plaintiff in his selection as CEO, but all hoped that he could grow into the role and develop on the job. Within

two to three months of his election, the Board saw that Plaintiff needed help, which it attempted to provide—including via director Storey's formal participation as an "ombudsman." But Plaintiff had significant weaknesses: he could not work well with certain key executives, and some Board members came to believe that he was more interested in undermining central figures within the Company rather than in addressing pending issues; he acted—or was perceived to act—in a manner that was violent and abusive to employees and fellow Board members; and he demonstrated a lack of understanding with respect to metrics critical to evaluating RDI's businesses. Moreover, outside litigation involving Plaintiff and his sisters, who were key executives in the Company and also sat on the Board, had led to a "dysfunctional management team" torn apart by "'thermonuclear' hostility" that was clearly affecting the Company and stockholder value. (*See* Factual Background, *supra* at 5-9.)

After months of contemplating anger management courses, hiring outside consultants, or other changes to ameliorate Plaintiff's deficiencies, a majority of RDI's Board saw a lack of progress. Absent evidence that Plaintiff's tenure as CEO was creating any value or "leading us forward," the Board chose to terminate his divisive reign after several weeks of open contemplation in which it debated Plaintiff's performance "at length," gave Plaintiff multiple opportunities to make presentations defending himself, utilized the services of outside counsel, attempted to find negotiated alternatives to Plaintiff's termination, and took its role seriously in the face of Plaintiff's repeated threats to sue each of them and "ruin them financially" if the Board dared to remove him. Even the directors that voted not to terminate Plaintiff on June 12, 2015 recognized significant problems with his performance, and objected more to the timing of his removal than to the underlying basis. (*See* Factual Background, *supra* at 8-12.) This was exactly how a board was supposed to act under both Nevada law and RDI's Bylaws.

As with Plaintiff, an officer's "inability to perform adequately" and lack of "experience, expertise, and proper degree of affability" are protected reasons under the business judgment rule for his or her termination. *Franklin*, 324 F. Supp. at 813; *see also Carlson*, 925 A.2d at 540 n.232 (where "the evidence indicated that Carlson was not effective in the role of President of CR and that he had important managerial shortcomings," "firing him could have fostered CR's

welfare" and was thus protected by the business judgment rule). Plaintiff's insinuation that his termination was somehow "improper" because he was fired after he ultimately declined to settle the Cotter trust litigation (SAC ¶¶ 78-94) is baseless. The "agreement-in-principle" between Plaintiff and his sisters, if finalized, would have circumscribed Plaintiff's management authority and placed him under the auspices of an Executive Committee. (HD ¶ 41.) The Board's consideration of that potential deal made sense, as a finalized agreement could have reduced the admitted dysfunction hampering RDI and rectified some of the otherwise-terminal problems in Plaintiff's CEO tenure, while also providing him a structure within which to grow and gain experience; once that agreement fell through, the Board was left with the same intractable problems as before. The fact that a company's CEO cannot "work well" with its directors or executives, and requires "close and constant supervision," as was the case with Plaintiff, is a valid basis for terminating the officer, and is a decision protected by the business judgment rule. *In re Walt Disney Co. Deriv. Litig.*, 906 A.2d 27, 72-73 (Del. 2006). Even RDI's unaffiliated investors see this as a valid reason for Plaintiff's termination. (HD ¶ 18(d).)[4]

Because the RDI Board's termination of Plaintiff can "arguably be taken to have been done for the benefit of the corporation," that merits-based decision is fully protected by the business judgment rule and immune from Plaintiff's challenge. *Horwitz*, 604 F. Supp. at 1135; *see also Katz v. Chevron Corp.*, 22 Cal.App.4th 1352, 1366 (1994) (rule protects corporate management decisions whenever they can be "attributed to any rational business purpose").[5]

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[4] The fact that the RDI Board utilized both the Company's outside counsel and its own counsel, separately retained, when evaluating Plaintiff's performance and its duties is further evidence of the exercise of protected business judgment. *See In re Walt Disney Co. Deriv. Litig.*, 906 A.2d at 72-73 ("business judgment" properly exercised where officer "weighed the alternatives" and "received advice from counsel"); *Horwitz*, 604 F. Supp. at 1134-35 (directors use of advice from "law firms" was evidence of business judgment exercise).

[5] As noted in the Individual Defendants' contemporaneous Motion for Summary Judgment on Director Independence (No. 2), each non-Cotter Board member was independent with respect to the decision to terminate Plaintiff. Even if they were not, the "business judgment rule" would still apply because, under Nevada law, an "entire fairness" review can be triggered only (1) where there is a "change or potential change" in stockholder "control of [the] corporation," NRS 78.139, not present here; or (2) where a board "authorizes, approves, or ratifies a contract or transaction" involving an "interested director," a scenario also not present where there was a

(b) Plaintiffs' Procedural Complaints Are Unsupportable

Second, Plaintiff's remaining complaints regarding the "process" surrounding his termination are equally invalid. (*See* SAC ¶¶ 72-74, 76.) It is "well settled that corporate bodies, in proceedings taken for the removal of a corporate director or an officer, are not bound to act with the strict regularity required in judicial proceedings." 2 Fletcher Cyc. Corp. § 360. Directors need not give a CEO advance notice of a plan to remove him at a regular board meeting, and RDI's Bylaws contain no notice requirement. *Klaassen v. Allegro Dev. Corp.*, 106 A.3d 1035, 1043-44 (Del. 2014) (rejecting claim that CEO's termination was improper because of lack of agenda item giving advance notice that his performance was at issue); *OptimisCorp. v. Waite*, C.A. No. 8773-VCP, 2015 WL 5147038, at *66-67 (Del. Ch. Aug. 26, 2015) (rejecting argument that directors "breached their duty of loyalty by not advising [CEO] in advance of his potential termination"); 2 Fletcher Cyc. Corp. § 357.20 (2015) (a board's failure to give CEO advance notice of a plan to remove him as CEO does "not invalidate his termination").

Even so, here Plaintiff's performance was listed as an agenda item in advance of all three Board meetings in which his potential termination was discussed, and he was repeatedly given a platform before the Board to defend his tenure and present a business plan (which he declined when it became apparent that no such plan existed). (*See* Factual Background, *supra* at 9-11.) While Plaintiff may have wished to continue through June 2015 before any vote was held on his performance, his removal was permissible under RDI's Bylaws "at any time" (HD ¶ 20(b)), RDI's Board had "an individual who we're very concerned about" such that its "process or evaluation is constantly going on" (*id.* ¶ 8(l)), and the Board had an affirmative fiduciary duty to shareholders to remove Plaintiff whenever it felt that his performance was hindering the value of the Company—it could not simply hold off on a final decision based on Plaintiff's preferred timetable. (*See also id.* ¶ 7(b) (noting that the Board "had never set a date of June 30 for our intervention" and "there was no reason for us to wait until June 30").) RDI's Board of Directors in no way "ambushed" Plaintiff. *OptimisCorp*, 2015 WL 5147038, at *67. Plaintiff "knew that

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termination of an officer. NRS 78.140. And, even if an "entire fairness" review could apply, Plaintiff's firing was unquestionably a "fair" decision by the Board in light of the above-issues.

his position as C.E.O. was in jeopardy for a longer period of time than just May 21" (HD ¶ 8(j)), and RDI's Board gave him far more notice and opportunity to defend his performance than required by law. (*See also* HD ¶ 12(j) (per Plaintiff, RDI's Board discussed "the possibility of getting an interim CEO . . . as early as October 2014").) Plaintiff's process claims, as with his attack on the underlying merits of his termination, are baseless as a matter of fact and precluded as a matter of law by the business judgment rule.

3. RDI Was Not Damaged by Plaintiff's Termination

Plaintiff's fiduciary duty claim relating to his termination also fails because he cannot prove that any "breach proximately caused . . . damages" to RDI itself. *Olvera v. Shafer*, No. 2:14-cv-01298, 2015 WL 7566682, at *2 (D. Nev. Nov. 24, 2015) (applying Nevada law and dismissing fiduciary duty claim); *see also Carlson*, 925 A.2d at 540 (dismissing claim because plaintiff could not "articulate" or "prove that any damages flowed proximately" to company from his firing). To sustain a fiduciary duty claim, there must be cognizable evidence of "economic harm suffered" by the Company actually resulting from the Board's alleged "breach of duties owed in a fiduciary relationship." *Chimney Rock Pub. Power Dist. v. Tri-State Generation & Transmission Ass'n, Inc.*, No. 10-cv-02349, 2014 WL 811566, at *4 (D. Colo. Mar. 3, 2014). Nominal damages are insufficient. *See AMERCO v. Shoen*, 907 P.2d 536, 542 (Ariz. App. 1995) (in evaluating breach of fiduciary duty claim, finding "[w]e have no basis for concluding that, in the absence of actual damage or unjust enrichment, Nevada would encourage internecine corporate litigation by permitting a nominal damage claim"). Nor will mere "speculative" damages suffice. *Chimney Rock*, 2014 WL 811566, at *4.

Plaintiff cannot meet the damages showing required to avoid summary judgment. Uncontroverted testimony and documentary evidence from within RDI indicates that Plaintiff "was very weak as a C.E.O. or as a manager," that he "wasn't really leading the business and he wasn't leading us forward," "wasn't progressing fast," lacked a "vision of where we're going," and did not do "one thing . . . that created value for the company." (HD ¶¶ 3(d), (f)-(g); 8(r), (u).) RDI's unaffiliated major investors were also unanimous that it would not " make much difference" to shareholders if Plaintiff was CEO, and that the overall performance of the RDI,

along with its business plan, have remained entirely consistent and appropriate since Plaintiff's termination. (*See* Factual Background, *supra* at 12-13.) And while Plaintiff's expert Tiago Duarte-Silva asserts that RDI performed differently when Plaintiff was CEO as compared to Ellen Cotter, he offers no evidence or analysis connecting the purported changes in performance to anything Plaintiff or Ellen Cotter did or did not do as CEO, completely avoids actual or proximate causation, and does not address the essentially unchanged performance of RDI's stock price. (*See* HD ¶ 46.)[6]

Because Plaintiff does not have evidence of any "economic harm" flowing to RDI following his termination, let alone evidence that his firing was the "proximate cause" of such harm, he cannot establish an actionable breach of fiduciary claim. *See Bd. of Managers at Wash. Park Condo v. Foundry Dev. Co.*, 975 N.Y.S.2d 707, at *2-3 (N.Y. Sup. Ct. 2013) (table) (rejecting fiduciary duty claim where there was no connection of harm to nominal plaintiff); *Stafford v. Reiner*, 804 N.Y.S.2d 114, 114-15 (N.Y. App. Div. 2005) (rejecting fiduciary duty claim because "proximate cause" evidence was absent, and claim was "entirely speculative" with "no support in the record"). Indeed, given that he cannot satisfy ***any*** of the elements required to sustain his fiduciary duty claim relating to his termination, each of Plaintiff's causes of action should be dismissed to the extent that they relate to his removal.

B. Plaintiff Cannot Maintain This Derivative Action to Assert Fiduciary Duty Claims Relating to His Termination

This Court, at the pleading stage (accepting all allegations as true), determined that Plaintiff had standing to assert a derivative action on behalf of RDI itself and its shareholders

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[6] Indeed, since Plaintiff's termination, RDI's stock has frequently traded at or above the value it held on June 12, 2015. (*See* HD ¶ 45.) Where the market data regarding the share price shows that prices have risen following disclosures, the "proximate causation" required for a breach of fiduciary duty claim is entirely lacking. *See In re Acterna Corp. Sec. Litig.*, 378 F. Supp. 2d 561, 588 (D. Md. 2005). Even if it had not, a mere drop in share price is insufficient to satisfy the required causation. *See Morgan v. AXT, Inc.*, No. C 04-4362, 2005 WL 2347125, at *16 (N.D. Cal. Sept. 23, 2005) (allegation that share price dropped after disclosure revealed prior misrepresentations insufficient to constitute causation). And, of course, a "decline" in "stock price is not even a derivative injury" and cannot support the required causation in the context of Plaintiff's purported derivative action. *South v. Baker*, 62 A.3d 1, 25 (Del. Ch. 2012).

with respect to a variety of fiduciary claims, including as they related to his termination. However, the elements of standing are not merely pleading requirements 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 obvious, following discovery, 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 fiduciary duty claims relating to his termination and to the extent that he seeks reinstatement as CEO and President of the RDI. Any suggestion by the Plaintiff otherwise is tilting at windmills. Thus, even if Plaintiff's termination and reinstatement claims were not entirely barred by the business judgment rule (which they are), Plaintiff could not maintain a derivative action regarding such claims.

In pursuing a derivative action, 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 corporation 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). Following discovery, it is clear that the vast majority of these factors negate Plaintiff's attempted derivative standing with respect to his termination and reinstatement claims, as there are irreconcilable conflicts of interest between Plaintiff, other RDI shareholders, and the Company itself.[7]

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). As the former CEO and President of RDI, Plaintiff "has a personal economic interest in reversing the events leading to his removal," but RDI's "shareholders do not share this interest, as they do not stand to regain past employment or company influence." *Energytec*, 2008 WL 4131257, at *7 (rejecting derivative standing by former CEO of company). Not only do Ellen and Margaret Cotter, who control the majority of the voting Class B shares in RDI, oppose Plaintiff's termination and reinstatement claims, significant unaffiliated shareholders in the Company have testified that they see no economic benefit in pursuing Plaintiff's termination claim or in seeking his reinstatement. (*See* Factual Background, *supra* at 12-13.) These outside shareholders had "no opinion" as to whether Plaintiff's termination and requested reinstatement would affect RDI's share price, saw no evidence that the Company's "business operations" have been affected by his termination or would be benefitted by his reinstatement, and do not see "a high priority" to returning Plaintiff to office. (*Id.*) Thus, there is clear economic antagonism—what is economically beneficial to

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[7] 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.

Plaintiff himself is not viewed by the Company or its investors as economically advantageous.

The Remedy Sought 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. (*See* Factual Background, *supra* 9-10.) Other courts have found identical 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 relating to his termination is not a harm suffered by RDI itself or any of its other shareholders, and is not a proper vehicle for a derivative action.

Other Litigation Is Pending: In addition to this case, currently there is a California trust litigation, a Nevada trust and estates litigation, and a private arbitration proceeding, all of which relate to the contested control of RDI and purported misdeeds related to Plaintiff's firing. "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 settlement" 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 is asserting the same arguments in those cases as in this one. For instance, Plaintiff in the trust litigation has claimed—as in this action—that he was wrongfully terminated in "a boardroom coup," that "Ellen [Cotter] deliberately interfered with and corrupted a search process set in motion by the RDI Board," that Margaret Cotter was promoted to a position to which she is also wholly unqualified," and that the Board improperly increased his sisters' compensation. (*See* HD ¶ 47.) "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 Clearly 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"). 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).

Plaintiff Has No Shareholder Support: Even setting aside the fact that the individuals who control a majority of RDI's voting shares do not support Plaintiff's derivative action or his requested reinstatement, it is clear that Plaintiff has no evidence of shareholder support from significant unaffiliated shareholders in RDI. Andrew Shapiro, which owns approximately $13 million in RDI's Class A stock and $30,000 in Class B stock, has testified that he "wasn't committed one way or the other than [Plaintiff] should be reinstated," and he did not "think necessarily [Plaintiff] is the best adequate representative of mine or other shareholder interests." (HD ¶ 19(f)-(g).) Both Whitney Tilson and Jonathan Glaser, who together control over 1 million shares of the Company's Class A stock and over a thousand Class B shares, have explicitly rejected the idea of reinstating Plaintiff. (*See* Factual Background, *supra* at 12-13.) Indeed, Tilson has specifically noted that "the well has been poisoned" with respect to Plaintiff as CEO, and his reinstatement would merely perpetuate a "divided company." (HD ¶ 17(a).) Tilson has further stressed that Plaintiff is not "the single best qualified person to run" RDI, and emphasized his belief that Plaintiff's advancement within RDI was likely the product of "nepotism." (*Id.*) This "lack of support" for Plaintiff's termination and reinstatement claims by relevant "non-defendant shareholders" is strong evidence that Plaintiff does not have standing to maintain his derivative challenge. *Love*, 2007 WL 4928035, at *6; *see also Smith*, 977 F.2d at 948 (lack of "cooperation" or support from other shareholders undermined attempted derivative action).

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 for his highly personal termination and reinstatement claims. *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"). Because Plaintiff lacks standing to pursue a derivative action seeking relief on his termination and reinstatement claims, summary judgment is fully warranted.

C. Plaintiff's Reinstatement Demand Is Unsupportable and Untenable

Plaintiff's Employment Contract with RDI, which relates to his duties as President and

which—according to Plaintiff—continued to apply when he became CEO (HD ¶ 11(a)), provides that Plaintiff will receive twelve months of "compensation and benefits" following a termination "without cause," and nothing if he was terminated for "cause." (*Id.* ¶ 21(c).) Nowhere does the Employment Contract give Plaintiff the right of reinstatement or any other right of specific performance against the Company. (*Id.* ¶ 21.) "It is hardly controversial to recognize that an order of specific performance is rarely an appropriate remedy for breach of an employment agreement." *Cedar Fair, L.P. v. Falfas*, 19 N.E.3d 893, 897 (Ohio 2014). The result should not be different here: Plaintiff's attempt to achieve, via this derivative action, a reinstatement remedy beyond what is available under his Employment Contract is unsupportable for six reasons. Accordingly, summary judgment as to the relief sought by Plaintiff is warranted.

First, "generally, equity will not assume jurisdiction for the purpose of reinstating a removed officer." 2 Fletcher Cyc. Corp. § 363. "An equitable action does not lie where the officer was removable without cause," *id.*, as Plaintiff was pursuant to RDI's Bylaws, which provided that he "may be removed at any time, with or without cause." (HD ¶ 20(b).)

Second, specific performance is available under Nevada law only if "the remedy at law is inadequate." *Serpa v. Darling*, 107 Nev. 299, 305 (1991); *see also* 2 Fletcher Cyc. Corp. § 363 ("equity has no power to reinstate a removed officer . . . where they have an adequate remedy at law"). Here, Plaintiff's Employment Contract sets forth the relief owed following a termination, Plaintiff is participating in a simultaneous arbitration regarding his removal, and the Company itself has suffered no damages as a result of his firing. As such, a remedy at law is clearly sufficient to resolve Plaintiff's wrongful termination claims.

Third, "there are strong policy reasons" for the "general rule against compelling an employer to retain an employee," especially if such reinstatement—as here—is "against [the employer's] wishes." *Zannis v. Lake Shore Radiologists, Ltd.*, 392 N.E.2d 126, 129 (Ill. Ct. App. 1979). Plaintiff's reinstatement "would involve difficulty of supervision," *Cedar Fair*, 19 N.E.3d at 898, and there are significant questions counseling against reinstatement as to how "a large business entity" like RDI could "properly function" if it was "force[d]" to "reemploy an unwanted senior officer" like Plaintiff "after it had obviously moved on." *Id.*

Fourth, officers have no "vested right to serve out the remainder of their terms." *Chesapeake Corp. v. Shore*, 771 A.2d 293, 345-46 (Del. Ch. 2000). Plaintiff has "no property right" in his position as CEO and, given RDI's Bylaws, if reinstated he "could immediately be fired for no reason or for any other permissible reason." *Rosario-Torres v. Hernandez-Colon*, 889 F.2d 314, 323 (1st Cir. 1989). This fact alone may "support a denial of reinstatement." *Id.*

Fifth, the "long period of time" that has elapsed since Plaintiff's termination, over 15 months at the moment (far longer than his 10 months as CEO), counsels against Plaintiff's reinstatement. *Id.* at 324 (recognizing that "a long period of time" between "discharge" and "entry of judgment" weighs against reinstatement); *Nance v. City of Newark*, Civ. No. 97-6184, 2010 WL 4193057, at *2 (D.N.J. Oct. 19, 2010) (same). This is especially true given that the Company has moved on from the issues encountered during Plaintiff's tenure, now has several new directors serving on the Board, and its own uninterested investors recognize that Plaintiff's reinstatement would merely perpetuate a "divided company."

Sixth, and finally, reinstatement is not proper where—as here—there is "irreparable animosity between the parties." *Blum v. Witco Chem. Corp.*, 829 F.2d 367, 373-74 (3d Cir. 1987); *Robinson v. SEPTA*, 982 F.2d 892, 899 (3d Cir. 1993) (same). It is beyond dispute that there is "substantial animosity between the parties," including, in particular, between Plaintiff and his sisters; "the parties' relationship [is] not likely to improve"; and "the nature of [RDI's] business require[s] a high degree of mutual trust and confidence," which is "noticeably lacking." *Brooks v. Woodline Motor Freight, Inc.*, 852 F.2d 1061, 1066 (8th Cir. 1988). Plaintiff's requested reinstatement relief is therefore untenable and should be denied.

V. CONCLUSION

For the foregoing reasons, the Individual Defendants respectfully request that the Court grant them summary judgment as to the First, Second, Third, and Fourth Causes of Action set forth in Plaintiff's SAC, to the extent that they assert claims based on Plaintiff's June 12, 2015 termination as CEO and President of RDI, and to the extent that Plaintiff seeks damages and/or an order both declaring that his termination was "legally ineffectual and is of no force and effect" and an injunction reinstating him as the Company's CEO and Chairman.

Dated: September 23, 2016

COHEN|JOHNSON|PARKER|EDWARDS

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DECLARATION OF COUNSEL NOAH S. HELPERN IN SUPPORT OF THE INDIVIDUAL DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (NO. 1) ON PLAINTIFF'S TERMINATION AND REINSTATEMENT CLAIMS

I, Noah Helpern, state and declare as follows:

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

2. Attached hereto as Exhibit 1 is a true and correct copy of transcript excerpts from the deposition of Timothy Storey, taken on February 12, 2016, in which the following pages are relevant:

a.) 119:25-120:12 (Storey testifying that McEachern believed "the current disharmony within the business was untenable going forward and needed to be dealt with");

b.) 154:2-4 ("I think the comment was simply . . . that things should be dealt with now. They had come to a head and there was no point in delaying. . . . . That's my perception, that there was – the view was there was disharmony, and therefore it needed to be dealt with. It was clearly a view around the board table by a number of people that the matter needed to be dealt with expeditiously and rightly."); and

c.) 226:21-227:11 (Storey testifying that it "was not my opinion" that Plaintiff was terminated as CEO as a result of "the trust and estate litigation").

3. Attached hereto as Exhibit 2 is a true and correct copy of transcript excerpts from the deposition of Guy Adams, taken on April 28, 2016, in which the following pages are relevant:

a.) 77:6-24 ("Tim Storey was coaching" Plaintiff and acting as "ombudsman" to address Plaintiff's "performance and there being certain issues");

b.) 78:13-20 (according to Adams, Storey noted that "the only reason" Plaintiff received the CEO "job is because his last name is Cotter," while Adams was aware of Plaintiff's "shortcomings" upon his election);

c.) 78:18-21 (while Adams had hoped that Plaintiff could "learn on the job and get up to speed quickly . . . by April, [Adams] was of the opinion that wasn't working out");

d.) 83:23-87:23 ("I questioned [Plaintiff's] knowledge about the business he's managing and his management style . . . I was forming the opinion or had formed the opinion that he wasn't really leading the business and he wasn't leading us forward . . . . I said, We've been working with [Plaintiff] all these months and I don't see progress.");

e.) 84:20-87:23 (Adams testifying that, properly adjusting for lease rentals, the margins for film rental in the United States as compared to Australia and New Zealand revealed a 2% gap, not a 16-18% gap as Plaintiff claimed. Similarly, as RDI's ex-CFO clarified, "[i]n the USA they allocate the G and A down to the theatre level so the theatre level labor cost looks high, and in Australia and New Zealand, they allocate a lot of the labor costs up to G and A so the labor cost looks really low.");

f.) 88:24-89:22 ("But the vision of where we're going, how we're going to lead – where is our CEO leading our company, I said, We haven't heard a whiff of this . . . . Nobody saw it; nobody heard it."); and

g.) 89:23-90:10 (Gould "agreed" with Adams that Plaintiff "wasn't progressing fast.").

4. Attached hereto as Exhibit 3 is a true and correct copy of transcript excerpts from the deposition of Guy Adams, taken on April 29, 2016, in which the following pages are relevant:

a.) 419:17-421:23 (Adams recalling occasions on which he was informed, within "two days" after the events, of outbursts by Plaintiff in which he "lost his temper" when dealing with Linda Pham, Debbie Watson, and Ellen Cotter);

b.) 419:11-16 ("There's been more than one conversation by the non-Cotter board members about [Plaintiff's] interpersonal skills and anger management issues.");

c.) 422:1-18 ("Late 2014, early 2015, . . . there was a discussion . . . among the board – non-Cotter board members about potentially [Plaintiff] being coaxed or demanded to attend anger management classes.");

d.) 426:19-427:9 (Adams testifying that "[c]alling up the chairman of the board and saying he's prepared to file a derivative suit" against the Company was an unjustifiable attempt to pressure the Board and itself "cause to remove" Plaintiff);

e.) 431:2-432:19 (When Adams was discussing estate planning with Plaintiff in June 2014, Plaintiff "jumped up from his desk and turned beet red and was screaming at the top of his lungs at [Adams]," and then "marched up and down, paced, and was yelling at [Adams]" before "apologiz[ing]" for his outburst.);

f.) 451:25-452:16 (Plaintiff's "door was shut a considerable amount of time. I'm not sure exactly what was going [on] during the time the door was shut.");

g.) 451:25-454:25 (further noting that Plaintiff "seemed very slow, very hard to make decisions");

h.) 460:12-24 ("Tim Storey voiced the opinion that if his last name wasn't Cotter, he wouldn't be CEO.");

i.) 462:14-25 (Adams believed that, at the time of Plaintiff's election, he "was young" and "didn't have that much experience"); and

j.) 463:9-464:7 (Storey "appointed himself" coach for Plaintiff because, "within two or three months, it became clear to the board that [Plaintiff] needed help

in his role, not only as CEO in running the company but trying to make amends or find bridges that he could work with his sisters.").

5. Attached hereto as Exhibit 4 is a true and correct copy of transcript excerpts from the deposition of Edward Kane, taken on May 2, 2016, in which the following pages are relevant:

a.) 134:1-135:22 (Kane believed that there was a "toxic office and polarization" in RDI because of, in part, incidents between Plaintiff and various employees, which led Linda Pham to contact McEachern regarding "her concern for her actual physical safety" and Debbie Watson to "carry[] mace to the office");

b.) 137:12-140:15 (Linda Pham filed two complaints that were turned over the McEachern and Storey because she was "physically afraid" of Plaintiff, especially "when she was there after-hours.");

c.) 159:10-160:12 (Plaintiff insisted on showing the board pictures of theatres in Hawaii that Plaintiff believed were in disrepair to the Board, without first raising the issue with Ellen Cotter, in an attempt to make Ellen "the fall person for this," even though "[s]he had nothing to do with the issues, if there were any.");

d.) 161:4-162:11 (Rather than ask, "Margaret, how can I help in solving this issue?," Plaintiff "attack[ed] his sister" and "used [the STOMP dispute] as a tool to embarrass her in front of the board," which is "not what a C.E.O. would do when you have two experienced executives," and "[t]he net result" of the STOMP dispute "is that Margaret by herself handled this arbitration with her lawyers and we just got an award for more than $2.2 million."); and

e.) 164:3-21 (Storey was acting "as the ombudsman" to try to get Plaintiff "to work together" with Ellen and Margaret Cotter).

6. Attached hereto as Exhibit 5 is a true and correct copy of transcript excerpts from the deposition of Edward Kane, taken on May 3, 2016, in which the following pages are relevant:

a.) 251:13-253:6 ("The independent committee . . . spent an inordinate amount of time trying to come up with ways of ameliorating the . . . way . . . the Cotters interacted with each other."); and

b.) 331:11-332:17 (Kane explaining opinion of majority of non-Cotter directors as to why further delay on vote to terminate Plaintiff at the June 12, 2015 Board meeting would have been problematic and suboptimal for the Company's shareholders).

7. Attached hereto as Exhibit 6 is a true and correct copy of transcript excerpts from the deposition of Edward Kane, taken on June 9, 2016, in which the following pages are relevant:

a.) 529:22-530:2 (Kane noting that Gould and Storey saw "a psychologist or psychiatrist and wanted us to mandate that [Plaintiff] visit this psychologist or psychiatrist."); and

b.) 532:12-534 (testifying that the Board "had never set a date of June 30 for our intervention" and "there was no reason for us to wait until June 30").

8. Attached hereto as Exhibit 7 is a true and correct copy of transcript excerpts from the deposition of Douglas McEachern, taken on May 6, 2016, in which the following pages are relevant:

a.) 49:25-50:7 (Plaintiff "had no real estate experience, no international experience, no management experience, no cinema experience and no live theater experience");

b.) 50:19-51:12 (Storey and McEachern cautioned Plaintiff for "going around Ellen's back" and wasting "valuable" time "doing financial analysis of individual cinemas" where a "consultant [could] do this");

c.) 51:13-52:1 (Plaintiff visited RDI cinemas in Hawaii and "didn't talk to anybody, just went and took pictures" so that he could "undercut" Ellen Cotter);

d.) 52:2-5 (Plaintiff "had a habit of coming into the office, sitting in his office and shutting the door, by himself and being there all day.");

e.) 71:2-18 (identifying "sometime in mid to late May of 2015" when McEachern decided to support the termination of Plaintiff as CEO);

f.) 78:14-79:2 (McEachern testifying as to a personal meeting with Plaintiff in May, in which he threatened to go "after everybody");

g.) 112:18-113:24, 114:6-15 (Linda Pham "felt that [Plaintiff] was being abusive in his behavior towards her," and Debbie Watson's "comments were supportive of Linda Pham's concerns.");

h.) 163:20-164:5 ("I was not comfortable with [Plaintiff] having the authority and responsibilities on his own as C.E.O. of Reading");

i.) 167:4-25 (explaining why Gould's proposal, which involved delay of potentially "two years" on decision regarding Plaintiff as CEO, was not "in the best interest of shareholders");

j.) 176:1-9 (Plaintiff "knew that his position as C.E.O. was in jeopardy for a longer period of time than just May 21");

k.) 177:5-11 (recalling emails from Storey regarding "the holes in" Plaintiff's "expertise or ability to function as C.E.O. and where he needed further handling");

l.) 219:2-24 (noting that the Board had "an individual who we're very concerned about" such that its "process or evaluation is constantly going on");

m.) 229:4-6 (McEachern explaining Storey's preference at the June 12, 2015 Board meeting to conclude the process relating to the evaluation of Plaintiff as CEO "at the end of June time frame or 90-day time frame when he started");

n.) 285:5-8 (noting Plaintiff's plan "to make some sort of presentation about the ugliness of the theaters which hadn't had any capital put into them for quite a while");

o.) 285:23-286:11 (after complaints from McEachern over the course of "a month or two" that his "closed door" policy was sending the message that he was "not being engaged with the employees of the company," Plaintiff "open[ed] the door to his office one inch," which "really caused some great angst");

p.) 287:21-24 (Plaintiff "traveled around with his dad looking at things in Australia and possibly New Zealand, but in terms of any real operational effect or activities, nothing");

q.) 288:19-289:8 (likening Plaintiff's response to "throw[ing] hand grenades in something that you're trying to do on a positive basis");

r.) 292:2-5 ("The company from August of 2014 until Jim's termination, I cannot tell you one thing that we did that created value for the company, one thing that Jim Cotter, Jr., managed to do. Nothing.");

s.) 292:6-24 (Following Plaintiff's election as CEO, "August, September, October, November, December, January, February – six months goes on and he hasn't gone to visit anybody who has – connected our big activities that are taking place, which are doing exceedingly in Australia and New Zealand.");

t.) 292:25-293:9 (identifying Plaintiffs' "[i]nability to work with executives" of RDI);

u.) 293:4-9 (recalling emails in which Storey "alluded to" the fact that Plaintiff "was very weak as a C.E.O. or as a manager");

v.) 293:10-13 (noting Plaintiff's idea "to go to U.C.L.A. to learn how to manage" and "get an M.B.A.");

w) 293:23-294:8 (Plaintiff had "an inability to operate as a manager, an inability to create trust, an inability to communicate with people.");

x.) 294:3-15 ("That lack of experience that [Plaintiff] had all painted a picture that we're not making progress that our shareholders expect us to make in this organization, and we got to get somebody in here who can help us move the company forward."); and

y.) 302:21-303:13 (McEachern emphasizing his belief that Ellen Cotter "should be in charge of going and figuring out where to go" with respect to food and beverage changes, "not the C.E.O. going and undercutting an individual running that operation").

9. Attached hereto as Exhibit 8 is a true and correct copy of transcript excerpts from the deposition of Margaret Cotter, taken on May 12, 2016, in which the following pages are relevant:

a.) 275:14-278:12 (discussing factors leading to the dissolution of the "agreement-in-principle" as it was revised and lawyers for each side attempted to put it into final form).

10. Attached hereto as Exhibit 9 is a true and correct copy of transcript excerpts from the deposition of Margaret Cotter, taken on May 13, 2016, in which the following pages are relevant:

a.) 301:17-302:6 ("I believe that the email had 23 reasons why he shouldn't be giving me this employment agreement. And the employment agreement was very restricted, where if I didn't hand in a report at some particular time, I could be terminated.");

b.) 304:5-23 (Plaintiff "just wanted to find all the fault in what I had done rather than deal with the situation in hand and getting this [preliminary injunction motion] filed to prevent the show from leaving the theater.");

c.) 367:20-368:12 (Gould suggested that Plaintiff remain as President while stepping down as CEO at the May 21, 2015 meeting, following which Margaret Cotter recognized that Plaintiff "can get [his] training over the next five years and gain more experience and possibly [he] could become C.E.O. in another five years"); and

d.) 368:13-371:20 (describing negotiations regarding additional items and revisions during the attempted finalization of the agreement-in-principle).

11. Attached hereto as Exhibit 10 is a true and correct copy of transcript excerpts from the deposition of James J. Cotter, Jr. ("Plaintiff"), taken on May 16, 2016, in which the following pages are relevant:

a.) 30:25-37:9 (Plaintiff contends that his Employment Contract, which covered his duties as RDI President, continued to apply when he became CEO);

b.) 133:13-17 (Plaintiff testifies that he was appointed Vice Chairman of the Company in September 2007, and then President in June 2013);

c.) 133:18-134:11, 135:23-144:1 (Plaintiff states that he joined the RDI Board in March 2002 at his father's behest, and had never previously served on the board of a public company);

d.) 152:13-153:21 (Plaintiff concedes that he no "experience at all in the cinema or theater business of any sort" outside of his tenure as an RDI director, no experience "with business in Australia or New Zealand" other than as an RDI director, and his exposure to real estate was confined to a few transactions "as a corporate lawyer" and one "cinema transaction with Reading as a lawyer.");

e.) 163:19-165:1 (the position of President of RDI was reactivated specifically for Plaintiff; there had been no President for some time and he did not succeed anyone in that position);

f.) 198:19-21 ("I was on the verge of putting together budgets for the whole company with stretch goals.");

g.) 205:19-206:6 (Plaintiff admits that he "did not have a draft" business plan prepared as he was "waiting" for the completion of the plans from various divisions); and

h.) 235:18-21 (Plaintiff concedes that he "never presented a plan to the board prior to being terminated, but that was one of the action items that I thought was important for the company.").

12. Attached hereto as Exhibit 11 is a true and correct copy of transcript excerpts from the deposition of Plaintiff, taken on May 17, 2016., in which the following pages are

relevant:

a.) 315:22-317:16 (Plaintiff admits, "Initially, I was not supportive of the idea [of an ombudsman]. . . . I was protective of maintaining my authority as CEO[.]");

b.) 344:24-345:12 (Plaintiff testifying that he "found it difficult working with [his sisters] because, by that point, the issues that I was having with them relating to the trust and estate matters had permeated the company");

c.) 354:23-357:24 (Gould and Storey met with Bryant Crouse, an outside consultant, to discuss getting "involved in the company and perform[ing] an assessment and provid[ing] recommendations to the company, to the management team . . . on ways to improve the management and corporate governance");

d.) 447:18-448:4 (Plaintiff testifying that he visited every theater on Oahu but did not identify himself to management there "[b]ecause I wanted to almost be a mystery shopper");

e.) 481:24-483:5 (Plaintiff admitting that he "heard [] from the directors" that there was a "perception at Reading by employees" that he had "a volatile temper" and "an anger management problem," and that he told the Board that they "should all investigate" the accusations);

f.) 509:10-15 (Plaintiff admitting that "someone communicated" to him that he needed to keep his door open when in the office);

g.) 517:2-17 (Plaintiff admits yelling at Adams "sometime in 2014"); and

h.) 528:9-529:20 (Plaintiff concedes that the Board discussed "the possibility of getting an interim CEO . . . as early as October 2014").

13. Attached hereto as Exhibit 12 is a true and correct copy of transcript excerpts from the deposition of Plaintiff, taken on July 6, 2016, in which the following pages are relevant:

a.) 696:22-700:3 (Plaintiff describing his relationship with Margaret Cotter as "dysfunctional" and claiming that she "literally refused to report to me");

b.) 704:7-22 (noting his understanding that the independent directors would utilize director Storey's findings to "possibly take actions in response to those findings and recommendations"); and

c.) 705:13-706:9 (Plaintiff agreeing that a board of a company always "has the power to hire and fire a CEO" "[s]ubject to agreements made, written contracts made," "or possibly a resolution").

14. Attached hereto as Exhibit 13 is a true and correct copy of transcript excerpts from the deposition of Ellen Cotter, taken on May 18, 2016, in which the following pages are relevant:

a.) 156:19-165:18 (testifying that she and Adams also spoke with outside counsel at Akin Gump prior to May 21, 2015).

15. Attached hereto as Exhibit 14 is a true and correct copy of transcript excerpts from the deposition of William Gould, taken on June 8, 2016, in which the following pages are relevant:

a.) 86:12-22 (at the June 12, 2015 Board meeting, "even without [Ellen and Margaret Cotter's votes, . . . the parties moving for termination had sufficient votes . . . to accomplish what they wanted to do");

b.) 110:13-20 ("Guy, Doug and Ed Kane sa[id] they felt . . . that [Plaintiff's] performance was such that he should be replaced.");

c.) 119:1-120:2 ("[A]ll the directors felt that [Storey's appointment as ombudsman] was a reasonable approach to try.");

d.) 123:15-21 (At the June 12, 2015 Board meeting, the majority of the non-Cotter directors "made the statements . . . they felt that they were convinced [Plaintiff's] performance was such that it had to be cut off at an earlier point; that the time had come to make decision, and we should not wait the extra month or so to get Tim Storey's final report.");

e.) 133:17-134:5 (describing plan to "get a report from [Storey] and then make a final decision whether some or all of the Cotter family members would have

to improve their performance or change . . . what they were doing");

f.) 134:6-24 (further emphasizing that the Board was prepared "to take drastic steps which might involve terminating one or more of the Cotters"); and

g.) 210:25-211:4 (Margaret Cotter "later was vindicated when the Court ruled in Reading's favor[.]").

16. Attached hereto as Exhibit 15 is a true and correct copy of transcript excerpts from the deposition of William D. Ellis, taken on June 28, 2016, in which the following pages are relevant:

a.) 55:21-57:5 (testifying that he was aware that the Board had "some concerns about [Plaintiff's] behavior," including his "[t]emperament and what I think people characterized as anger issues," and that he personally heard Plaintiff "yelling at times" because his office "shared a thin wall" with that of Plaintiff).

17. Attached hereto as Exhibit 16 is a true and correct copy of transcript excerpts from the deposition of Whitney Tilson, taken on May 25, 2016, in which the following pages are relevant:

a.) 150:6-154:23 (Tilson stating that he would not reinstate Plaintiff if he had the opportunity because "the well has been poisoned" following Plaintiff's conflicts with Ellen and Margaret Cotter, his reinstatement would merely perpetuate a "divided company," there is a "reasonable likelihood" that Plaintiff is not "the single best qualified person to run" RDI, he was concerned that Plaintiff's advancement within RDI was purely the product of "nepotism," "[t]here was nothing that was a real outlier, either positive or negative, in the couple quarters that [Plaintiff] was the CEO" and that "my general sense is that just because you happen to have the same genetic code of the person who founded and built the company doesn't make you the best qualified CEO");

b.) 155:16-156:9 (confirming that he would not seek "the reinstatement or rehiring of [Plaintiff] as CEO");

c.) 176:2-25 ("I personally, speaking only for myself, am not an advocate for returning [Plaintiff] to the CEO position."); and

d.) 182:14-183:3 (admitting that "[t]he business operations" of RDI have "remained pretty steady" since Plaintiff's termination).

18. Attached hereto as Exhibit 17 is a true and correct copy of transcript excerpts from the deposition of Jonathan Glaser, taken on June 1, 2016, in which the following pages are relevant:

a.) 155:13-157:6 (Glaser testifying that he would not seek the reinstatement of Plaintiff, "it's just not a high priority to put [Plaintiff] back," he is "personally comfortable with Ellen Cotter as CEO," and he did not "think it would make much difference" to the "shareholders of Reading" if Plaintiff was CEO);

b.) 154:13-19 (Glaser testifying, "I actually don't really have a problem with Ellen as CEO.");

c.) 160:10-19 (testifying that he did not "have an opinion" on whether reinstatement would affect RDI's share price, and that if Plaintiff "were reinstated, I have no idea if the market would react positively or not");

d.) 222:13-20 (confirming that "a CEO could properly be terminated for not getting along with the employees and other executives of the company," and that failure to get along "would be a major factor");

e.) 243:14-244:18 (estimating current RDI stock ownership);

f.) 242:9-243:2 ("I don't really have a huge problem with the way the company is running day to day."); and

g.) 258:22-259:5 (Glaser noting that he does not "have any evidence that [Ellen Cotter] [is] not a good CEO" and that he "was not necessarily troubled by" her election as permanent CEO).

19. Attached hereto as Exhibit 18 is a true and correct copy of transcript excerpts from the deposition of Andrew Shapiro, taken on June 6, 2016, in which the following pages are relevant:

a.) 40:8-17 ("I haven't had a disagreement with their direction . . . with Senior, with [Plaintiff], or with what Ellen has been doing . . . . I think the business plan has been fairly consistent.");

b.) 41:8-11 ("[W]ith the current assets that they have, [Plaintiff] was migrating the company towards building upon what the company had, and I feel Ellen and the new regime is similarly doing that.");

c.) 42:18-43:2 ("So during both periods of time, the operating performance of the company has kind of chugged along. I don't feel there's any differences between the operational direction. I can't tell of any difference between the operational direction that [Plaintiff] was leading the company and that Ellen is leading the company.");

d.) 50:22-57:5 (outlining Shapiro's position with Lawndale and ownership of RDI stock);

e.) 98:19-23 ("I don't really have a bias between [Plaintiff's] regime or Ellen's regime, if that's what you say. I think that she's been advancing the company forward, similar to what I observed [Plaintiff] doing.");

f.) 187:19-188:14 (discussing decision not to intervene because he "was not necessarily in pursuit of, of any and all of those remedies" sought by Plaintiff, he "wasn't committed one way or the other than [Plaintiff] should be reinstated"); and

g.) 236:18-237:17 (criticizing representativeness of Plaintiff's derivative action purportedly on behalf of RDI's shareholders, including that Shapiro did not "think necessarily [Plaintiff] is the best adequate representative of mine or other shareholder interests").

20. Attached hereto as Exhibit 19 is a true and correct copy of the Amended and Restated Bylaws of RDI, last revised December 28, 2011, in which the following provisions are relevant:

a.) Art. IV ("Officers"), § 1 ("Election") ("Any person may hold one or more offices and each officer shall hold office until his successor has been duly elected and qualified or until his death or until he shall resign or is removed in the manner as hereinafter provided for such term as may be prescribed by the Board of Directors from time to time."); and

b.) Art. IV ("Officers"), § 10 ("Removal; Resignation") ("The officers of the Corporation shall hold office at the pleasure of the Board of Directors. Any officer elected or appointed by the Board of Directors, or any member of a committee, may be removed at any time, with or without cause, by the Board of Directors by a vote of not less than a majority of the entire Board at any meeting thereof or by written consent.").

21. Attached hereto as Exhibit 20 is a true and correct copy of the June 3, 2013 Employment Agreement between Plaintiff and Reading International, Inc. ("RDI" or "the Company"), previously marked as Exhibit 178 during the Plaintiff's deposition, in which the following provisions are relevant:

a.) § 1 ("Term of Employment") ("Subject to the provisions of Section 10 below, the Company shall employ the Executive, and the Executive shall serve the Company in the capacity of President for a term commencing as of June 3, 2013 . . . .");

b.) § 2 ("Duties") ("During the Term of Employment, the Executive will serve as the Company's President and will report directly to the Chief Executive Officer."); and

c.) § 10 ("Termination") ("In the event of termination under this Section 10 or under Section 5 (except as provided therein), the Company's unaccrued obligations under this Agreement shall cease and the Executive shall forfeit all

right to receive any unaccrued compensation or benefits hereunder but shall have the right to reimbursement of expenses already incurred. If the Company terminates Executive without Cause, the Executive shall be entitled to compensation and benefits which he was receiving for a period of twelve months from such notice of termination.”).

22. Attached hereto as Exhibit 21 is a true and correct copy of a Form 10-K filed by RDI on March 7, 2014, in which the following page is relevant:

a.) 3 (describing focus of RDI’s business and extent of its operations).

23. Attached hereto as Exhibit 22 is a true and correct copy of a Form DEF 14A filed by RDI on April 25, 2014, in which the following pages are relevant:

a.) 3-6 (providing biographies of member of the RDI Board of Directors as of April 2014 and a breakdown of their committee memberships, including with respect to James J. Cotter, Sr.).

24. Attached hereto as Exhibit 23 is a true and correct copy of an RDI press release dated September 15, 2014, in which the following page is relevant:

a.) 1 (announcing the death of James J. Cotter, Sr. on September 13, 2014).

25. Attached hereto as Exhibit 24 is a true and correct copy of a Form 8-K/A filed by RDI on February 18, 2015, previously marked as Exhibit 63 during Guy Adams’ deposition, in which the following page is relevant:

a.) -5591 (summarizing trust and estate litigation).

26. Attached hereto as Exhibit 25 is a true and correct copy of a Form 8-K filed by RDI on June 18, 2015, in which the following Items are relevant:

a.) Item 5.02 (announcing Plaintiff’s termination and appointment of Ellen Cotter as Interim CEO and President of RDI); and

b.) Item 8.01 (announcing the filing of Plaintiff’s derivative action).

27. Attached hereto as Exhibit 26 is a true and correct copy of a Schedule 14A filed by RDI on November 10, 2015, previously marked as Exhibit 392 during William Gould’s deposition, in which the following page of the included October 16, 2015 Proxy Statement is

relevant:

a.) 22 n.8 (further describing trust and estate litigation).

28. Attached hereto as Exhibit 27 is a true and correct copy of the Minutes of the Meeting of the RDI Board of Directors held on August 7, 2014, previously marked as Exhibit 179 during Plaintiff's deposition, in which the following page is relevant:

a.) 1 (reflecting the elections of Plaintiff, Ellen, and Margaret Cotter to new leadership positions on the Board of Directors, and the health-related resignation of James J. Cotter, Sr..).

29. Attached hereto as Exhibit 28 is a true and correct copy of the Minutes of the Meeting of the RDI Board of Directors held on March 19, 2015, previously marked as Exhibit 72 during Guy Adams' deposition, in which the following page is relevant:

a.) -3830 (reflecting that Storey "will be assisting with planning and governance issues over the next three months").

30. Attached hereto as Exhibit 29 is a true and correct copy of the Minutes of the Meeting of the RDI Board of Directors held on May 21, 2015, previously marked as Exhibit 199 during Plaintiff's deposition, in which the following pages are relevant:

a.) 1 (noting for the record the attendance of in-house counsel Bill Ellis and Craig Tompkins, and outside counsel from Akin Gump Strauss Hauer & Feld, LLP, on behalf of RDI; that Plaintiff "stated that he was not prepared to make a presentation on the Company's operations"; and that the Board "proceeded to discuss at length the performance of [Plaintiff] as Chief Executive Officer and President since he was appointed in August 7, 2014");

b.) 1-2 (reflecting that Plaintiff threatened a lawsuit and his attorney addressed the full Board);

c.) 3-4 (describing presentations before the Board by certain directors regarding observed "deficiencies" in Plaintiff's "leadership, understanding of the Company's business, temperament, managerial skills, decision-making and other attributes in the role of Chief Executive Officer," with the Board

ultimately deciding to "reconvene the meeting on May 29, 2015 to continue its deliberations"); and

d.) 4 (Plaintiff requested time until the next Board meeting to "give further consideration to continuing in the role of President of the Company under the leadership of a new Chief Executive Officer").

31. Attached hereto as Exhibit 30 is a true and correct copy of the Minutes of the Meeting of the RDI Board of Directors held on May 29, 2015, previously marked as Exhibit 200 during Plaintiff's deposition, in which the following pages are relevant:

a.) 1 (reflecting outside counsel's discussion of a telephonic conversation with Plaintiff's attorney on May 28, 2015 regarding authorization "to accept serve of process on behalf of the independent directors of the Company" with respect to Plaintiff's threatened lawsuit and new discussion surrounding Plaintiff's potential termination);

b.) 1-2 (Plaintiff "would not agree to remain employed as President of the Company under the leadership of a new Chief Executive Officer");

c.) 2 (reflecting motion by Director Adams, seconded by director McEachern, to remove Plaintiff from his position as President and CEO);

d.) 2-3 (Board discusses Plaintiff's performance as CEO and President of RDI, both in and outside of the presence of Plaintiff and the Cotter sisters);

e.) 3-4 (recounting progress and ultimate agreement-in-principle between the Cotter siblings during the course of the May 29, 2015 Board meeting, with a general description of the contours of the agreement reached); and

f.) 4 (noting adjournment of meeting, with "[n]o action . . . taken by the board with respect to the motion made earlier in the meeting," to "permit the Cotters to move forward to document their settlement").

32. Attached hereto as Exhibit 31 is a true and correct copy of draft Minutes of the Meeting of the RDI Board of Directors held on June 12, 2015, previously marked as Exhibit 346 during William Ellis' deposition, in which the following pages are relevant:

a.) 1-2 (reflecting Board discussion regarding Plaintiff's performance and outcome of the ultimate vote on the pending termination motion); and

b.) 2 (noting that Plaintiff asked to defer a vote on his status until the next scheduled Board meeting (to be held on June 15, 2015), but there was little support for his proposal, and no related motion was made).

33. Attached hereto as Exhibit 32 is a true and correct copy of an email sent by Timothy Storey to William Gould re: "Reading," with attachment, dated February 5, 2015, previously marked as Exhibit 189 during Plaintiff's deposition, in which the following pages are relevant:

a.) 2 (Storey indicating his belief that Plaintiff "assumed CEO role on short notice with limited experience"); and

b.) 3 (Storey noting that, under Plaintiff, "morale poor and needs to be improved" and Plaintiff "need[s] to establish teamwork etc," and writing that "CEO inexperienced and needs help to lead/develop leadership role").

34. Attached hereto as Exhibit 33 is a true and correct copy of an email sent by Edward Kane to William Gould and Timothy Storey re: "A follow up," dated February 25, 2015, previously marked as Exhibit 100 during Edward Kane's deposition, in which the following page is relevant:

a.) -204 (Kane discussing a conversation in which Plaintiff mentioned that his "reply" to the trust and estate litigation would be "very upsetting," leading Kane to fear that this "will exacerbate the dissension" between Plaintiff and Ellen and Margaret Cotter).

35. Attached hereto as Exhibit 34 is a true and correct copy of an email sent by Timothy Storey to William Gould re: "Reading- issues," dated March 6, 2015, previously marked as Exhibit 6 during Timothy Storey's deposition, in which the following page is relevant:

a.) 1 (Storey noting that "we need to help [Plaintiff] learn and to manage the business").

36. Attached hereto as Exhibit 35 is a true and correct copy of an email sent by William Gould to Guy Adams, Edward Kane, Douglas McEachern, and Timothy Storey re: "Confidential Memo – Reading International," dated March 7, 2015, previously marked as Exhibit 11 during Timothy Storey's deposition, in which the following pages are relevant:

a.) 2 (Gould outlining role for Storey to "act as an ombudsman (and mention to [Plaintiff]");

b.) 2-3 (Gould writes, "The Independent Directors cannot allow the hostility engendered by the Cotter litigation to affect the Company. As Ed Kane has often pointed out, our duty is to all the shareholders and not just to the Cotter family. We cannot accept a dysfunctional management team under any circumstances . . . . But we must ask ourselves, how can we insure that the three Cotters will work together given the 'thermonuclear' hostility currently existing?"); and

c.) 3 (Gould indicating that Plaintiff "can't go around Ellen and deal only with Bob Smerling or interview and hire a high level food and beverage executive in Ellen's area of responsibility without consulting Ellen"; "the Independent Directors may require [Plaintiff] to take an anger management class"; and plan that, "[a]t the June Board meeting, we will make an assessment of how things are going and if there has not been sufficient improvement, we will take whatever actions we deem necessary or appropriate").

37. Attached hereto as Exhibit 36 is a true and correct copy of a Summary Agenda for an RDI Conference Call, dated April 8, 2015, previously marked as Exhibit 14 during Timothy Storey's deposition, in which the following page is relevant:

a.) -726 (agenda for conference call lists "Face-to-face meeting of Independent Directors in June before the Shareholders Meeting to assess status" of Plaintiff and "Possible options" as items for discussion).

38. Attached hereto as Exhibit 37 is a true and correct copy of an email sent by Timothy Storey to Plaintiff re: "draft email," dated April 15, 2015, previously marked as

Exhibit 190 during Plaintiff's deposition, in which the following pages are relevant:

a.) 1 (Storey noting goal to operate "more harmoniously" and writing, "I have made it clear to Jim – and EC and MC – that things have to improve and that improvement has to be sustained, otherwise the board will need to look to other steps to protect the company's position"); and

b.) 2 (Storey concluding that "it is difficult for someone to change 'character' overnight" and "back sliding is not acceptable").

39. Attached hereto as Exhibit 38 is a true and correct copy of an email sent by Edward Kane to Guy Adams re: "Fw: Update report – confidential," dated May 9, 2015, previously marked as Exhibit 76 during Guy Adams' deposition, in which the following page is relevant:

a.) -5484 (Plaintiff recognizes that "I need a grown-up (who knows how a public company should operate) in the room with me and my two sisters," "I am OK with an adult in the room periodically making sure we continue momentum," and "I am ok letting this play out until the end of June or whatever date agreed to and revisit").

40. Attached hereto as Exhibit 39 is a true and correct copy of an email sent by Ellen Cotter to Plaintiff, Margaret Cotter, Edward Kane, Douglas McEachern, Timothy Storey, Guy Adams, William Gould, and William Ellis re: "Agenda – Board of Directors Meeting – May 21, 2015," dated May 19, 2015, previously marked as Exhibit 124 during Douglas McEachern's deposition, in which the following page is relevant:

a.) -5340 (listing "Status of President and CEO" listed as the first subject to be discussed at the May 21, 2015 Board meeting).

41. Attached hereto as Exhibit 40 is a true and correct copy of a "Confidential Settlement Memo of Understanding" sent by Harry Susman, counsel for Ellen and Margaret Cotter, to Adam Streisand and Meg Lodise, dated May 27, 2015, previously marked as Exhibit 98 during Guy Adams' deposition, in which the following pages are relevant:

a.) -7576–7579 (version of the tentative agreement-in-principle on certain Cotter-specific issues, providing that "JJC would continue to serve as CEO and President under the terms of his existing contract, but in the overall management structure and subject to the limitations set forth below," including (1) an "Executive Committee" with "EMC, AMC, JJC, and Guy Adams (Chairman)" that had delegated authority extending to the hiring/firing/compensation of "all senior level consultants/employees," review and approval/disapproval "of all contracts/commitments" in excess of $1 million, and review and approval of RDI's "annual Budget and Business Plan"; and (2) investor relations would be handled henceforth "by CFO in consultation with the GC, not CEO").

42. Attached hereto as Exhibit 41 is a true and correct copy of an email sent by Plaintiff to Ellen Cotter, Margaret Cotter, Edward Kane, Douglas McEachern, Timothy Storey, Guy Adams, William Gould, and William Ellis re: "Board Meeting – Tomorrow," dated June 11, 2015, previously marked as Exhibit 403 during Plaintiff's deposition, in which the following pages are relevant:

a.) -5519–5520 (email from Ellen Cotter to the Board "reconvening the original May 21, 2015 meeting" and placing "Item 1 of this Agenda," "Status of the President and CEO," as the primary agenda item for the board meeting "tomorrow").

43. Attached hereto as Exhibit 42 is a true and correct copy of Plaintiff's Amended Responses to Edward Kane's First Set of Requests for Admission, dated July 27, 2016, in which the following Responses are relevant:

a.) Resp. to RFA No. 15 (Plaintiff admitting that the possibility of his termination was discussed by the Board in his presence at the May 21, 2015 Board meeting);

b.) Resp. to RFA No. 16 (Plaintiff admitting that the Board again discussed the possibility of his termination at a Board meeting held on May 29, 2015); and

c.) Resp. to RFA No. 17 (Plaintiff admitting that the Board discussed the possibility of his termination for the final time on June 12, 2015).

44. Attached hereto as Exhibit 43 is a true and correct copy of the Intervening Plaintiffs' Amended Responses to Margaret Cotter's First Set of Interrogatories, with Exhibits A and B thereto, dated May 16, 2015, previously marked as Exhibit 232 during the deposition of Jonathan Glaser, in which the following Responses are relevant:

a.) Interrog. Resp. No. 20 & Ex. A thereto (listing relevant RDI stock ownership and trades made by the entities controlled by Tilson); and

b.) Interrog. Resp. No. 20 & Ex. B thereto (listing relevant RDI stock ownership and trades made by entities controlled by Glaser).

45. Attached hereto as Exhibit 44 is a true and correct copy of the historical share price of RDI's Class A stock for the period from March 20, 2015 to September 21, 2016.

46. Attached hereto as Exhibit 45 is a true and correct copy of the Expert Report of Tiago Duarte-Silva, Plaintiff's expert, dated August 25, 2016.

47. Attached hereto as Exhibit 46 is a true and correct copy of James J. Cotter, Jr.'s Petition for Immediate Suspension of Powers of Ann Margaret Cotter and Ellen Cotter as Co-Trustees and For Appointment of Temporary Trustee in the related trust litigation, dated March 24, 2014, in which the following pages are relevant:

a.) 1-4 (Plaintiff arguing that he was wrongfully terminated in "a boardroom coup," that "Ellen [Cotter] deliberately interfered with and corrupted a search process set in motion by the RDI Board," that Margaret Cotter was promoted to a position to which she is also wholly unqualified," and that the Board improperly increased his sisters' compensation).

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

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

Executed on the 23rd day of September, 2016, in Los Angeles, California.

/s/ *Noah Helpern*
Noah Helpern

CERTIFICATE OF SERVICE

I hereby certify that, on September 23, 2016, I caused a true and correct copy of the foregoing **INDIVIDUAL DEFENDANTS' MOTION FOR SUMMARY JUDGMENT (NO. 1) RE: PLAINTIFF'S REINSTATEMENT AND TERMINATION CLAIMS** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

/s/ *C.J. Barnabi*
An employee of Cohen|Johnson|Parker|Edwards

EXHIBIT 1

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 JAMES J. COTTER, JR., individually and)
derivatively on behalf of Reading)
5 International, Inc.,)
)
6 Plaintiff,)
)
7 vs.) No. A-15-719860-B
) Coordinated with:
8 MARGARET COTTER, ELLEN COTTER, GUY) P-14-082942-E
ADAMS, EDWARD KANE, DOUGLAS McEACHERN,)
9 TIMOTHY STOREY, WILLIAM GOULD, and)
DOES 1 through 100, inclusive,)
10)
Defendants.)
11 and)
)
12)
READING INTERNATIONAL, INC., a)
13 Nevada corporation,)
)
14 Nominal Defendant.)
)
15

16 DEPOSITION OF TIMOTHY STOREY, a defendant herein,

17 noticed by LEWIS ROCA ROTHGERBER CHRISTIE LLP, at

18 1453 Third Street Promenade, Santa Monica,

19 California, at 9:28 a.m., on Friday, February 12,

20 2016, before Teckla T. Hollins, CSR 13125.

21

22 Job Number 291961

23

24

25

1 aware that he was doing -- Guy Adams was doing some work
2 in relation to estate assets, but my understanding was
3 pretty minimal, something to do with looking at assets
4 in Texas.
5 MR. KRUM:
6 **Q. Did you ever hear or learn or were you ever**
7 **told that Mr. Adams had a carried interest in certain**
8 **dealings or properties in which the Cotter family -- in**
9 **which the Cotter family had an interest?**
10 MR. SEARCY: Objection. Vague. Lacks foundation.
11 THE WITNESS: I heard nothing regarding that until
12 this meeting.
13 MR. KRUM:
14 **Q. Take a look at the next page bearing production**
15 **number 1102 on Plaintiff's 17. Can you read for us the**
16 **handwritten note on the top?**
17 A. "Notes from Tim on performance."
18 **Q. No, I'm sorry. The prior page.**
19 A. Okay. "No harmony with girls and" --
20 THE REPORTER: I'm sorry?
21 THE WITNESS: "No harmony with girls and needed.
22 Not showing ability to run company." Comments from Ed
23 Kane.
24 MR. KRUM: Okay.
25 **Q. And then further down on that same page,**

1 there's the name -- handwritten name "Doug" and there's
2 a line that follows that. What does that say?
3 A. "Current position untenable."
4 Q. And is that a comment Mr. McEachern made?
5 A. Yes.
6 Q. And do you recall with any greater specificity
7 what he said? Or failing that, what you understood him
8 to mean?
9 A. My recollection is that he made a very brief
10 comment to the intent that the current disharmony within
11 the business was untenable going forward and needed to
12 be dealt with.
13 Q. Let's look at the last page of Plaintiff's 17.
14 What do these notes reflect?
15 A. I think these are the notes I made for myself,
16 should I give comments on the chief executive's
17 performance.
18 Q. Okay.
19 Did you have occasion to do that?
20 A. I don't recollect I did.
21 Q. Okay. We're done with this, or at least for
22 the time being.
23 I have a few documents that I'm going to try to
24 cover fairly quickly. Mr. Storey, I'll ask you to look
25 at it and tell me if you recognize the document and can

1 MR. SEARCY: Objection. Vague.
2 THE WITNESS: I think the comment was simply that
3 they -- that things should be dealt with now. They had
4 come to a head and there was no point in delaying.
5 MR. KRUM:
6 **Q. Are you referring to your prior testimony about**
7 **disharmony?**
8 MR. SEARCY: Objection. Vague.
9 THE WITNESS: That's my perception, that there
10 was -- the view was there was disharmony, and therefore
11 it needed to be dealt with. It was clearly a view
12 around the board table by a number of people that the
13 matter needed to be dealt with expeditiously and
14 rightly.
15 MR. KRUM:
16 **Q. Did any of Ellen Cotter, Margaret Cotter, Guy**
17 **Adams and/or Doug McEachern ever respond to comments by**
18 **you and/or Bill Gould to the effect that the ombudsman**
19 **process was supposed to continue into June?**
20 MR. SEARCY: Objection. Vague. Lacks foundation.
21 THE WITNESS: I don't recollect -- Excuse me. I
22 don't recollect any particular comment, other than it
23 was necessary to get on with matters.
24 MR. KRUM:
25 **Q. At the -- At the board meeting at which Ellen**

1 Calls for speculation. Calls for improper opinion.
2 THE WITNESS: I don't think that we had yet got to
3 that stage where the detailed work had to be done.
4 MR. ROBERTSON:
5 **Q. And in your view, did that disharmony -- was**
6 **that the driving factor in the termination of**
7 **Mr. Cotter, Jr.?**
8 MR. SEARCY: Objection. Lacks foundation. Calls
9 for speculation. Calls for opinion.
10 MR. RHOW: I would add vague and ambiguous.
11 THE WITNESS: Well, I can only speak for myself.
12 MR. ROBERTSON:
13 **Q. That's all I'm asking.**
14 A. My view was that the disharmony wasn't at a
15 position where it -- where it gave rise to me thinking
16 that we should change the CEO. I think it all -- pretty
17 close to that day, that time in May, we were making
18 reasonable progress in getting plans and budgets put
19 together, albeit process, but the executives largely
20 were cooperating with each other.
21 **Q. In your view, based on your experience on the**
22 **board of directors, but for the existence of the trust**
23 **and estate litigation, do you believe that**
24 **Mr. Cotter, Jr. would have been terminated as CEO of**
25 **Reading?**

1 MR. SEARCY: Objection. Vague. Lacks foundation.
2 Calls for opinion. Calls for speculation.
3 MR. RHOW: Join all of those.
4 MR. FERRARIO: Me too.
5 MR. RHOW: And I think it's vague and ambiguous
6 also.
7 THE WITNESS: Well, as I just said, I don't -- that
8 wasn't my opinion.
9 MR. ROBERTSON:
10 **Q. I'm sorry, that was or was not your opinion?**
11 A. That was not my opinion.
12 **Q. Okay.**
13 A. But, I mean, you know, there are different
14 opinions that can be had.
15 **Q. Based upon your involvement, why was**
16 **Mr. Cotter, Jr. terminated as the CEO?**
17 MR. RHOW: Same objections. I think it calls for
18 speculation. You're asking what --
19 MR. ROBERTSON: What was his understanding of why
20 Mr. Cotter, Jr. was terminated as CEO of Reading.
21 MR. RHOW: Same objections.
22 MR. SEARCY: Join.
23 THE WITNESS: As you have heard, we had a series of
24 board meetings which dealt with the matter. I don't
25 think we dealt with -- At those board meetings, we

EXHIBIT 2

1 EIGHTH JUDICIAL DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 JAMES J. COTTER, JR., derivatively on behalf of 5 Reading International, Inc.,	)	
6 Plaintiff,	)	Case No. A-15-719860-B
7 vs.	)	
8 MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD 9 KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM 10 GOULD, and DOES 1 through 100, inclusive,	)	Case No. P-14-082942-E Related and Coordinated Cases
11	)	
12 Defendants, and	)	
13 READING INTERNATIONAL, INC., a Nevada corporation,	)	
14	)	
15 Nominal Defendant.	)	

16 Complete caption, next page.

17

18

19 VIDEOTAPED DEPOSITION OF GUY ADAMS

20 LOS ANGELES, CALIFORNIA

21 THURSDAY, APRIL 28, 2016

22 VOLUME I

23

24 REPORTED BY: LORI RAYE, CSR NO. 7052

25 JOB NUMBER: 305144

1 EIGHTH JUDICIAL DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 JAMES J. COTTER, JR.,)
derivatively on behalf of)
4 Reading International, Inc.,)
) Case No.
5 Plaintiff,) A-15-719860-B
vs.) P-14-082942-E
6)
MARGARET COTTER, ELLEN)
7 COTTER, GUY ADAMS, EDWARD)
KANE, DOUGLAS McEACHERN,)
8 TIMOTHY STOREY, WILLIAM)
GOULD, and DOES 1 through)
9 100, inclusive,)
)
10 Defendants.)
and)
11 _____)
READING INTERNATIONAL, INC.,)
12 a Nevada corporation,)
)
13 Nominal Defendant.)
_____)
14 T2 PARTNERS MANAGEMENT, LP,)
a Delaware limited)
15 partnership, doing business)
as KASE CAPITAL MANAGEMENT,)
16 et al.,)
)
17 Plaintiffs,)
vs.)
18)
MARGARET COTTER, ELLEN)
19 COTTER, GUY WILLIAMS, EDWARD)
KANE, DOUGLAS McEACHERN,)
20 WILLIAM GOULD, JUDY CODDING,)
MICHAEL WROTNIAK, CRAIG)
21 TOMPKINS, and DOES 1 through)
100, inclusive,)
22)
Defendants,)
23 and)
_____)
24 READING INTERNATIONAL, INC.,)
a Nevada corporation,)
25)
Nominal Defendant.)

1 THE VIDEOGRAPHER: We are off the record --
2 MR. TAYBACK: I don't think that's what he
3 said.
4 THE VIDEOGRAPHER: Sorry.
5 BY MR. KRUM:
6 **Q. So how did that telephone conversation**
7 **come about?**
8 A. I called Ed or Ed called me. I don't
9 remember.
10 **Q. As best you can recall, what did he say**
11 **and what did you say?**
12 A. We were talking about Jim Junior's
13 performance and there being certain issues. And
14 Tim Storey was coaching him. I think we called him
15 ombudsman, and we discussed that, how effective
16 that was. And in the conversation, I said, I'm
17 going to talk to Bill Gould, the lead director.
18 **Q. You said certain issues.**
19 **To what are you referring?**
20 A. Tim Storey's coaching Jim Junior as CEO.
21 **Q. Anything else?**
22 A. Those issues and just in general, Jim
23 Junior's abilities as CEO, what we saw there, what
24 we felt.
25 **Q. In particular, to what were you referring**

1 **by his abilities, and likewise his performance?**
2 A. Well, for me, we -- I think Tim Storey
3 had a check sheet of things he wanted done, one of
4 which was some strategy for the company, a vision
5 for the company, where we're going, once we get the
6 budget, how do we get there. That comes from the
7 CEO. We wanted to firm up contracts for -- my
8 recollection is Craig Tompkins and Margaret Cotter.
9 We wanted to get that done. I think -- I can't
10 remember what -- the things Ed said. Ed had a list
11 of things as well.
12 I had -- over the months, I -- we elected
13 Jim Junior. We all wanted him to succeed. And Tim
14 Storey said that the only reason he's getting the
15 job is because his last name is Cotter. And I
16 said, That might be true. What our job is as a
17 board is to help him be the best CEO he can be.
18 And we talked as directors about
19 shortcomings, and I felt he can learn on the job
20 and get up to speed quickly. And by April, I was
21 of the opinion that wasn't working out.
22 **Q. Now, during this telephone conversation**
23 **with Mr. Kane, was there any discussion of the**
24 **interpersonal dynamic between Jim Cotter Junior on**
25 **the one hand and either or both Margaret and Ellen**

1 **discussed with Mr. Kane the subject of you serving**
2 **as interim CEO, did you say to him, in words or**
3 **substance, Have we already concluded that Jim**
4 **Cotter Junior will be terminated as CEO?**
5 A. There was a notion that we would have a
6 board meeting and the independent directors would
7 discuss this and there would be a vote. And I
8 wasn't -- I wasn't sure how the vote would come
9 out. I didn't know. But there was a -- everyone
10 had concerns. Ed and I had a concern about it,
11 wanted to talk about it.
12 **Q. When was the first time you had a**
13 **conversation with someone other than Ed Kane about**
14 **the subject of the termination or possible**
15 **termination of Jim Cotter Junior as CEO?**
16 A. Bill Gould.
17 **Q. And --**
18 A. First week or so of April.
19 **Q. Was that in person or by phone?**
20 A. In person.
21 **Q. Was anyone else present?**
22 A. No.
23 **Q. Where did that occur?**
24 A. I went to his office. We walked across
25 the street and had lunch. I don't know the name of

1 the restaurant.

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

3 A. I told him, We've been down this process

4 with Jim Junior as CEO. We all wanted him to

5 succeed. We all wanted him to take the reins and

6 lead the company forward but there were glaring

7 deficits. And I recounted to him how we formed

8 this committee, if you will, resolution committee

9 or conflicts committee, of which Tim Storey and

10 Doug McEachern were on for the Cotter siblings to

11 meet and talk. And McEachern told me that was --

12 didn't work that well.

13 Then we had Tim Storey acting as Jim

14 Junior's coach. And later Tim Storey was promoted

15 to ombudsman for this position and Tim got very

16 involved in working with Jim Junior and coaching

17 him. And Tim Storey was giving every month,

18 glowing, glowing reports about how good things were

19 going with Jim Junior.

20 And I disagreed with those reports and I

21 told both Ed Kane on the phone and I told Bill

22 Gould in person when I met him about that. And

23 then I told Bill Gould two concerns that I had.

24 The first concern was at some point, and I don't

25 remember the exact date, it could have been

1 December, it could have been January, but Jim
2 Junior had an analysis of movie theatres in
3 Australia and New Zealand and their margins in
4 Australia, and movie theatres in the USA, their
5 margins, and there was a gap. I don't remember the
6 precise gap but maybe it was -- the margin gap was
7 maybe 16, 18 percent.
8 And Junior showed me one time in his
9 office the spreadsheet and said, you know, Look at
10 the gap, This is terrible. If the USA theatres
11 operated there and had the same margins, think what
12 the impact that would be on our earnings,
13 et cetera, et cetera.
14 So there was a board meeting. I came in
15 early for the board meeting and I went into
16 Junior's office. In the board book, they laid out
17 the margins for Australia and the USA. And if you
18 adjusted the margins for the film rental in the USA
19 compared to the film rental in Australia and New
20 Zealand, two different markets, and you adjusted --
21 made adjustments for the rental, the lease rentals,
22 it wasn't a 16 or 18 percent gap. It was like a
23 2 percent gap.
24 And Jim Junior says, Yeah, well, I don't
25 care about that now. And this was something he was

1 really concerned about, I mean, for months. And
2 then he said, Well, I'm not worried about that now.
3 I'm concerned about the labor. The labor in
4 Australia and New Zealand is a lot less than labor
5 costs in the US. And I said, Well, I don't know
6 anything about that. You're going to have to look
7 into that.
8 So that was an hour before the board
9 meeting. We went to the board meeting and Jim
10 Junior brought up to the board this thing about the
11 labor costs. USA theatre labor costs versus
12 Australia and New Zealand labor costs.
13 And Ellen didn't really have an answer at
14 the time. She -- she said she'd look into it,
15 et cetera. And I thought, okay, we'll get to the
16 bottom of it.
17 And later that week or the next week or
18 the next week, I saw Andrzej Matyczynski, the
19 ex-CFO of the company, and I said, What is this
20 about the labor cost? Why is the labor cost so
21 high for theaters in Australia and New Zealand --
22 so low in Australia and New Zealand and so high
23 here? And Andrzej says, Well, that's easy. In the
24 USA they allocate the G and A down to the theatre
25 level so the theatre level labor cost looks high,

1 and in Australia and New Zealand, they allocate a
2 lot of the labor costs up to G and A so the labor
3 cost looks really low.
4 And I said, Does Jim Junior know this?
5 He says, Yes, I've told him this before. And I
6 said, We're looking at this and the board's -- he's
7 got the board concerned about this. And Andrzej
8 says, Yeah, I wish you all would have called me in.
9 I could explain that.
10 So I told Bill Gould that -- the
11 following: I like Jim Junior, I want him to
12 succeed as much as anyone, but it's clear, not
13 understanding the theatre margins, I questioned his
14 knowledge about the business he's managing and his
15 management style of bringing to the board this
16 problem about labor costs.
17 And he hadn't even, in my opinion,
18 properly investigated that himself. I was forming
19 the opinion or had formed the opinion that he
20 wasn't really learning the business and he wasn't
21 leading us forward. And I told Bill that. I said,
22 We've been working with Jim Junior all these months
23 and I don't see progress.
24 **Q. When did you tell Mr. Gould that?**
25 A. At this lunch meeting.

1 **Q. The lunch meeting in April?**
2 A. In April, yes.
3 **Q. And this -- you told him in April about**
4 **this --**
5 A. These two examples.
6 **Q. These two examples that were raised at**
7 **the board meeting in December of '14 or January of**
8 **'15?**
9 A. Yeah.
10 **Q. And let me be clear. What you just**
11 **described, was that the two concerns you talked**
12 **about when you prefaced your lengthy answer?**
13 MR. TAYBACK: Object to the -- object to the
14 form of the question to the extent it
15 mischaracterizes his testimony.
16 You can answer.
17 BY MR. KRUM:
18 **Q. Let me ask it this way --**
19 A. That's all --
20 **Q. -- you used the term "two concerns" that**
21 **you described to Mr. Gould, or words to that**
22 **effect.**
23 A. Yes.
24 **Q. Is there anything else that falls into**
25 **the category of two concerns beyond what you just**

1 **described?**

2 A. There may have been one more concern that

3 I can recall was about the leadership of the

4 company and working on the budget. And Jim Junior

5 complained that Ellen and Margaret weren't getting

6 their budget in on a timely basis and whatnot.

7 I explained to Bill Gould that for the

8 CEO, getting the division's budget, that's income

9 they expect to receive and expenses they expect to

10 spend. But the vision of where we're going, how

11 we're going to lead -- where is our CEO leading our

12 company, I said, We haven't heard a whiff of this.

13 And I discussed this with Jim Junior several times

14 over the last three months prior to this, and he

15 said he's working on it. Nobody saw it; nobody

16 heard it.

17 And I told Bill Gould, you know, To be a

18 CEO, you have to lead. And I thought this was

19 another item that raised my concern. There may

20 have been other items we discussed over lunch

21 regarding this matter but I don't remember them at

22 this time.

23 **Q. And what did Mr. Gould say at that lunch?**

24 A. He said -- he agreed with me that Junior

25 wasn't progressing fast. He disagreed with me that

1 Tim Storey wasn't doing a good job. He thought Tim
2 Storey was doing a great job. He disagreed with me
3 that we should act. He told me let's wait. And I
4 said, Why are we waiting? He said, Well, let the
5 thing be adjudicated and we'll find out how it
6 turns out. And I said, That could take years. I
7 think we need to make a decision what's best for
8 the company now. And he says he wanted to wait.
9 And I said, Bill, you and I have a different
10 opinion about this.
11 **Q. Did you ever tell Tim Storey you**
12 **disagreed with his glowing reports about Jim**
13 **Junior?**
14 A. Yes.
15 **Q. When?**
16 A. It was later on. Probably around March,
17 I would say, at a March meeting that -- along that
18 timeline. I don't remember a specific day. But
19 the --
20 **Q. Was it at a board meeting?**
21 A. Yeah, after a board meeting, yes.
22 **Q. Okay. And what did you say and what did**
23 **he say, generally?**
24 A. I said, Tim, I appreciate your efforts.
25 I know you're doing this with the best of

EXHIBIT 3

1 EIGHTH JUDICIAL DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 JAMES J. COTTER, JR., derivatively on behalf of 5 Reading International, Inc.,	)	
6 Plaintiff,	)	Case No. A-15-719860-B
7 vs.	)	
8 MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD 9 KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM 10 GOULD, and DOES 1 through 100, inclusive,	)	Case No. P-14-082942-E Related and Coordinated Cases
11 Defendants,	)	
12 and	)	
13 READING INTERNATIONAL, INC., a Nevada corporation,	)	
14 Nominal Defendant.	)	
15	)	

16 Complete caption, next page.

17

18

19 VIDEOTAPED DEPOSITION OF GUY ADAMS

20 LOS ANGELES, CALIFORNIA

21 FRIDAY, APRIL 29, 2016

22 VOLUME II

23

24 REPORTED BY: LORI RAYE, CSR NO. 7052

25 JOB NUMBER 305149

1 EIGHTH JUDICIAL DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 JAMES J. COTTER, JR.,)
derivatively on behalf of)
4 Reading International, Inc.,)
) Case No.
5 Plaintiff,) A-15-719860-B
vs.) P-14-082942-E
6)
MARGARET COTTER, ELLEN)
7 COTTER, GUY ADAMS, EDWARD)
KANE, DOUGLAS McEACHERN,)
8 TIMOTHY STOREY, WILLIAM)
GOULD, and DOES 1 through)
9 100, inclusive,)
)
10 Defendants.)
and)
11 _____)
READING INTERNATIONAL, INC.,)
12 a Nevada corporation,)
)
13 Nominal Defendant.)
_____)
14 T2 PARTNERS MANAGEMENT, LP,)
a Delaware limited)
15 partnership, doing business)
as KASE CAPITAL MANAGEMENT,)
16 et al.,)
)
17 Plaintiffs,)
vs.)
18)
MARGARET COTTER, ELLEN)
19 COTTER, GUY WILLIAMS, EDWARD)
KANE, DOUGLAS McEACHERN,)
20 WILLIAM GOULD, JUDY CODDING,)
MICHAEL WROTNIAK, CRAIG)
21 TOMPKINS, and DOES 1 through)
100, inclusive,)
22)
Defendants,)
23 and)
_____)
24 READING INTERNATIONAL, INC.,)
a Nevada corporation,)
25)
Nominal Defendant.)

1 **Q. Did you add any substantive comments to**
2 **the document based on feedback from Frank Reddick?**
3 **Don't tell me what they are, just yes or no.**
4 A. No, not really.
5 **Q. Now, directing your attention to Roman**
6 **Numeral iii, you refer to apparent anger management**
7 **issues and so forth.**
8 **Do you see that?**
9 A. I didn't read Number i, ii and iii to the
10 board.
11 **Q. When you drafted this, to what were you**
12 **referring when you used the balance of that**
13 **sentence, starting with the word "apparent"?**
14 A. There's been more than one conversation
15 by the non-Cotter board members about Jim Junior's
16 interpersonal skills and anger management issues.
17 **Q. What anger management issues, is what I'm**
18 **asking you.**
19 A. There were claims in the office that some
20 people claim he's lost his temper with them.
21 **Q. Who?**
22 A. I believe Linda Pham is one of them.
23 **Q. Anyone else?**
24 A. Debbie Watson.
25 **Q. Debbie Watson? Who is Debbie Watson?**

1 A. She is an accountant for Jim Cotter's
2 estate.
3 **Q. She's in RDI's offices?**
4 A. Sometimes, occasionally. Yes, she has a
5 desk there.
6 **Q. She has no job at RDI?**
7 A. No.
8 **Q. To whom does she work when she renders**
9 **services to the estate of James Cotter Senior?**
10 A. The estate trustees.
11 **Q. Ellen and Margaret?**
12 A. Yes.
13 **Q. Anybody else other than Linda Pham and**
14 **Debbie Watson?**
15 A. Ellen Cotter recited an incident about
16 Jim Junior's anger.
17 **Q. When?**
18 A. Maybe 2014.
19 **Q. She recited it then, it occurred then or**
20 **both?**
21 A. No, no, no. She told me about it -- I
22 don't know. I don't know when she told me about it
23 but she told me in past tense about the incident.
24 **Q. So in 2014 is did you understood the**
25 **incident to have occurred?**

1 A. I think it was 2014.
2 **Q. Did she give you any context --**
3 **Here is the question: Did she give you**
4 **any context about the incident?**
5 A. Yes.
6 **Q. Which was what?**
7 A. She and Debbie Watson were working late
8 and Jim Junior came in there and lost his temper to
9 both of them, and they both told me independently
10 of this incident.
11 **Q. And the incident, you understood,**
12 **occurred in 2014?**
13 A. It could have been '15. It could have
14 been '15. I'm not clear on when it happened. I'm
15 just very not clear on that.
16 **Q. And both Ellen and Debbie Watson told you**
17 **about it after the fact?**
18 A. After the fact, yes.
19 **Q. Meaning some number of months after the**
20 **fact; correct?**
21 MR. SWANIS: Objection; form.
22 THE WITNESS: Debbie Watson told me about it
23 two days later.
24 BY MR. KRUM:
25 **Q. Okay. When was that?**

1 A. Late 2014, early 2015, I'm not sure. And
2 there was a discussion -- getting back to your
3 question about anger management, there's been
4 discussion among the board -- non-Cotter board
5 members about potentially Jim Junior being coaxed
6 or demanded to attend anger management classes.
7 **Q. What was the conclusion reached by the**
8 **non-Cotter board members about that?**
9 A. Well, it was split, believe it or not.
10 My recollection is that I think Bill Gould and Tim
11 Storey may have had a position that that would have
12 been a beneficial thing.
13 Ed Kane and I thought that was not
14 beneficial. It was demeaning. It could be
15 productive. And I remember -- I do remember at the
16 independent directors meeting, Doug McEachern
17 saying you can't teach interpersonal skills, so he
18 was also not for it.
19 **Q. Now, the precipitating events of the**
20 **discussion you just described, what was the**
21 **precipitating event? Was it the Linda Pham report?**
22 **The supposed Linda Pham incident? I'm sorry.**
23 A. I'm sorry. You're referring to the
24 board -- the independent directors meeting?
25 **Q. Let me ask a complete question.**

1 MR. TAYBACK: I think you talked past each
2 other.
3 MR. KRUM: I think we're talking past each
4 other.
5 **Q. Do you see in this paragraph, you say:**
6 **"I personally believe we may have cause"?**
7 **Do you see that? It's the fifth line of**
8 **the eight lines?**
9 A. The one under here?
10 **Q. The left-hand margin begins, quote:**
11 **While I personally believe we may have**
12 **cause.**
13 A. Yes.
14 **Q. But to put it in context for us,**
15 **Mr. Adams, you see in the prior line, you're**
16 **talking about "removed without case," but I think**
17 **that should be "cause"; right?**
18 A. Yes.
19 **Q. What was the basis for your personal**
20 **belief that there may have been cause to remove**
21 **Mr. Cotter Junior as president and CEO?**
22 MR. TAYBACK: I'll only admonish you not to
23 divulge communications with lawyers that you may
24 have had that contributed to that, but you can give
25 your opinion.

1 THE WITNESS: One is his inabilities to work
2 with employees and contractors in the office, the
3 name of those women I just named. Calling up the
4 chairman of the board and saying he's prepared to
5 file a derivative suit and conspire with hedge
6 funds to take over the company. I thought those
7 were potentially reasons. But you're right, the
8 paragraph is -- reads "without cause."
9 BY MR. KRUM:
10 **Q. So your view, Mr. Adams, was that the**
11 **supposed incidents with Linda Pham and Debbie**
12 **Watson were a basis upon --**
13 A. And Ellen Cotter.
14 **Q. -- and Ellen Cotter, were a basis upon**
15 **which to terminate Jim Cotter Junior on or about**
16 **May 20-something, 2015?**
17 A. No, I didn't say that.
18 **Q. Was it your view that the supposed**
19 **incidents with Linda Pham, Debbie Watson and/or**
20 **Ellen Cotter were a basis upon which -- well,**
21 **strike that.**
22 **Did those factor into your**
23 **decision-making?**
24 A. Yes.
25 **Q. How many conversations did you have with**

1 **your testimony about it.**
2 **Was anything else said about the supposed**
3 **Linda Pham incident or the supposed Ellen Cotter**
4 **and Deborah Watson incident beyond that**
5 **conversation, other than what you've told me?**
6 MR. SWANIS: Objection; form, and I'm going to
7 lodge an objection to the "supposed" language
8 there.
9 MR. TAYBACK: Join.
10 THE WITNESS: There was one other thing. A
11 director made a comment that was anybody ever
12 seeing or being witnesses to this. Everybody was
13 dead silent.
14 I raised my hand and I said, Well, once I
15 had an incident with Jim Junior and he jumped up
16 from his desk and turned beet red and was screaming
17 at the top of his lungs at me, and I sat down and
18 he marched up and down, paced, and was yelling at
19 me. And finally he sat down and collected himself
20 and I asked him, you know, was there anything else
21 he wanted me to do, and he said no and he
22 apologized. He apologized.
23 But in that board meeting with the
24 independent directors, when they were saying has
25 anybody seen this, it happened to me.

1 BY MR. KRUM:
2 **Q. But the answer is, nobody had seen or**
3 **witnessed the supposed Linda Pham incident;**
4 **correct?**
5 A. Yes.
6 **Q. And nobody had seen or witnessed the**
7 **supposed Ellen Cotter or Debbie Watson incident;**
8 **correct?**
9 A. Yes.
10 **Q. Hence, supposed.**
11 **When was your incident, as you described**
12 **it?**
13 A. Probably June 2014.
14 **Q. And what was the subject matter?**
15 A. We were talking about Mr. Cotter Senior's
16 estate planning. And I didn't really realize how
17 sick Mr. Cotter was, and Jim Junior was in -- was
18 not pleased how long things were taking, and that
19 was the subject matter of that discussion.
20 **Q. Okay. You'll be pleased to know,**
21 **Mr. Adams, I'm in the process of eliminating lots**
22 **of other documents that I might have otherwise**
23 **shown to you.**
24 **I'll ask the court reporter to mark as**
25 **Exhibit 88, a multi-page document bearing**

1 A. It was unanimous.
2 **Q. Was that in August of 2014?**
3 A. Yes, it was.
4 **Q. And did you and James Cotter Junior work**
5 **in the same office from then forward? Did he**
6 **come in -- let me back up.**
7 **After James Cotter Junior became CEO, did**
8 **he continue coming into the office at Reading where**
9 **you were working three days a week?**
10 A. Yes, Junior did, yes.
11 **Q. And how much time did he spend in the**
12 **office, to your perception?**
13 A. From my perception, he worked long hours.
14 I mean, I don't know what time he got there in the
15 morning, but he seemed to work till 5:00, 6:00 at
16 night.
17 **Q. Is it fair to say or correct to say that**
18 **James Cotter Junior would arrive before you did in**
19 **the morning?**
20 A. Certainly.
21 **Q. And then would be there till 5:00 or 6:00**
22 **at night?**
23 A. From the times I was there, it appeared
24 that he was there before me and he stayed after me.
25 **Q. Is it an accurate statement -- I know**

1 **we've been at this for almost two days now and I**
2 **don't want to summarize things too simply, but is**
3 **it an accurate statement to say that James Cotter**
4 **Junior had what you would consider a good work**
5 **ethic?**
6 A. Yes and no. I'm not trying to evade the
7 question. There was -- he was in the office, so
8 yes, he was there. So that's the yes part of the
9 question. The no part of the question is, his door
10 was shut a considerable amount of time. I'm not
11 sure exactly what was going during the time the
12 door was shut. And so I mean, it -- he seemed very
13 slow, very hard to make decisions.
14 They were trying to encourage him that
15 it's okay, he can make -- he's CEO. But he seemed
16 very reluctant and very slow to make decisions.
17 **Q. I'm focusing in on his work ethic, how**
18 **hard he was laboring at the task.**
19 **Based upon that, did it seem that he was**
20 **laboring at the task of being CEO?**
21 MR. SWANIS: Objection; form.
22 MR. TAYBACK: Object to the form.
23 MR. NATION: I'll rephrase the question.
24 **Q. Did it seem that James Cotter Junior was**
25 **putting in the time and effort that you would**

1 **expect of someone in his position trying to take on**
2 **the challenges of being CEO?**
3 A. Initially, yes.
4 MR. TAYBACK: I'm going to object to that as
5 vague.
6 You can answer.
7 THE WITNESS: Initially, yes.
8 BY MR. NATION:
9 **Q. When you say "initially, yes," you mean**
10 **August, September?**
11 A. October, November.
12 **Q. And on? What about December and January?**
13 A. Well, the reason I said "initially" is
14 because there was some point, and I don't remember
15 precisely when it was, but three or four months
16 into the job, where I went to his secretary with
17 documents and said, Where are those documents I put
18 on Jim's desk? And she said, Oh, my God, don't
19 ever put documents on his desk. I said, Well, what
20 do I do? And she said, Give them to me and I'll
21 log them and hound him to get them signed and
22 returned to you. I said, Sure. I just didn't want
23 to bother you. And she said, Jim's office is a
24 place where documents go to get lost.
25 **Q. Which secretary was that?**

1 A. Antoinette. I don't remember her last
2 name.
3 **Q. Sounds like my office.**
4 A. And I wasn't sure of the time spent
5 behind closed doors. I wasn't sure what's going on
6 during that time, what's happening there.
7 He made all the -- I'll tell you this:
8 To his credit, he made -- like all the management
9 meetings I was aware of, he made all the management
10 meetings, every week, two a week, he made them all,
11 that I know of.
12 **Q. With regard to the documents going into**
13 **the office to disappear, as put by his assistant,**
14 **did you take that to mean that James Cotter Junior**
15 **did not let documents go without first processing**
16 **them or did you take it some other way?**
17 MR. TAYBACK: Objection; vague.
18 THE WITNESS: I took it from the standpoint
19 that he must bring them home and read them or he
20 had a lot of documents in his office and they just
21 got lost in there. That's how I took it.
22 BY MR. NATION:
23 **Q. Did you ever have a document that you**
24 **provided get lost?**
25 A. Yes.

1 He was gaining experience. So the vetting, as you
2 referred to, there's some amount of vetting seeing
3 the guy work as president. There's some vetting
4 process we see, interacting and whatnot with him at
5 that time.
6 So to the extent we would have a formal
7 vetting process, no. We knew him and saw him -- I
8 saw him a short period of time. The other
9 directors saw him much longer. So there was some
10 amount of vetting but it wasn't a vetting process.
11 BY MR. NATION:
12 **Q. Did you receive any input from the other**
13 **directors about the appropriateness of electing**
14 **James Cotter Junior to be CEO in August of 2014?**
15 MR. SWANIS: Objection; form.
16 MR. TAYBACK: Join.
17 THE WITNESS: Yes. We had an independent
18 directors meeting after this meeting or the meeting
19 afterwards. I don't remember which one. And at
20 that time, Tim Storey voiced the opinion that if
21 his last name wasn't Cotter, he wouldn't be CEO.
22 And I said, Yes, but he is and now our job is to
23 support him and help him and help make him a great
24 CEO.
25 ///

1 MR. TAYBACK: Object to the extent that calls
2 for speculation as to what other board members may
3 have thought or expected.
4 But you may answer.
5 THE WITNESS: If Jim Cotter Junior had
6 expectations?
7 BY MR. NATION:
8 **Q. I'm asking about -- let me rephrase the**
9 **question.**
10 A. Okay.
11 **Q. It takes a little while to get warmed up**
12 **sometimes in these things.**
13 A. Okay.
14 **Q. I'm focusing around the time that James**
15 **Cotter Junior was elected as CEO.**
16 **Did you, as a member of the board, have**
17 **expectations how he was going to perform as CEO**
18 **going forward from there?**
19 A. I had expectations. I don't know about
20 the other members of the board, what theirs were.
21 But my expectations were that he was young, he
22 didn't have that much experience and that he would
23 be improving as he went. And I was expecting
24 improvement as the months and years flew by. I was
25 very optimistic that he would be a really good CEO.

1 **Q. Why?**
2 A. He's smart. He has experience. He spent
3 what, three years as president prior to this? It
4 appeared from that first meeting, his sisters
5 supported him. They voted for him. I imagine his
6 father wanted him to progress and run the company
7 and I figured he'd settle in and learn his way,
8 feel his way and be CEO and improve as he went.
9 **Q. Did it start -- at some point, Tim Storey**
10 **began, as referred to in some other documents, as**
11 **shadowing James Cotter Junior in his job as CEO in**
12 **order to try and help him out.**
13 A. Yes.
14 **Q. And is that something that was initiated**
15 **right at the beginning in August of 2014?**
16 A. No.
17 **Q. How long before that was it initiated?**
18 A. I think -- my answer is as follows:
19 I think Tim, bless his heart, appointed
20 himself that, maybe after three months, maybe after
21 four, and then he started communicating to the
22 board things he would find having spent time with
23 Jim Junior. And then we -- we called it Tim
24 coaching Jim Junior.
25 The point is, within two or three months,

1 it became clear to the board that Jim Junior needed
2 help in his role, not only as CEO in running the
3 company but trying to make amends or find bridges
4 that he could work with his sisters. And that was,
5 in part, Tim Storey's duties, to help him in the
6 CEO function and find ways to make new bridges with
7 his sisters.
8 **Q. Was it your perception that the issue of**
9 **improving at the CEO function and bridging the gap**
10 **with his sisters were hand in hand as two sides of**
11 **the same problem?**
12 MR. SWANIS: Objection; form.
13 THE WITNESS: No. I didn't -- me personally,
14 Guy Adams, I didn't see that as the same thing.
15 BY MR. NATION:
16 **Q. So you saw it as two --**
17 A. Yes.
18 **Q. -- two discrete kind of issues, one is**
19 **growing into the job and the other is getting along**
20 **with the other players?**
21 A. Yes.
22 MR. NATION: All right. Always good when you
23 reach for a document and the one you expect comes
24 up.
25 Okay. Exhibit 92.

EXHIBIT 4

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 JAMES J. COTTER, JR.,)
individually and)
5 derivatively on behalf of)
Reading International,)
6 Inc.,)
) Case No. A-15-719860-B
7 Plaintiff,)
) Coordinated with:
8 vs.)
) Case No. P-14-082942-E
9 MARGARET COTTER, et al.,)
)
10 Defendants.)
and)
11 _____)
READING INTERNATIONAL,)
12 INC., a Nevada)
corporation,)
13)
Nominal Defendant)
14 _____)

15

16 DEPOSITION OF: EDWARD KANE

17 TAKEN ON: MAY 2, 2016

18

19

20

21

22

23

24 REPORTED BY:

25 PATRICIA L. HUBBARD, CSR #3400

1 **Was that the trust and estate disputes**
2 **in litigation?**
3 A. Not necessarily, no.
4 **Q. Well --**
5 A. I think I was referring to what was
6 becoming a toxic office and polarization of the
7 office.
8 And I'm not laying -- I did not lay
9 blame on either Mr. Cotter or his sisters, but it
10 needed to be better.
11 **Q. You're referring to the second paragraph**
12 **under the subsection that begins with,**
13 **"The second issue is, of course" --**
14 A. Right.
15 **Q. -- "the atmosphere in the L.A.**
16 **office which I'm told is toxic"?**
17 A. Right.
18 **Q. I'll get to that in a minute, sir.**
19 A. Okay.
20 **Q. Do you recall anything else to which you**
21 **were referring in the first paragraph when you said**
22 **"resolving current disputes"?**
23 MR. SEARCY: Objection. Asked and
24 answered.
25 THE WITNESS: I can't recall what I had

1 in mind, but it wasn't -- I don't think it was the
2 litigation.
3 BY MR. KRUM:
4 **Q. Very well. So, going back to where we**
5 **were a moment ago and the sentence that uses the**
6 **word "toxic" --**
7 A. Uh-huh.
8 **Q. -- what was the source or what were the**
9 **sources of your information that led you to say**
10 **that?**
11 A. I think the office was -- I was told was
12 becoming polarized and there had been incidents
13 between Jim, Jr., I think, prior to this and Bill
14 Ellis's secretary, Linda Pham, and also with Debbie
15 Watson and with Ellen.
16 And Linda Pham had contacted Doug
17 McEachern, I think, and someone else about her
18 concern for her actual physical safety. Debbie
19 Watson was carrying mace to the office, and they
20 were alleging Jimmy had yelled at them to the point
21 that they were afraid physically. And Ellen
22 reported the same thing. And --
23 **Q. You think that's to what this is**
24 **referring?**
25 A. I think that the -- it may be. I don't

1 A. If I said it, yes.
2 **Q. Okay. So, I'm referring to that**
3 **testimony --**
4 A. Okay.
5 **Q. -- Mr. Kane. I'm not trying to put**
6 **words in your mouth. So when you said --**
7 A. I thought you were referring to
8 something else.
9 MR. SEARCY: You have to let him finish
10 his question. Okay?
11 BY MR. KRUM:
12 **Q. When you -- when you said in words or**
13 **substance something about employees taking sides, my**
14 **question is, was Linda Pham one of the employees who**
15 **had taken a side?**
16 MR. SEARCY: Objection. Vague.
17 THE WITNESS: I think Linda Pham had
18 filed a complaint against Jim. And whether that
19 amounted to taking sides, it was more personal. She
20 was physically afraid of him.
21 And that was turned over to
22 Mr. McEachern and Storey.
23 BY MR. KRUM:
24 **Q. Well, you don't know if she was**
25 **physically afraid.**

1 **You just know she filed a complaint and**
2 **said whatever she said, correct?**
3 A. I believe --
4 MR. SEARCY: Objection.
5 Mischaracterizes his testimony.
6 THE WITNESS: I believe in her complaint
7 she talked about she was physically afraid.
8 BY MR. KRUM:
9 **Q. You understand that Linda Pham was**
10 **terminated, right?**
11 A. Yes, I do.
12 **Q. You understand that she was terminated**
13 **for taking confidential emails between Jim**
14 **Cotter, Jr., and Bill Ellis and forwarding them to**
15 **Margaret Cotter.**
16 **Did you know that?**
17 MR. SEARCY: Objection. Lacks
18 foundation, calls for speculation.
19 THE WITNESS: That's not my
20 understanding.
21 BY MR. KRUM:
22 **Q. What's your understanding?**
23 A. My understanding is that after her first
24 complaint, she issued a second complaint saying
25 nothing has been done and she was still afraid of

1 Mr. Cotter when she was there after-hours.
2 And then Tim Storey took it upon himself
3 to fire her.
4 **Q. How do you come to have that**
5 **understanding?**
6 A. Because he did fire her. And he
7 certainly didn't run that by the so-called
8 independent committee.
9 And I don't know what authority he had
10 to do that, but he did it.
11 **Q. Why did he fire her?**
12 A. He never said why he fired her.
13 **Q. Did you ask?**
14 A. It was too late.
15 **Q. Did you ask?**
16 A. I think I knew -- well, she had already
17 been fired and they had already settled on an amount
18 to give her to leave.
19 **Q. Okay. Did you think --**
20 **You didn't ask Mr. Storey what happened,**
21 **correct?**
22 A. All he said was he fired her.
23 **Q. What did you say?**
24 A. I didn't say anything. It had been
25 done.

1 And if he did fire her, I should have
2 said -- I didn't say -- "who gave you the authority
3 to do it?"
4 But I didn't because she was already
5 fired.
6 **Q. So, what further communications did you**
7 **have with anyone with respect to the termination of**
8 **Linda Pham, if any?**
9 A. I was told, and I don't know who told me
10 this, that at that time she was working for Bill --
11 Bill Ellis as his secretary. And she was -- the
12 termination was such that he ended up crying in his
13 office, he was so upset.
14 **Q. Who told you that?**
15 A. I don't remember.
16 **Q. Did you ever hear or learn or were you**
17 **ever told that Bill Ellis was with Mr. Storey when**
18 **Ms. Pham was terminated?**
19 MR. SEARCY: Objection. Vague.
20 THE WITNESS: I don't remember.
21 BY MR. KRUM:
22 **Q. Did you ever speak to Bill Ellis about**
23 **the termination of Linda Pham?**
24 A. No.
25 **Q. Did you ever speak to anyone other than**

1 THE WITNESS: I can't -- I just can't
2 remember.
3 BY MR. KRUM:
4 **Q. When was the first time you told anyone,**
5 **whether Ellen or Margaret or Guy Adams, that you**
6 **would support the removal of Jim Cotter, Jr., as**
7 **president, C.E.O. or both?**
8 A. I just can't remember what that time
9 line was.
10 **Q. Do you recall a circumstance? Can you**
11 **put it in context between events?**
12 A. There were a number of events that
13 evolved over a period of time based upon his
14 actions.
15 **Q. What actions are you referencing?**
16 A. The first issue I had was when he went
17 to Hawaii on vacation and -- it was near Christmas
18 of 2014. And he -- he sent me some email pictures
19 of a few of the theaters that he thought were in
20 disrepair. And he was going to show them to the
21 board.
22 I said to him, "Don't show them to the
23 board. If she wasn't your sister, would you be
24 sending them to the board?"
25 And he said "no," he acknowledged that

1 he wouldn't. But later on he did.
2 Then I suggested to him before he did
3 that, "Why don't you say to Ellen, 'Come with me, I
4 want -- I have some issues with the Hawaiian
5 theaters, and just go with me and I'll point out my
6 concerns and see how we can rectify them.'"
7 He didn't do that.
8 And in fact I started thinking Ellen was
9 the fall person for this. She had nothing to do
10 with the issues, if there were any, in those
11 theaters, and there were reasons for that why she
12 didn't.
13 Then there were -- there was other
14 issues. We went to a board meeting, and he demanded
15 that he have the authority to spend $10 million on
16 any project without the approval of the board. And
17 he said "My father had it."
18 Well, he was not then nor now is he his
19 father.
20 And he actually said he should get more
21 authority to spend that kind of money because
22 inflation had occurred and his father had that
23 $10 million right, which his father I don't believe
24 ever exercised.
25 It didn't make any sense to me. But I

1 voted for it, although Tim Storey was opposed to it,
2 because I knew he would never pull the trigger, he
3 couldn't pull the trigger on anything.
4 Then there was the issue of the Stomp
5 situation where Stomp sent a letter that they were
6 going to leave the Orpheum Theatre, and that was a
7 big money-maker for the company.
8 What he should have done is to get on a
9 plane and go back and sit with Margaret and say,
10 "Margaret, How can I help in solving this issue?"
11 Instead he used it as a tool to
12 embarrass her in front of the board. That was a big
13 problem for me, because that's not what a C.E.O.
14 would do when you have two experienced executives.
15 You work with them. And if it comes to the point
16 you need to get rid of them, then that's another
17 situation.
18 But he did not handle it appropriately
19 at all.
20 And actually as a side, he -- it's in
21 his Complaint against me and others about the Stomp
22 and how bad she did.
23 Well, we had an arbitration, and the
24 arbitrator said that Margaret had done everything
25 required and more than everything required, and that

1 Stomp had an agenda to leave because they thought
2 they could make more money in another theater.
3 The net result is that Margaret by
4 herself handled this arbitration with her lawyers,
5 and we just got an award for more than $2.2 million.
6 So, instead of attacking his sister, he
7 should have supported her at least to a point.
8 I think he was not treating his sisters
9 as executives. This was my thought at the time. He
10 was treating them as the opposition, which was
11 inappropriate.
12 There were other issues. I can't recall
13 all of them right now. But he was not acting like a
14 C.E.O. would act.
15 **Q. So was it your view, Mr. Kane, that Jim**
16 **Cotter, Jr., needed to act as a C.E.O. but Margaret**
17 **Cotter, Jr., could act as an adversary on account of**
18 **the disputes the two of them had both at RDI and in**
19 **the trust and estate case?**
20 MR. SEARCY: Objection. Argumentative,
21 mischaracterizes testimony, lacks foundation.
22 THE WITNESS: Absolutely not.
23 I don't --
24 BY MR. KRUM:
25 **Q. What did you do, if anything, to**

1 board that was mediating and -- or supposedly, Tim
2 Storey.
3 BY MR. KRUM:
4 **Q. When was Mr. Storey charged with**
5 **mediating between Jim Cotter, Jr., on the one hand**
6 **and Ellen -- either or both Ellen and Margaret**
7 **Cotter on the other hand?**
8 A. When Bill Gould thought we should have
9 this non-Cotter committee, he -- I think
10 Mr. McEachern and Mr. Storey I believe met with
11 Ellen and Margaret and Jimmy to try to create an
12 office relationship that was -- that would move the
13 company forward.
14 Then later Mr. Storey was, in my
15 judgment -- or at least my understanding, he was
16 there to get them to work together. So, that was an
17 ongoing thing.
18 **Q. Was Mr. Storey when he was doing this as**
19 **a committee of one, in effect, referred to as the**
20 **ombudsman?**
21 A. Yes.
22 **Q. Do you recall ever being present where**
23 **one or the other or both of Ellen and Margaret**
24 **Cotter called Jim Cotter, Jr., a liar?**
25 A. I don't remember being present.

EXHIBIT 5

1

2

3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5

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

6 7 8 9 10 11 12 13 14 15

16

17 VIDEOTAPED DEPOSITION OF EDWARD KANE

18 TAKEN ON MAY 3, 2016

19 VOLUME 2

20

21

22

23 Job no. 305191

24 REPORTED BY:

25 PATRICIA L. HUBBARD, CSR #3400

1 Q. Directing your attention to the end of
2 your March 27, 2015 email to Jim Cotter, Jr. --
3 A. Uh-huh.
4 Q. -- as part of Exhibit 110, I
5 particularly direct your attention to the text six
6 lines from the bottom that begins you will -- quote,
7 "You will go a long way toward
8 obviating a need for Tim's
9 intrusion," and so forth.
10 A. Yes.
11 Q. You see that?
12 A. Yes, I do.
13 Q. Were each of the non-Cotter members and
14 the RDI board of directors, including Tim Storey in
15 particular, spending extra time dealing with the
16 issues raised by the disputes among the Cotters,
17 meaning Ellen and Margaret Cotter on one hand and
18 Jim Cotter, Jr., on the other?
19 MR. SEARCY: Objection. Vague.
20 THE WITNESS: The independent committee
21 or so-called independent committee, non-Cotter
22 committee, spent an inordinate amount of time trying
23 to come up with ways of ameliorating the -- the way
24 the company -- the Cotters interacted with each
25 other.

1 BY MR. KRUM:

2 **Q. Directing your attention, Mr. Kane, to**

3 **the last two lines of your May 27 email to Jim**

4 **Cotter, Jr., as part of Exhibit 110.**

5 A. Yes.

6 **Q. They read, quote,**

7 **"There is no downside to this.**

8 **There is potential downside to**

9 **letting things fester. Think about**

10 **it," period.**

11 **What were you communicating or**

12 **attempting to communicate to him when you said**

13 **there's potential downside to letting things fester.**

14 A. I think -- and I can't be specific, but

15 I think there was a feeling among most, if not all

16 of the non-Cotter directors that if things didn't

17 improve, we might have to terminate one or more of

18 them.

19 **Q. Well, that would be effective only if**

20 **the person or persons terminated did not control the**

21 **RDI/Cotter-related class B voting stock, right?**

22 MR. SEARCY: Objection. Argumentative,

23 lacks foundation.

24 THE WITNESS: It might. But it would

25 send a message to everyone that there was an

1 alternative that -- I'll point out -- you didn't ask
2 me, but you'll will find out later that
3 Mr. McEachern actually sent around saying all of the
4 directors should resign, all the non-Cotter
5 directors. That was an alternative; either we fire
6 one of them or we all resign.
7 **Q. And you understood the point of**
8 **Mr. McEachern's comment about everyone resigning to**
9 **acknowledge that some or all of -- well, either**
10 **Margaret or Margaret and Jim ultimately -- Jim, Jr.,**
11 **ultimately were going to control the voting stock**
12 **and be able to elect the board, right?**
13 A. Yes.
14 MR. SEARCY: Objection. Lacks
15 foundation.
16 THE WITNESS: Yes.
17 BY MR. KRUM:
18 **Q. Take a look back at Exhibit 110.**
19 **On the second page do you see that it**
20 **reflects that on March 30 you forwarded to someone,**
21 **but it doesn't indicate, your March 27 email to Jim**
22 **Cotter, Jr.?**
23 **I'm referring, Mr. Kane, to just past**
24 **halfway down on the second page. It reads on --**
25 **"On Mar 30, 2015, at 4:39 P.M."**

1 **Q. Who is the "us" to which you just**
2 **referred?**
3 A. I think that all of the so-called
4 independent directors saw that.
5 **Q. When did that become clear to you?**
6 A. I can't remember exactly.
7 **Q. Can you approximate when that became**
8 **clear to you whether by a date or by reference to**
9 **some other event or events?**
10 A. I can't.
11 **Q. What did any of the other non-Cotter**
12 **directors say to you or communicate to you that led**
13 **you to the conclusion that you just articulated to**
14 **the effect that they had concluded that a resolution**
15 **of the disputes between the Cotters could not be**
16 **reached?**
17 A. I think all five of us knew that there
18 was no resolution at that point.
19 **Q. Isn't it the case that Mr. Gould**
20 **articulated a position to the effect that the**
21 **disputes between the Cotters should be resolved in**
22 **the pending litigation?**
23 MR. SEARCY: Objection. Vague, assumes
24 facts.
25 THE WITNESS: I think -- and I'm not

1 entirely clear, I think he wanted to wait until that
2 litigation was concluded. That was his position.
3 BY MR. KRUM:
4 **Q. Did you ever tell him that you disagreed**
5 **other than when you chose to vote to terminate Jim**
6 **Cotter, Jr.?**
7 A. If -- if we had a discussion, I would
8 have told him that -- and I don't know if I did --
9 that we could not wait that long. We had to come to
10 some resolution. If the Cotter -- Cotters couldn't
11 come to one among themselves, we would have to.
12 **Q. Why was that?**
13 A. Because, as I just said, the company was
14 not moving forward. There was a polarization in the
15 office among the employees, and it had to be
16 resolved one way or another.
17 That was my opinion.
18 **Q. So as of the date of -- excuse me.**
19 **As of the date and time of Exhibit 80,**
20 **you had determined that, if necessary to carry the**
21 **vote, you would vote in favor of the termination of**
22 **Jim Cotter, Jr., as president and C.E.O., correct?**
23 A. I don't know if at that time I had that
24 decision. As I said before, I wouldn't have invited
25 him to come to my house if I had had a firm decision

EXHIBIT 6

1

2

3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5

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

6 7 8 9 10 11 12 13 14 15

16

17 VIDEOTAPED DEPOSITION OF EDWARD KANE

18 TAKEN ON JUNE 9, 2016

19 VOLUME 3

20

21

22

23 Job No.: 315759

24 REPORTED BY:

25 PATRICIA L. HUBBARD, CSR #3400

1 **And you sent it to him on May 9, 2015,**
2 **right?**
3 A. Uh-huh, yes.
4 **Q. And your email reads as follows, quote,**
5 **"I've had it with Bill Gould and**
6 **Tim Storey. I am seriously**
7 **considering getting off the**
8 **so-called independent committee.**
9 **Your thoughts," question mark.**
10 **What prompted you to send this email?**
11 A. I thought that -- again, that Tim Storey
12 had moved from his role as mediator between the
13 Cotter family to placing himself in management. And
14 I had had complaints throughout the time both from
15 Jim Cotter, Jr., Ellen and Margaret in that regard.
16 And he certainly didn't have experience in cinema or
17 live theaters, as far as I know.
18 And the committee wasn't working. Bill
19 Gould and Tim Storey were doing things without the
20 input or permission of the rest of us. And I didn't
21 see any need to continue on it.
22 **Q. What were they doing without the**
23 **permission of the rest of you?**
24 A. Well, for one thing they did is go out
25 and see a psychologist or psychiatrist and wanted us

1 to mandate that Jim Cotter, Jr., visit this
2 psychologist or psychiatrist.
3 **Q. That was Bill Gould's second go-around**
4 **with the psychologist as a -- as a proposed advisor**
5 **to RDI, wasn't it?**
6 MR. SEARCY: Objection.
7 THE WITNESS: This had to do -- this is
8 the only one I know of, and it had to do with Jim
9 Cotter, Jr.
10 BY MR. KRUM:
11 **Q. What else, if anything?**
12 A. What else -- pardon?
13 **Q. What else, if anything, referring to**
14 **your answer -- go ahead.**
15 A. I think they had -- they seemed to have
16 an agenda, and I didn't feel I was part of that
17 agenda.
18 **Q. Why do you say that?**
19 A. Because they said, for example, that
20 we'll make a decision on Jim Cotter, Jr., on
21 June 30.
22 I never agreed to that. They said we
23 had agreed to it. Guy never remembered that.
24 They were -- I had the feeling they were
25 excluding us from their discussions and they had

1 hostile at the time.

2 **Q. "At the time" being when?**

3 A. When we had the meetings.

4 **Q. Which meetings were hostile? Were they**

5 **in 2014? 2015?**

6 A. Around this time and going forward.

7 **Q. May 9th and going forward?**

8 A. Yes, yes.

9 **Q. So we're clear on the record, May 9th,**

10 **and going forward?**

11 A. Yes, yes.

12 **Q. What happened about that time that**

13 **created, in your view, what you viewed as hostility?**

14 A. Well, when we -- when I said -- and I

15 don't know if others said it, but we had never set a

16 date of June 30 for our intervention -- so-called

17 intervention of it -- and Jim Cotter, Jr.,'s

18 situation, the tenure. They -- they were upset that

19 I said that, but it happened to be the case.

20 And then it turned out that there was no

21 reason for us to wait until June 30. Our -- our

22 counsel told us --

23 MR. SEARCY: Hold on.

24 THE WITNESS: All right. There was no

25 reason. And we had never agreed to it.

1 So I thought that Bill Gould and -- and
2 Tim Storey were not including the three of us in
3 their discussions and their agenda, so to speak.
4 BY MR. KRUM:
5 **Q. Did some -- were there some exigent**
6 **circumstances that arose in or about May of 2015**
7 **that required a decision to be made regarding Jim**
8 **Cotter, Jr.'s remaining C.E.O. or not remaining**
9 **C.E.O.?**
10 MR. SEARCY: Objection. Vague.
11 MR. VERA: Join.
12 THE WITNESS: There were issues. I
13 can't recall -- recall the time line. But there
14 were various issues with regard to Jim Cotter, Jr.,
15 and his remaining as C.E.O.
16 BY MR. KRUM:
17 **Q. Did any of those issues arise in or**
18 **after April 2015?**
19 A. I can't remember the date. I can
20 remember some of the issues, but I can't remember
21 the date.
22 **Q. Okay. I'm not going to ask you to**
23 **repeat testimony from your prior sessions. So,**
24 **subject to that, if you would, please, just identify**
25 **the issues to which you were referring.**

1 A. Okay. One issue was Jim Cotter, Jr.,
2 going to Hawaii, taking pictures of the theaters and
3 trying to use them to show that Ellen was not doing
4 a proper job.
5 **Q. That occurred in about December of 2014,**
6 **correct?**
7 A. I don't remember when it occurred.
8 **Q. Okay. And what other issues were there?**
9 A. I didn't like the way Jim Cotter, Jr.,
10 was handling the Stomp. It appeared -- issue. It
11 appeared to me that he was focusing on Ellen --
12 excuse me -- Margaret in front of the board. I
13 thought that was inappropriate.
14 **Q. And by that you're referring to the**
15 **purported notice of termination by the Stomp**
16 **producers at the board meeting about which you**
17 **testified earlier today?**
18 A. Yes.
19 **Q. Okay. What other issues?**
20 A. Then there were issues of -- try to best
21 describe it. What three female employees called
22 harassment by Jim Cotter, Jr.
23 **Q. Those were the -- and you're referring**
24 **to Linda Pham, non-employee Deborah Watson and Ellen**
25 **Cotter; is that correct?**

EXHIBIT 7

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 JAMES J. COTTER, JR.,)
individually and)
5 derivatively on behalf of)
Reading International,)
6 Inc.,)
) Case No. A-15-719860-B
7 Plaintiff,)
) Coordinated with:
8 vs.)
) Case No. P-14-082942-E
9 MARGARET COTTER, et al.,)
)
10 Defendants.)
and)
11 _____)
READING INTERNATIONAL,)
12 INC., a Nevada)
corporation,)
13)
Nominal Defendant)
14 _____)

15

16 VIDEOTAPED DEPOSITION OF DOUGLAS McEACHERN

17 TAKEN ON MAY 6, 2016

18

19

20

21

22

23

24 REPORTED BY:

25 PATRICIA L. HUBBARD, CSR #3400

1 I didn't think they went anywhere, and I
2 was getting sick and tired of the whole lot of
3 everybody in this whole deal, quite frankly.
4 At some point -- I don't know -- in
5 February or March, sometime in that time frame, I
6 was ready to quit the board and just get out of
7 Dodge and say I'm done with all this, and concluded
8 at some point, Mr. Krum -- and I can't tell you
9 when -- in my mind I thought we had to do something.
10 I thought that either we -- we had to do
11 nothing about the situation, we had to terminate
12 Jim, we had to terminate Ellen and Margaret, or fire
13 all three of them and move forward with the company
14 in the best interest of the shareholders, because we
15 weren't getting anywhere.
16 And so when you say -- and by the way, I
17 vocalized that view of the world.
18 And things continued to evolve in my own
19 mind. Started to have further discussions with Jim
20 over his performance as a C.E.O.
21 Mr. Storey was appointed by Mr. Gould,
22 the best I can tell -- I don't think the board ever
23 did this -- to work with Jim to try to help make him
24 a C.E.O.
25 Bear in mind we made -- hope this

1 doesn't get anybody mad -- we made a mistake making
2 Jim Cotter C.E.O. in August of 2014. We made an
3 individual who had no real estate experience, no
4 international experience, no management experience,
5 no cinema experience and no live theater experience.
6 Other than that, in retrospect he was very
7 qualified.
8 (Whereupon Mr. Swanis entered the
9 deposition proceedings at this
10 time.)
11 THE WITNESS: When we met with Jim in
12 the fall it became very, very clear after hearing
13 from some of the executives in the company that Jim
14 was doing an analysis of the cinema operation. That
15 sounded like a pretty good thing to go do.
16 BY MR. KRUM:
17 **Q. I'm sorry. I'm sorry. Wait a minute.**
18 **Where are you in time?**
19 A. In the fall of 2014.
20 Jim was doing an examination of the
21 cinema operations. He was going around Ellen Cotter
22 to get information from our then C.F.O. Andrzej
23 Matyczynski and Robert Smerling and others about
24 financial performance of the cinemas.
25 Tim and I found out about this and said,

1 "Jim, we understand you're doing this analysis of
2 the cinemas. Jim, but you're going around Ellen's
3 back. This is not what a C.E.O. should be doing. A
4 C.E.O.'s time is too valuable than to be spending it
5 doing financial analysis of individual cinemas. Go
6 hire a consultant to do this. And by the way, if
7 you continue down the same path you're on, you're
8 going to get perceived as only doing this to try to
9 nail your sister."
10 And by the way, put those words down and
11 attribute it to me, because I think I did say that
12 to him.
13 He continued on doing this and in fact
14 in December went to Hawaii with his family and did a
15 similar review of something -- some of the theaters
16 in Hawaii.
17 The only reason I know about that is I
18 approve his expenses, and the expense came through.
19 But during that time he went and visited
20 cinemas; didn't talk to anybody, just went and took
21 pictures of the cinemas.
22 Now, the comments and the counsel to Jim
23 were, "Jim, it's could quite conceivably be that our
24 cinemas need to be enhanced and operations improved,
25 but we're not going to get there with you going and

1 trying to undercut the person who's doing it."
2 That then translated into other comments
3 to Jim. Jim had a habit of coming into the office,
4 sitting in his office and shutting the door, by
5 himself and being there all day.
6 **Q. How do you know that?**
7 A. Because I saw it. And I counseled with
8 him and I talked to him about it.
9 **Q. How many times did you see that?**
10 A. Every time I went to the office.
11 **Q. How often was that?**
12 A. I couldn't tell you. I didn't keep
13 track. I don't have a calendar that would tell you
14 when.
15 But I also heard from executives in the
16 company that he was doing that.
17 **Q. Let me ask the questions, though.**
18 **So, you reside a Rancho Santa Fe,**
19 **correct?**
20 A. I didn't at the time.
21 **Q. Where did you reside?**
22 A. Arcadia.
23 **Q. I lived in Los Angeles for 20 years and**
24 **I'm sorry, sir, I don't know where that is.**
25 **Where is Arcadia?**

1 ground.

2 **Q. When did you first decide,**

3 **Mr. McEachern, that you would seek or support the**

4 **termination of Jim Cotter, Jr., as C.E.O.?**

5 A. Could you read that question to me

6 again. I'm sorry.

7 MR. KRUM: Sure. I'll have the court

8 reporter read it back.

9 (Whereupon the question was read

10 as follows:

11 "Question: When did you first

12 decide, Mr. McEachern, that you

13 would seek or support the

14 termination of Jim Cotter, Jr., as

15 C.E.O.?")

16 THE WITNESS: I do not have a specific

17 date to give you, Mr. Krum, but it was sometime in

18 mid to late May of 2015.

19 BY MR. KRUM:

20 **Q. Can you place it in time relative to an**

21 **event, conversation or anything else?**

22 A. No, I can't.

23 **Q. When was the first time you communicated**

24 **to anyone that you were prepared to support or seek**

25 **the termination of Jim Cotter, Jr., as C.E.O.?**

1 **technique or something in between?**
2 A. I'm trying to think of how I do --
3 sometimes I try to do the normal typing. That's --
4 that may be about 50 percent of the time. And then
5 the other 50 I have to go and find out where the
6 letters are or the numbers.
7 **Q. Well, as I said, I'm old enough to ask**
8 **that question.**
9 **Did you ever communicate to Jim Cotter,**
10 **Jr., that you were assessing whether he should**
11 **remain C.E.O. of RDI?**
12 MR. SEARCY: Objection. Vague, vague as
13 to time.
14 THE WITNESS: Sometime in May Jim
15 Cotter, Jr., and I had a discussion about replacing
16 him as C.E.O. And I remember the discussion, I
17 think it was in his office, and he told me that I
18 could not fire him as C.E.O. And he told me that if
19 I were to vote to fire him, he would sue me and ruin
20 me financially, to which my response was "Jim, we
21 have D and O insurance."
22 His response was "I don't think it
23 covers this."
24 "Well, Jim, we have an indemnification
25 from the company."

1 "It's not any good. I'm going after
2 everybody."
3 And that -- because of that discussion,
4 we did talk about it and I remember it. I can't
5 tell you when it happened.
6 BY MR. KRUM:
7 **Q. Was it after the first supposed RDI**
8 **board of directors meeting at which the subject of**
9 **his termination was raised?**
10 MR. SWANIS: Objection. Form.
11 MR. SEARCY: Join.
12 THE WITNESS: I'm sorry. What?
13 MR. SEARCY: He objected to form.
14 THE WITNESS: Oh. I do not know if it
15 was before or after.
16 BY MR. KRUM:
17 **Q. So you believe that you may have spoken**
18 **to Jim Cotter, Jr., and indicated to him that you**
19 **were prepared to vote to terminate him prior to the**
20 **subject being raised at an RDI board of directors**
21 **meeting?**
22 MR. SWANIS: Objection. Form.
23 MR. SEARCY: Join. Object that it's
24 vague.
25 THE WITNESS: I don't know that I had

1 THE WITNESS: I don't -- I don't know
2 how to answer the question.
3 BY MR. KRUM:
4 **Q. What is --**
5 A. You're referring --
6 **Q. What is it you investigated -- strike**
7 **that.**
8 **What is it that you found troublesome?**
9 A. Linda Pham made, I think it was, a phone
10 call to the employee hotline about concerns and
11 issues about what was going on or it was treated as
12 a call to a hotline reporting a trouble.
13 I do recall speaking with Bill Gould
14 about the situation and telling him that I thought
15 that I should meet with Linda Pham and understand
16 what her concerns were, and I did.
17 **Q. When?**
18 A. That's why I say it's October, November
19 2014.
20 I went to the office. She and I -- she
21 felt very, very uncomfortable. I had not met her
22 before. And we went to the Starbucks across the
23 street and spent an hour or two hours listening to
24 what her concerns were about Jim Cotter, Jr.
25 She asked me to speak with Debbie Watson

1 and a Rick Bruce, who were in the office, about her
2 concerns to validate what she was telling me.
3 A month or so later I had not spoken
4 with Debbie -- two or three weeks later or Rick
5 Bruce, and she chastised me for not following up.
6 I subsequently had a discussion with
7 Debbie Watson and with Rick Bruce. Rick had nothing
8 to add. He said he was not there at the time --
9 period of time.
10 But Debbie Watson, as I recall, her
11 comments were supportive of Linda Pham's concerns.
12 **Q. When did you speak to Ms. Watson?**
13 A. It was an afternoon of a Tuesday or
14 Thursday on my way to a class at Claremont McKenna,
15 and it was by phone. I want to say sometime late
16 November, early December.
17 **Q. What was the resolution of the situation**
18 **with Linda Pham?**
19 A. To the best of my knowledge, we did
20 nothing.
21 **Q. Well, what did you do after you -- if**
22 **anything, after you did what you just described?**
23 A. I reported it back to Bill Gould, the
24 lead director.
25 **Q. And in the course of your conversations**

1 **with Linda Pham, what discussions, if any, did you**
2 **have concerning her relationship with either Ellen**
3 **or Margaret Cotter?**
4 A. I do not recall.
5 **Q. And what was her complaint?**
6 A. What was her complaint?
7 She felt that Jim was being abusive in
8 his behavior towards her and going through -- as I
9 recall, he was going through her files -- I had
10 difficulty understanding this, but she -- she felt
11 he was going through her files and/or doing things
12 secretively behind his closed doors.
13 She was very, very -- her office was
14 right next to Jim's, and she was very critical of
15 his behavior in the office.
16 **Q. Did she say anything substantive to**
17 **substantiate the claim that he was abusive to her?**
18 MR. SEARCY: Objection. Vague.
19 THE WITNESS: I cannot recall.
20 BY MR. KRUM:
21 **Q. And your best recollection is that you**
22 **concluded your -- that you spoke to -- strike that.**
23 **So your recollection is you spoke to**
24 **Linda Phan herself --**
25 A. Pham, P-h-a-m.

1 president and he didn't have the C.E.O. position, I
2 was fine with that.
3 I recall Margaret at one of these
4 meetings when we -- and this is where it gets
5 muddled. I don't remember what happened at what
6 meeting -- said there would be a position where we
7 hired a C.E.O., bring him in, Jim would be in some
8 role.
9 And Margaret said, "Jim, let's go along
10 with this and in five years maybe figure out how to
11 be a C.E.O., and you can take over as C.E.O. of the
12 company?"
13 **Q. Do you recall what -- anybody saying in**
14 **words or substance during the early evening call on**
15 **the Friday that we've been discussing that Jim**
16 **Cotter, Jr., could or would remain as C.E.O., but**
17 **that in practice or reality he would simply be one**
18 **member of an executive committee?**
19 MR. SEARCY: Objection. Vague.
20 THE WITNESS: I remember discussions
21 about how to not embarrass Jim Cotter, Jr., how to
22 get something transitioned, something that would be
23 palatable, something that we could move forward
24 with.
25 But I do recall some group of people

1 that Jim would be participating in something. I was
2 comfortable with that.
3 I was not comfortable with him having
4 the authority and responsibilities on his own as
5 C.E.O. of Reading.
6 BY MR. KRUM:
7 **Q. Do you recall who the group of people**
8 **was?**
9 A. Well, I know I wasn't part of whatever
10 that group was going to be. I suspect it was
11 Margaret and Ellen and potentially Ed or -- or Guy
12 Adams.
13 **Q. Let me prompt your -- attempt to prompt**
14 **your memory.**
15 **Do you recall that it was Guy Adams**
16 **along with Margaret, Ellen and Jim, Jr., and that**
17 **Guy Adams was to be the chair or chairman of this**
18 **committee?**
19 A. I get confused as to who was doing what
20 and what executive committee when. Because we
21 formed a subsequent executive committee after Jim
22 was terminated.
23 That Guy would be on the committee I'm
24 not surprised about. That Guy would share it I'm
25 not surprised about.

1 answered.
2 THE WITNESS: No.
3 BY MR. KRUM:
4 **Q. What else, if anything, do you recall**
5 **from your conversation or conversations with**
6 **Mr. Adams regarding the termination of Jim Cotter,**
7 **Jr., prior to the vote to do so, if anything?**
8 A. I believe I discussed with him my
9 conversations about voting to terminate Jim Cotter,
10 Jr., with Bill Gould, which I found a little
11 perplexing.
12 As I said, we had four choices: Do
13 nothing, fire Jim, fire the girls, fire all three of
14 the Cotters.
15 And in my discussions with Bill Gould,
16 Bill stated he wanted to do nothing. Bill wanted to
17 sit with the situation as it was, which I found very
18 frustrating, for upwards of two years until some
19 court decided who voted the voting stock.
20 I told Bill that that was not our job to
21 figure out who voted the stock; our responsibility
22 was to the shareholders of this corporation and to
23 do what was in the best interest of the shareholders
24 and that I did not believe waiting two years with
25 the situation we had was -- was possible.

1 THE WITNESS: I think Jim, Jr., knew
2 that his position as C.E.O. was in jeopardy for a
3 longer period of time than just May 21st.
4 BY MR. KRUM:
5 **Q. Well, do you base conclusion that on any**
6 **conversation you had with him?**
7 A. Based upon assigning Tim Storey to work
8 with him because of his C.E.O. skills, one would
9 think that he would have figured that out.
10 **Q. That's your understanding of what**
11 **Mr. Storey's role was?**
12 A. Yes.
13 **Q. And the basis of that understanding is**
14 **what?**
15 A. Discussions with Bill Gould.
16 **Q. Do you recall a meeting of the five**
17 **non-Cotter directors at which Mr. Storey was charged**
18 **with a function that came to be referred to as**
19 **ombudsman?**
20 A. No, I do not.
21 **Q. Do you recall a meeting of five**
22 **non-Cotter directors of which Mr. Storey was charged**
23 **with working with Jim Cotter, Jr., as C.E.O. and, in**
24 **particular, working with him and the Cotter sisters**
25 **to attempt to enable them to work together as**

1 **professionals instead of siblings with fights?**
2 MR. SEARCY: Objection. Vague,
3 compound, argumentative.
4 MR. SWANIS: Object to form.
5 THE WITNESS: He was to figure out how
6 to do things that were in the best interest of the
7 shareholders. And I recall emails from -- email or
8 emails from Tim about the holes in -- and that's my
9 phrase, not Tim's -- in Jim's expertise or ability
10 to function as a C.E.O. and where he needed further
11 handling.
12 BY MR. KRUM:
13 **Q. When was this?**
14 A. Sometime after he started working with
15 him.
16 **Q. When was that?**
17 A. Sometime after the -- I think the end of
18 March.
19 **Q. Did you ever hear or learn or were you**
20 **ever told that the role of Mr. Storey commencing in**
21 **or after March, whatever it was, was to -- was to**
22 **continue into June 2015?**
23 MR. SWANIS: Objection. Form.
24 THE SEARCY: Join. Also lacks
25 foundation.

1 BY MR. KRUM:
2 **Q. Well, we were talking about evaluating**
3 **the C.E.O. That was my first question. So let me**
4 **go back to that.**
5 **What process had been put in place at**
6 **any time prior to Exhibit 124 to assess or evaluate**
7 **the performance of the C.E.O. of RDI?**
8 MR. SWANIS: Objection. Form.
9 MR. SEARCY: Objection. Also assumes
10 facts.
11 THE WITNESS: The evaluation of
12 performance by executives in a company is an ongoing
13 activity. This is no different than any of the
14 other companies I've been associated with.
15 Typically at the end of the year there
16 is an evaluation done, a process to evaluate the
17 performance, look at compensation and decide how to
18 reward somebody for bonus or not for performance.
19 Here when you've got an individual who
20 we're very concerned about, process or evaluation is
21 constantly going on.
22 BY MR. KRUM:
23 **Q. Who was doing that?**
24 A. I think the entire board.
25 **Q. Well, what was Mr. Kane doing?**

1 **Q. But you never had any communications**
2 **with either of them about the subject or the notion**
3 **that the C.E.O. position was to be reviewed in June?**
4 A. I recall some discussion with Tim about
5 an end of June time frame or 90-day time frame when
6 he started, yes.
7 **Q. What do you recall about --**
8 A. Just that.
9 **Q. Nothing else?**
10 A. No.
11 **Q. That was a bad question and an unclear**
12 **answer because of the question.**
13 **Other than what you just said, do you**
14 **recall anything from your discussion with Tim Storey**
15 **about an end of June or 90 daytime frame?**
16 A. No.
17 **Q. Now, there came a point in time,**
18 **Mr. McEachern, when you became a member of a**
19 **so-called special nominating committee; is that**
20 **correct?**
21 A. Yes.
22 **Q. How did that happen?**
23 A. Are we talking about the nominating
24 committee for a member of the board of directors?
25 **Q. Well, let me ask the first -- another**

1 went around to the theaters, didn't introduce
2 himself to any of the theaters, taking pictures of
3 the state of our theaters in Hawaii where we have a
4 fairly big footprint.
5 I think he was coming back, planning to
6 make some sort of presentation about the ugliness of
7 the theaters which hadn't had any capital put into
8 them for quite a while. That never happened.
9 But as Ed Kane tells me, he had
10 discussions with Jim who showed Ed these pictures,
11 said, "Jim, what are you doing with this? Are you
12 trying to undercut your sister with the board of
13 directors? Why don't you sit down and go to Hawaii
14 with your sister, look at the operations and what
15 can be done to enhance them."
16 At the same time in the fall, hearing
17 that Jim is operating behind closed doors, but,
18 really, how can that possibly be and how do you
19 create trust? And I mentioned that earlier.
20 Jim, as would be reported, would come to
21 the office, go into his office and shut the door and
22 spend all day behind closed doors.
23 The message that he was told by me that
24 he was sending was one of not being engaged with the
25 employees of the company.

1 I said, "Jim, you got to open the door
2 to the office."
3 This went on for a month or two.
4 Finally Jim opens the door to his office, he opens
5 the door to his office one inch. And nominally can
6 you report that the door is open? Yes. In form it
7 is. In substance is it? Not.
8 That really caused some great angst.
9 You go back and start evaluating and you say, "Well
10 we made this guy the C.E.O., and you reflect upon
11 what he had done.
12 Now, my exposure to Jim -- I hope I'm
13 not going on too much.
14 **Q. I want a complete list.**
15 A. My exposure to Jim -- I joined the board
16 in June of 2012 -- had been exposure to him for a
17 couple of years in meetings. He sat in the board
18 meetings. I recall nothing that Jim Cotter, Jr.,
19 ever had to say in any board meeting at all.
20 And when his dad died in early September
21 of 2014, I went to Jim and said, "Listen, Jim, my
22 relationship was with your dad. I knew him for a
23 long period of time. I don't know your three kids,
24 who now seem to be the ones who are running the
25 company. I'll be happy to resign from the board if

1 you want."
2 And he said, "No. Stay on the board.
3 We need you," and some other stuff. So I stayed on
4 the board.
5 But we had these interactions in
6 meetings, and you try to mentor and help somebody
7 move their self along. From that point -- and this
8 is now moving into January, February of 2015,
9 getting to a point where this is just -- I'm pulling
10 my hair out, and I think the other directors were
11 too, a point where it's like why don't we just all
12 resign and call it a day and move on. We're not
13 getting any progress, we're not helping the
14 shareholders of this organization, we're not causing
15 value to be created.
16 And upon reflection, we put a C.E.O. in
17 place who had, as I said earlier, no real estate
18 experience, no management experience, no live
19 theater experience, no cinema experience and no
20 international experience.
21 Yeah, he traveled around with his dad
22 looking at things in Australia and possibly New
23 Zealand, but in terms of any real operational effect
24 or activities impact, nothing.
25 And then we moved into this Stomp

1 situation. The Stomp situation, Jim initially
2 wanted to use that, in my judgment, to case Margaret
3 Cotter in a very negative light with the board. At
4 the same time she was looking to try to get hired by
5 the company and get an employment contract and move
6 from her contractor or outside contractor status to
7 an employee of reading.
8 Talked about what she wanted to do, but
9 that's what she wanted to have happen. That I
10 recall from the fall of 2014.
11 And Ellen wanted to have a similar
12 contract.
13 Jim's comments constantly were to me "I
14 know what my dad wants. I know what my dad wants."
15 It's like the specter of Jim Cotter, Sr., is hanging
16 over all this. I don't know. He never told me what
17 his dad wants. But he would say it on a regular
18 basis.
19 It got to the point where now Ellen and
20 Margaret are trying to get their employment status
21 squared away. And sometime in maybe -- I don't
22 know -- March or April Jim finally sends a contract
23 to Margaret, an employment contract, a draft. And
24 it wasn't long, it was three or four pages as I
25 recall.

1 But as a preamble to it was a cover memo
2 that -- an email that had 23 or 4 or 17 or 20
3 reasons why Margaret should not get an employment
4 contract with the company.
5 And it was like, "Jim, if you're trying
6 to get -- mend fences and move forward. You don't
7 sit there and throw hand grenades in something that
8 you're trying to do on a positive basis."
9 But I know Jim had to do that. And then
10 Stomp happened. And I think that the employment
11 contract business happened before Stomp.
12 And Stomp came to his attention at some
13 point in April, May, and we ended up with a lot of
14 consternation about what went on. People were
15 jumping to conclusions before they had any facts,
16 which Bill Gould, bless his heart, he -- he had us
17 meet -- I don't know if it was the entire board, but
18 we met around the board room.
19 I had a granddaughter did that to me.
20 Scared me.
21 (Whereupon Mr. Rhow left the
22 deposition proceedings at this
23 time.)
24 THE WITNESS: He met around the board
25 room and had a discussion with Margaret on the phone

1 discussions that he had had.
2 The company from August of 2014 until
3 Jim's termination, I cannot tell you one thing that
4 we did that created value for the company, one thing
5 that Jim Cotter, Jr., managed to do. Nothing.
6 He ended up going to Australia and New
7 Zealand sometime in maybe February, but Ed Kane was
8 the one banging on the table saying "You know, you
9 got to get out of the office. We got to get this --
10 this toxic environment where everyone's just at
11 wit's end out of here. And he had numerous
12 discussions telling Jim, "Go to Australia and New
13 Zealand and get out of here."
14 And so now -- Australia and New Zealand
15 was 50 percent of our activities, maybe. Maybe 60.
16 I'm not sure what the percentage is. It's in the
17 10-K.
18 But we had him in place in August.
19 August, September, October, November, December,
20 January, February -- six months goes on and he
21 hasn't gone to visit anybody who has -- connected
22 our big activities that are taking place, which are
23 doing exceedingly in Australia and New Zealand. And
24 we had a lot of great opportunities.
25 All of those things. No -- making no

1 progress. Inability to work with executives.
2 Does that include Ellen and Margaret?
3 Absolutely it includes Ellen and Margaret, but as
4 executives. And I had concluded, Rob, that I did
5 not think that in my judgment Jim Cotter, Jr., was
6 C.E.O. capable. Some of the emails I recall
7 receiving from Tim Storey alluded to that, that we
8 have somebody who was very weak as a C.E.O. or as a
9 manager.
10 Tim at one point said that Jim wants to
11 go to U.C.L.A. to learn how to manage -- get an
12 M.B.A. -- I think it was U.C.R. Get an M.B.A. and
13 learn how to manage people.
14 The comet was waiting. You're 45 or 46
15 years old and you're going to go to school to learn
16 how to manage people?
17 You're not going to change somebody at
18 that point in time. Maybe people are going to alter
19 their behavior five or ten percent, but you're not
20 going to have an entire mind meld to try and get
21 somebody to change their basic DNA in how they
22 relate to people.
23 And you add all these things up -- the
24 Linda Pham, as I said earlier, that was maybe five
25 percent. It wasn't a major component. But it was

1 an inability to operate as a manager, an inability
2 to create trust, an inability to communicate with
3 people. That lack of experience that he had all
4 painted a picture that we're not making progress
5 that our shareholders expect us to make in this
6 organization, and we got to get somebody in here who
7 can help us move the company forward. And I voted
8 to terminate him. So --
9 **Q. Just to put this one on a time line, the**
10 **point in time by which you had reached your**
11 **conclusion based upon the factors you just described**
12 **was sometime in late April or May of 2015; is that**
13 **right?**
14 A. I'd say it's probably mostly in the May
15 time frame, I think.
16 I mean I had discussions with -- as I
17 said, with Bill Gould about our options that we had
18 to do something. I discounted one that Bill wanted
19 to pursue as just -- the whole company would have
20 imploded if we had gone down that past.
21 **Q. Okay.**
22 MR. SEARCY: Let me just -- before you
23 ask another question, Robert, I just want to put on
24 the record that Mr. Rhow left, and when he left it
25 caused the door to make that startling sound that we

1 THE WITNESS: Analyzing the theater
2 operations, absolutely nothing was wrong with doing
3 that. Nothing.
4 I didn't believe -- I thought it was
5 inappropriate that Jim was wasting -- inappropriate
6 in that Jim was wasting his individual C.E.O. time
7 doing it and that his time was better spent in other
8 activities to move the company forward.
9 I felt we could hire a consultant to go
10 do that, to work with Ellen to figure out how do we
11 make it better.
12 BY MR. NATION:
13 **Q. And also on that topic, I believe you**
14 **also mentioned going to Bob -- directly to Bob**
15 **Smer- -- Smerling rather than going to Ellen, right?**
16 A. Yes. And to Andrzej Matyczynski.
17 **Q. All right. So, I realize I haven't**
18 **summarized this, but in the time that we've been**
19 **asking and discussing this, is there anything else**
20 **that you would add to the list?**
21 A. One thing that came to mind, Jim felt
22 that we should change the food and beverage
23 activities going on at the cinemas.
24 I don't know if you've been to the
25 cinema lately. Popcorn seems to be -- and a Coke

1 seems to be the old passe thing. Now it's gourmet
2 hot dogs and beer and wine and alcohol and all kinds
3 of other things being served, which I think was an
4 appropriate thing.
5 He wanted and was endeavoring to go hire
6 a food and beverage manager around Ellen Cotter,
7 who's in charge of the operations.
8 It's like, well, now, wait a minute. We
9 decide we need to go do this, the individual running
10 that operation is the person that we -- should be in
11 charge of going and figuring out where to go; not
12 the C.E.O. going and undercutting an individual
13 running that operation.
14 **Q. Anything else you can think of?**
15 A. Probably as I leave tonight a couple
16 things will hit me.
17 **Q. We've hit the high spots, I take it.**
18 A. I think so.
19 **Q. Did you become aware from any source**
20 **that Tim Storey disagreed with that assessment? In**
21 **other words, that Tim Storey was giving reports,**
22 **portraying James Cotter, Jr.'s, performance in a**
23 **more favorable light?**
24 MR. SEARCY: Objection. Assumes facts,
25 lacks foundation, it's vague.

EXHIBIT 8

1

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4

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

5 6 7 8 9 10 11 12 13 14 15

16 VIDEOTAPED DEPOSITION OF MARGARET COTTER

17 TAKEN ON MAY 12, 2016

18 VOLUME I

19

20

21

22

23

24 REPORTED BY:

25 PATRICIA L. HUBBARD, CSR #3400

1 MR. SEARCY: So, Mark, if you're close
2 to finishing, it's about 6:22 right now.
3 MR. KRUM: Yeah. We should finish up by
4 6:30 if not before.
5 BY MR. KRUM:
6 **Q. Ms. Cotter, directing your attention to**
7 **your testimony of a moment ago to the effect that**
8 **your brother already had been told by the board that**
9 **he would be terminated, do you have that in mind?**
10 A. Do I have my statement in mind?
11 **Q. Yeah. I just want to direct your**
12 **attention to that.**
13 A. Yes.
14 **Q. And what was it you understood your**
15 **brother needed to do, if anything, as of June 4,**
16 **2015, to avoid being terminated?**
17 A. I believe at that point there was a --
18 we had collectively agreed that we would resolve
19 this dispute and the lawyers put together a
20 settlement.
21 We told the board that we resolved it
22 and that we're going to put it in the hands of the
23 lawyers. And we revised the settlement.
24 I don't know if it was -- I don't know
25 if we revised it because my brother asked for

1 additional things or if we just decided to throw in,
2 you know, additional elements of the settlement, but
3 that's where we were on June 4th.
4 **Q. When you refer to "this dispute," you're**
5 **referring to the trust disputes?**
6 MR. SEARCY: Objection. Vague.
7 BY MR. KRUM:
8 **Q. Well, let me ask an open-ended question.**
9 **In your last response you referred to**
10 **resolving this dispute.**
11 **To what were you referring when you said**
12 **"this dispute"?**
13 A. There were elements of the trust dispute
14 and there were also some terms regarding going
15 forward in the company in the settlement.
16 **Q. So what had transpired is that at a**
17 **reconvened -- a supposed reconvened telephonic board**
18 **meeting, Ellen reported that you and Ellen had**
19 **reached a resolution with your brother and that the**
20 **lawyers were going to prepare the paperwork; is that**
21 **correct?**
22 MR. SEARCY: Objection. Vague.
23 THE WITNESS: Which -- when are you
24 referring to?
25 ///

1 BY MR. KRUM:

2 **Q. Okay. Do you recall that there was a**

3 **Friday where there was a board meeting that convened**

4 **in the morning or early afternoon and that that**

5 **supposed board meeting adjourned and supposedly**

6 **reconvened in a telephonic meeting at about**

7 **6 o'clock in the evening?**

8 A. That's correct.

9 **Q. And do you recall that on the**

10 **telephonic -- or on the telephone call, Ellen**

11 **reported that a tentative agreement had been struck**

12 **by you and her on one hand and by your brother on**

13 **the other?**

14 A. I don't know if she said "tentative."

15 **Q. Okay. Do you recall that she reported**

16 **that an agreement had been reached?**

17 A. Yes.

18 **Q. And the agreement was between you and**

19 **her on one hand and your brother on the other hand?**

20 A. Yes.

21 **Q. And that in Exhibit 156, when you asked**

22 **your brother, quote, "What is the status of the**

23 **paperwork we sent you yesterday," close quote,**

24 **you're referring to the paperwork that Sussman sent**

25 **to Streisand about the agreement that Ellen had**

1 **reported during the 6:00 P.M. telephone call we just**
2 **discussed, right?**
3 MR. SEARCY: Objection. Vague, lacks
4 foundation.
5 THE WITNESS: No.
6 BY MR. KRUM:
7 **Q. Okay. To what are you referring, then?**
8 A. This is the revised settlement. This
9 was not -- this settlement offer that I'm referring
10 to in this email was not the settlement that my
11 sister was referring to on that telephonic board
12 meeting.
13 **Q. Okay.**
14 MR. SEARCY: So, Mr. Krum, I can tell by
15 the way my witness is slouching in her seat that
16 we're reaching the end here.
17 MR. KRUM: We'll be there in a minute.
18 BY MR. KRUM:
19 **Q. So, that settlement -- that**
20 **documentation was not accepted by your brother,**
21 **correct?**
22 MR. SEARCY: Objection. Vague.
23 MR. FERRARIO: Obviously. We're here.
24 THE WITNESS: That's correct.
25 ///

EXHIBIT 9

1

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4

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

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16 VIDEOTAPED DEPOSITION OF MARGARET COTTER

17 TAKEN ON MAY 13, 2016

18 VOLUME II

19

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24 REPORTED BY:

25 PATRICIA L. HUBBARD, CSR #3400

as follows:
"Question: Well, independent of what you meant on that particular day, in or about the end of March 2015 or early April, 2015, did you have a view or an opinion that your brother had some strategy or some particular purpose that was why he had not then acted to make you an employee of RDI?")

BY MR. KRUM:

Q. Can you answer that?

A. I can speculate as to what I meant on this day. I mean I just felt from the start that my brother was trying to push me off to the side and not be part of this company.

Q. Well, there came a time in May of 2015 when he sent you a draft of an employment agreement, right?

A. I -- I don't know if that was the date, but he sent me a draft, yes.

Q. Okay. Did that change your view of whether he was willing to make you an employee of RDI?

A. No.

1 **Q. Why not?**
2 A. I believe that the email had 23 reasons
3 why he shouldn't be giving me this employment
4 agreement. And the employment agreement was very
5 restricted, where if I didn't hand in a report at
6 some particular time, I could be terminated.
7 **Q. At any point in time from the time in**
8 **August of 2014 when your brother became C.E.O. until**
9 **he was terminated on June 12, 2015, did you develop**
10 **a view that he wanted or was looking for excuses or**
11 **reasons to terminate your consulting arrangement?**
12 A. You're asking me if I knew of reasons?
13 **Q. No. I'm asking you if you had that**
14 **thought in that time frame.**
15 **So let me ask the court reporter to read**
16 **the question back.**
17 (Whereupon the question was read
18 as follows:
19 "Question: At any point in time
20 from the time in August of 2014
21 when your brother became C.E.O.
22 until he was terminated on
23 June 12, 2015, did you develop a
24 view that he wanted or was looking
25 for excuses or reasons to

1 **you talking about when you received the Stomp**
2 **producer's letter purporting to terminate the**
3 **agreement and then sent that along to your brother?**
4 A. That's correct.
5 **Q. What is it you recall happened**
6 **between -- if anything that happened between when**
7 **you sent that letter to your brother and the board**
8 **meeting with respect to the Stomp matter?**
9 A. Just my brother would call, and he
10 wanted all these particulars about this February
11 letter.
12 And at that point we were putting
13 together a preliminary injunction motion to go into
14 the Supreme Court. And he wasn't listening to
15 the -- to me on this injunction saying that we have
16 to get this filed. He was more concerned about why
17 he wasn't notified back in February.
18 And I told him, "Jim, you're missing the
19 point."
20 And he just wanted to find all the fault
21 in what I had done rather than deal with the
22 situation at hand and getting this motion filed to
23 prevent the show from leaving the theater.
24 **Q. Ms. Cotter, when you say he wanted to**
25 **find fault, why do you say that?**

1 A. I don't recall.
2 **Q. Did you ever have a communication with**
3 **Guy Adams about him serving as interim C.E.O. of**
4 **RDI?**
5 A. I don't recall that.
6 **Q. Did you ever have a conversation with**
7 **any non-Cotter director about an interim C.E.O. of**
8 **RDI?**
9 A. Prior to June 16th --
10 **Q. Prior to June --**
11 A. Or 12th?
12 **Q. Prior to June 12, 2015, yes.**
13 A. I don't recall.
14 **Q. What's your best recollection as to how**
15 **many board meetings, which I'll call supposed board**
16 **meetings, occurred at which a subject or the subject**
17 **was the possible termination of your brother as**
18 **president and C.E.O.?**
19 A. I recall three.
20 **Q. And if you would, please, whether by**
21 **date or such other reference as you see fit,**
22 **describe or identify each of the three.**
23 A. There was the first one at some point in
24 May that termination of my brother was discussed.
25 And I believe at that board meeting there was a

1 suggestion by one of the directors, Bill Gould might
2 have said, "Jim, how about we keep you as president
3 and we get a new C.E.O.?"
4 And I then said, "Jim, and then you can
5 get your training over the next five years and gain
6 more experience and possibly you become C.E.O. in
7 another five years."
8 And I remember my brother thanked
9 everyone and said he'll think about it.
10 **Q. That's your recollection as to how that**
11 **meeting ended?**
12 A. Yes.
13 **Q. And then the next meeting occurred how**
14 **much later?**
15 A. I don't recall the date or how far it
16 was. But I believe at that meeting that there was
17 more discussion on his termination and the reasons
18 why.
19 And there came a time when there was
20 a -- a discussion about possibly ending it all,
21 meaning we would end the trust litigation, we would
22 end, you know, our disputes within the company.
23 And we dismissed the non-Cotters at some
24 point, and my brother, I and my sister sat in a room
25 and we talked about the company, working together.

1 We talked about the -- the trust dispute that we
2 had.
3 And we -- I mean I think this was going
4 on for like three or four hours.
5 And we reached a settlement that we all
6 agreed upon. We called the board back -- or the
7 board told us that we would reconvene at 6:00. And
8 at 6 o'clock we told the board that we all reached
9 an agreement.
10 And the board congratulated us and said
11 let's move forward.
12 **Q. And then what happened?**
13 A. I think that our -- my lawyer, my
14 sister's lawyer and I -- mine, our trust attorney
15 put together a settlement offer that -- that we had
16 given him in writing saying this is what we all
17 decided.
18 He put it -- he put together an
19 agreement, and he forwarded it over to my brother's
20 attorney, to his trust attorney.
21 **Q. Sussman to Streisand, yours to his?**
22 A. Sussman to Streisand, correct.
23 **Q. I'm sorry. Please continue.**
24 A. And I don't -- I don't know what
25 happened with that settlement, but then there was a

1 revised settlement where we, meaning my sister and
2 I, provided things to my brother, additional
3 benefits for my brother. I think we forgave --
4 agreed to forgive a $1.5 million note, and we
5 allowed him to continue receiving his $200,000 a
6 year director's fee from Cecelia in that settlement.
7 **Q. Then what happened?**
8 A. And then I don't know if I had a
9 conversation with my brother, and he said, "Let's
10 mediate."
11 **Q. You think that was a conversation?**
12 A. It might have been a conversation, yeah.
13 **Q. What was your response?**
14 A. "Jim, we've given you everything we can.
15 Take this. We've done mediation."
16 **Q. Who else said what, if anything, during**
17 **that conversation?**
18 A. I don't recall anything else.
19 **Q. So, what happened next?**
20 A. I just -- I remember my sister being in
21 New York with me. And there was a board meeting
22 that was -- that was put on the calendar.
23 **Q. An RDI board meeting?**
24 A. Yes.
25 **Q. Then what happened?**

1 A. And at that board meeting all the
2 directors spoke, and my brother was terminated.
3 **Q. So how did it come to pass that the --**
4 **that supposed board meeting was put on the calendar?**
5 A. I don't recall.
6 **Q. Who put it on the calendar?**
7 A. My sister as chairman.
8 **Q. Was the purpose of calling that meeting**
9 **to vote on the termination of your brother?**
10 A. That's correct.
11 **Q. What's your understanding as to why your**
12 **sister put that on the calendar at that time?**
13 A. I don't think that the settlement was
14 agreed to after we had all agreed.
15 **Q. In other words, your brother didn't**
16 **agree to the settlement proposal that -- the revised**
17 **settlement proposal that you had had your lawyer**
18 **Sussman provide to Streisand? Is that what you're**
19 **saying?**
20 A. That's correct.
21 **Q. Directing your attention, Ms. Cotter,**
22 **back to what you've described as the second meeting,**
23 **do you have in mind your testimony about you and**
24 **Ellen spending three or four hours with Jim talking**
25 **about the trust and estate disputes and the disputes**

EXHIBIT 10

1 EIGHTH JUDICIAL DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 JAMES J. COTTER, JR., derivatively
on behalf of Reading International,
5 Inc.,
Plaintiff,
6
vs. Case No.
7
MARGARET COTTER, ELLEN COTTER, A-15-719860-B
8 GUY ADAMS, EDWARD KANE, DOUGLAS
McEACHERN, TIMOTHY STOREY,
9 WILLIAM GOULD, JUDY CODDING,
MICHAEL WROTNIAK, and DOES 1
10 through 100, inclusive,
Defendants.
11
and
12
READING INTERNATIONAL, INC.,
13 a Nevada corporation,
Nominal Defendant.
14 _____
15 (CAPTION CONTINUED ON NEXT PAGE.)
16 VIDEOTAPED DEPOSITION OF JAMES COTTER, JR.
17 Los Angeles, California
18 Monday, May 16, 2016
19 Volume I
20
21
22 Reported by:
23 JANICE SCHUTZMAN, CSR No. 9509
24 Job No. 2312188
25 Pages 1 - 297

1 T2 PARTNERS MANAGEMENT, LP, a
Delaware limited partnership,
2 doing business as KASE CAPITAL
MANAGEMENT, et al.,
3 Plaintiffs,
4 vs.
5 MARGARET COTTER, ELLEN COTTER,
GUY ADAMS, EDWARD KANE, DOUGLAS
6 McEACHERN, WILLIAM GOULD, JUDY
CODDING, MICHAEL WROTNIAK, CRAIG
7 TOMPKINS, and DOES 1 through 100,
inclusive,
8 Defendants.
9 and
10 READING INTERNATIONAL, INC., a
Nevada corporation,
11 Nominal Defendant.
12 _____
13
14
15 Videotaped Deposition of JAMES COTTER, JR.,
16 Volume I, taken at 865 South Figueroa Street,
17 10th Floor, Los Angeles, California, commencing
18 at 10:09 a.m. and ending at 5:40 p.m., Monday,
19 May 16, 2016, before Janice Schutzman, CSR No. 9509.
20
21
22
23
24
25 PAGES 1 - 297

1 Q. Is that fair to say?
2 MR. KRUM: Same objections.
3 Go ahead.
4 THE WITNESS: Yes.
5 BY MR. TAYBACK: 10:30:57
6 Q. Any other form of redress that you are
7 seeking related to your termination --
8 MR. KRUM: Same objections.
9 BY MR. TAYBACK:
10 Q. -- through this lawsuit? 10:31:04
11 MR. KRUM: Sorry.
12 MR. TAYBACK: That's all right.
13 MR. KRUM: Same objections, same
14 admonition.
15 Go ahead. 10:31:09
16 THE WITNESS: At this point in time, I do
17 not recall any, no.
18 BY MR. TAYBACK:
19 Q. When you were CEO, it was pursuant to a
20 written contract? 10:31:20
21 A. No.
22 Q. So you had no written employment contract
23 with respect to your position as CEO?
24 A. That's a legal question, Mr. Tayback.
25 I had an employment agreement as president 10:31:35

1 that was signed on June -- in June of 2014. I was
2 promoted to president -- to CEO on August 7th, 2014.
3 And whether my position as CEO was subsumed in the
4 employment agreement, I can't tell you.
5 Q. What was your understanding -- when you 10:31:59
6 became CEO, what was your understanding of the terms
7 that governed your employment?
8 A. That governed my employment as CEO?
9 Q. Yes.
10 A. Well, at a minimum, the terms of my 10:32:15
11 employment agreement would continue, and there was
12 an expectation that it might be -- the terms might
13 be amended to reflect the new status as CEO. The
14 terms and compensation might be amended to reflect
15 the status of CEO as well. But that had never been 10:32:34
16 done.
17 Q. So that never did get done; correct?
18 A. That's right.
19 Q. So your compensation as CEO was the same as
20 that which is laid out -- was laid out in the 10:32:46
21 written agreement with respect to you being
22 president; correct?
23 A. Correct.
24 Q. And the other terms that are set forth in
25 that written agreement that governed your position 10:33:00

1 as president so, you believe, stayed in effect while
2 you were CEO; correct?
3 MR. KRUM: Objection, calls for a legal
4 conclusion.
5 THE WITNESS: Could you repeat the 10:33:11
6 question.
7 BY MR. TAYBACK:
8 Q. Sure.
9 The written agreement that you had as
10 president, you believe that that stayed in effect 10:33:16
11 while you were CEO?
12 MR. KRUM: Same objection.
13 THE WITNESS: Yes.
14 BY MR. TAYBACK:
15 Q. And you didn't have some separate written 10:33:22
16 agreement with respect to being CEO?
17 A. No, I did not.
18 Q. And your understanding is that as CEO, you
19 reported to the board; correct?
20 A. Correct. 10:33:33
21 Q. And you had no written guarantee of a
22 specific minimum term for which you would be CEO; is
23 that correct?
24 MR. KRUM: Same objection.
25 THE WITNESS: Well, the expectation that I 10:33:51

1 had was that the employment agreement would at least
2 provide me a certain term as CEO and president.
3 BY MR. TAYBACK:
4 Q. So you believed that the written agreement
5 did govern your term as CEO? 10:34:07
6 MR. KRUM: Same objection.
7 THE WITNESS: I don't know if I can say
8 that I specifically thought that at the time.
9 BY MR. TAYBACK:
10 Q. You know what an employment -- employment 10:34:20
11 at will is?
12 A. I do.
13 Q. And what's your understanding of that?
14 A. A company can terminate an executive at any
15 point in time. 10:34:35
16 Q. Did you believe that you were an employee
17 at will as CEO?
18 MR. KRUM: Same objection.
19 THE WITNESS: Again, I thought that at
20 least my employment agreement as president would 10:34:47
21 cover -- would be subsumed and would deal with my
22 new title as CEO at a minimum.
23 Now, when you discuss being an employee at
24 will, I never thought that the board -- I always
25 assumed that if I was going to be terminated, even 10:35:05

1 if I were an employee at will, that the board would
2 engage in some modicum of process before making a
3 decision to terminate the CEO of a company.
4 BY MR. TAYBACK:
5 Q. Put aside the process -- 10:35:19
6 A. Okay.
7 Q. -- for a minute. I want to understand what
8 your basis is for whether you believed that you
9 could be terminated at will or whether you couldn't
10 be terminated at will. 10:35:29
11 Did you believe you could be?
12 A. I believed that, at a minimum, the company
13 would provide me notice, 12 months' notice under my
14 employment agreement, before terminating me as
15 president and CEO. 10:35:42
16 Q. So you believe the notice provision and the
17 12 months -- the 12-month notice provision --
18 withdraw that.
19 So you believe that certain aspects, at
20 least, of that written agreement also governed your 10:35:59
21 relationship with the company as CEO; is that
22 correct?
23 MR. KRUM: Objection, calls for a legal
24 conclusion, the document speaks for itself.
25 You can answer. 10:36:10

1 THE WITNESS: Could you repeat the
2 question?
3 BY MR. TAYBACK:
4 Q. I'll just ask a different question.
5 It's your understanding that as CEO, if you 10:36:19
6 were terminated for any reason, that you would be
7 entitled to -- withdraw that.
8 It was your understanding as CEO that if
9 you were terminated without cause, that you would be
10 entitled to some compensation, 12 months? 10:36:34
11 MR. KRUM: Same objections.
12 THE WITNESS: With respect to my employment
13 agreement, I expected that, at a minimum, the
14 company would provide me 12 months' notice -- if
15 they wanted to end the relationship, that they would 10:36:55
16 give me 12 months and my status as president and CEO
17 would continue. But that's simply my understanding
18 under the employment agreement.
19 BY MR. TAYBACK:
20 Q. And you believe that that employment 10:37:08
21 agreement governed your tenure as CEO, that written
22 employment agreement?
23 MR. KRUM: Same objections.
24 THE WITNESS: Did I believe my employment
25 agreement governed my status as CEO? 10:37:24

1 BY MR. TAYBACK:
2 Q. Yes.
3 MR. KRUM: Same objections.
4 THE WITNESS: At a minimum, I agree that if
5 I were terminated as president and as CEO, that I 10:37:37
6 would have relief under that employment agreement.
7 BY MR. TAYBACK:
8 Q. And I guess you can't answer the question
9 yes or no as to whether or not you believe that the
10 employment agreement that you had as president 10:37:52
11 governed your relationship with the company as CEO?
12 A. You know --
13 MR. KRUM: Wait.
14 THE WITNESS: -- I'm --
15 MR. KRUM: Wait. Let me interpose my 10:37:57
16 objections.
17 Objection, vague and ambiguous, calls for a
18 legal conclusion.
19 You can answer.
20 THE WITNESS: I'm not a lawyer. I'm not a 10:38:03
21 practicing lawyer.
22 BY MR. TAYBACK:
23 Q. You are a lawyer; correct?
24 A. I am a lawyer. I'm not a practicing
25 lawyer. I'm not qualified in California. 10:38:10

1 I had an employment agreement as president.
2 I became CEO. The employment agreement was not
3 amended to reflect my new status as president and
4 CEO.
5 So did the employment agreement govern now 10:38:24
6 my status as CEO? I don't know. I mean, I can't
7 tell you that as a nonpracticing lawyer. I mean,
8 that's a legal conclusion.
9 Q. So when you became CEO, your compensation
10 stayed the same as it was when you were president? 10:38:43
11 A. It did.
12 Q. And did you do anything to seek to amend
13 your written employment agreement? Did you do
14 anything to do that?
15 A. At the time that I became CEO, in August of 10:38:57
16 2014, there were a lot of more pressing matters
17 confronting the company and confronting myself with
18 my father's death that I was addressing and thought
19 that these items were more important.
20 And so in the fullness of time, I'm sure 10:39:20
21 that would have been addressed, but it wasn't a
22 priority for me at that point in my life and with
23 the matters confronting the company.
24 Q. So the answer to my question is no?
25 A. Okay. 10:39:34

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

1 Q. And back in 2002, you were living in
2 New York?
3 A. Yes.
4 Q. Did you attend meetings?
5 A. Of course. 12:57:41
6 Q. Had you ever been on the board of a public
7 company prior to being on the board at Reading?
8 A. No.
9 Q. Was -- in 2002, was Reading a public
10 company at that point in time? 12:58:01
11 A. Yes.
12 Q. And the board -- who else was on the board
13 in 2002 when you first joined?
14 A. My father, I believe Bill Gould, Ed Kane,
15 possibly Al Villasenor. Those are the only names 12:58:38
16 that I can recall.
17 Q. Do you recall how big the board was? That
18 is to say, do you recall whether there were more
19 people but you're not remembering their names or
20 whether that might have been all of them? 12:58:54
21 A. There were certainly more people.
22 Q. Did you attend the board meetings in
23 person?
24 A. Some of them.
25 Q. And did you attend some by telephone? 12:59:00

1 A. Yes.
2 Q. Okay. And did you also miss some board
3 meetings in the early days of being on the board?
4 A. I don't recall why I would have missed
5 meetings. 12:59:13
6 Q. And did you get materials in advance for
7 consideration?
8 A. Absolutely.
9 Q. When would you get them in New York?
10 A. In 2002? 12:59:22
11 Q. Yeah.
12 A. That's a long time. I don't --
13 Q. You don't remember?
14 A. I don't remember.
15 Q. Okay. Did -- do you know -- do you have 12:59:28
16 a --
17 Do you remember having a routine where you
18 would get, in advance of a board meeting, an agenda
19 and what you'd have to understand you would be
20 voting on? 12:59:37
21 A. Again, it's been a long time. I would be
22 surprised if we didn't.
23 Q. Okay. This was your first time being on a
24 board of a public company; correct?
25 A. Yes. 12:59:47

1 Q. And what did you do to understand what your
2 responsibilities were?
3 A. Well, I was also a corporate lawyer at the
4 time, so I had familiarity with the responsibilities
5 of directors of public companies. 12:59:59
6 Q. Okay. So you had kind of your own
7 understanding. You didn't need to do anything in
8 particular to learn what you should -- what your
9 obligations would be as a board member for Reading?
10 A. I mean, I would often, you know, read 01:00:16
11 articles and cases, and aside from that and learning
12 as a corporate lawyer, I don't recall.
13 Q. Do you believe you were qualified to be on
14 the board of Reading at the time you were appointed?
15 A. Yes. 01:00:35
16 Q. Okay. Why? What made you qualified?
17 A. Well, I had stock in the company, I
18 believe, at the time. And I had an interest as a
19 large or potentially a very large stockholder with
20 my dad's interest. So I thought that it was 01:01:07
21 appropriate that I be on the board.
22 Q. How much stock did you own at the time?
23 A. I might not have owned a lot at the time,
24 but I'm -- the expectation was that the stock that
25 my dad owned would ultimately, you know -- or some 01:01:24

1 of the stock would be owned by his three children.
2 Q. And were your -- either of your sisters on
3 the board at the same time?
4 A. I don't believe my sisters were on the
5 board at that time. I think possibly Margaret might 01:01:37
6 have joined afterwards, and I don't think Ellen
7 joined until 2013.
8 Q. And do you agree that at the time they
9 joined, respectively, that they were both equally
10 qualified to be board members of Reading? 01:01:50
11 A. For the same reasons that I listed for
12 myself, as far as having an ownership interest or a
13 potential ownership interest in the company, that --
14 Q. At least for those reasons.
15 A. Yeah, at least for those reasons that it 01:02:04
16 would be appropriate that they be -- that they have
17 a seat on the board, yes.
18 Q. And did you have -- what was the
19 business --
20 How would you describe the business of 01:02:15
21 Reading in 2002 at the time you became on the board?
22 A. I mean, it's -- this goes back.
23 Q. Generally.
24 A. It owned real estate at the time. This was
25 before it had acquired an interest in U.S. cinemas, 01:02:48

1 I believe. But again, this goes back 14 years, so I
2 can't tell you.
3 Q. Had you had any professional experience in
4 real estate acquisition development prior to 2002?
5 A. I certainly had done real estate and other 01:03:14
6 acquisitions and financings as a corporate lawyer at
7 Whitman Breed prior to 2002.
8 Q. Other -- so as the corporate lawyer
9 documenting a real estate transaction --
10 A. Right. 01:03:40
11 Q. -- have you made any -- had you been
12 engaged in any business where the business decisions
13 were acquisitions, real estate development, things
14 like that?
15 A. Prior to 2002, no. 01:03:52
16 Q. Correct.
17 Did you feel that was an impediment to your
18 being an effective board member of Reading when you
19 first joined the board?
20 A. Well, it certainly wasn't preferred. But I 01:04:05
21 felt that while I didn't have the real estate
22 experience that would have been preferred for the
23 board and I didn't have the public company
24 experience that would have been preferred for the
25 board, that my interest as a possibly very large 01:04:19

1 stockholder of Reading outweighed not having the
2 real estate experience and not having the public
3 company experience. So I thought on balance, it was
4 appropriate.
5 Q. So you would agree that in, at least in 01:04:37
6 that instance, the Reading board could properly
7 weigh certain factors against other factors and make
8 a business decision that would -- came -- that
9 concluded that you were suitable for the board even
10 if you didn't have all of the preferred 01:04:54
11 characteristics of a board member; correct?
12 MR. KRUM: Objection, vague and ambiguous.
13 THE WITNESS: Okay.
14 BY MR. TAYBACK:
15 Q. Yes? 01:05:09
16 A. Yes.
17 Q. Once you came on the board, did you
18 participate in the meetings? That is to say, were
19 you an active participant in the meetings?
20 A. Early on? 01:05:20
21 Q. Yes.
22 A. Again, this takes me back many years.
23 Initially, without having the experience, I might
24 not have been as active as I had come to be over the
25 years. 01:05:42

1 Q. And did you feel like you learned on the
2 job as a board member of Reading?
3 A. As a director?
4 Q. As a director.
5 A. Of course. 01:05:53
6 Q. What's the first big decision that you can
7 remember participating in as a director?
8 A. I don't recall.
9 Q. As -- up to present, are there any other
10 publicly -- public company boards that you've served 01:06:33
11 on?
12 A. I served on Gish Biomedical at one point.
13 Q. Any others?
14 A. Not that I recall.
15 Q. How long -- what time period were you on 01:07:03
16 the board of Gish Biomedical?
17 A. I really can't pinpoint how long I served
18 on the board of Gish.
19 Q. Give me an estimate of what years, roughly,
20 it covered? 01:07:28
21 A. 2004/2005.
22 Q. So approximately a year or two?
23 A. Possibly.
24 Q. How did you come to be on the board of Gish
25 Biomedical? 01:07:47

1 A. I think I was appointed by the Reading
2 board because Reading had an interest in that
3 entity.
4 Q. What was the business of Gish Biomedical?
5 A. Biomedical. 01:07:59
6 Q. Was there some specific field, some
7 specific subspecialty or device that it was involved
8 in?
9 A. I can't recall. I mean, it's been many
10 years. But it was in medical products. 01:08:12
11 Q. And did you attend board meetings for Gish
12 Biomedical?
13 A. I did.
14 Q. Can you remember any of the other board
15 members? 01:08:22
16 A. I can't.
17 Q. And did you attend those meetings in
18 person?
19 A. Some of them.
20 Q. And some by telephone? 01:08:29
21 A. Perhaps, yes.
22 Q. Did you miss any?
23 A. I don't recall. I don't see why I would
24 have.
25 Q. Can you describe for me any major decisions 01:08:37

1 that were made while you were on the board of Gish
2 Biomedical?
3 MR. KRUM: Objection, vague.
4 THE WITNESS: Again, it was so many years
5 ago, I can't recall. 01:08:56
6 BY MR. TAYBACK:
7 Q. Did you have any experience in the
8 biomedical industry at the time that you served on
9 the Gish Biomedical board?
10 A. No. 01:09:04
11 Q. What were you -- what were your
12 qualifications for serving on that board?
13 A. I guess my sole qualification was that the
14 board of Reading appointed me, if I remember
15 correctly. 01:09:18
16 Q. Did you believe that that was an adequate
17 basis for you to undertake your fiduciary duties as
18 a board member of Gish Biomedical?
19 MR. KRUM: Objection insofar as it calls
20 for a legal conclusion. 01:09:30
21 THE WITNESS: Could you repeat the
22 question?
23 BY MR. TAYBACK:
24 Q. Sure.
25 Did you feel at the time that you were 01:09:36

1 appointed to that board that you were qualified to
2 discharge your fiduciary duties as a board member of
3 Gish Biomedical?
4 MR. KRUM: Same objection.
5 THE WITNESS: It's been so many years. I 01:09:47
6 can't recall whether I thought that at the time.
7 BY MR. TAYBACK:
8 Q. Well, as you sit here now, do you remember
9 thinking, wow, I'm on a board and I can't do my
10 fiduciary -- I can't live up to my fiduciary duties? 01:09:58
11 You probably would remember that, I think?
12 A. I mean, look- --
13 MR. KRUM: Same objection.
14 THE WITNESS: Looking back on it, I might
15 not have been the best candidate. 01:10:09
16 BY MR. TAYBACK:
17 Q. And did you say anything to anybody about
18 that?
19 A. Not that I recall, no.
20 Q. But that's a view that you look -- that you 01:10:16
21 have now, looking back on it.
22 You can't recall that you actually had that
23 view at the time?
24 MR. KRUM: Asked and answered.
25 THE WITNESS: I can't recall the view that 01:10:24

1 I had at that time.
2 MR. KRUM: Chris, it's 1:10, so whenever
3 it's convenient, why don't we break for lunch.
4 MR. TAYBACK: Now's good.
5 MR. KRUM: Now's good?
6 MR. TAYBACK: That's fine, yeah.
7 MR. KRUM: Okay.
8 THE VIDEOGRAPHER: This marks the end of
9 media No. 2. Going off the record at 1:10 p.m.
10 (The luncheon recess was taken
11 at 1:10 p.m.)
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1 A. In 2007, the position really was to support
2 my father as chairman. And in 2007, I commenced
3 holding executive management meetings with the
4 executives in Australia and New Zealand, both for
5 the property and cinema operations there, and also 02:11:31
6 executive management meetings at -- with the U.S.
7 cinema team.
8 Met with them twice a week, put together
9 agendas for both meetings. Spoke with executives to
10 figure out what should be put on the agenda in order 02:11:55
11 to move the company forward under the direction of
12 the chairman and CEO of the company.
13 Q. And had you had any experience at all in
14 the cinema or theater business of any sort?
15 A. Well, I had been a director of Reading 02:12:27
16 since 2002.
17 Q. Other than your tenure as a director of
18 Reading, had you had any experience with the --
19 A. No.
20 Q. -- business? 02:12:35
21 Is that also true with respect to your
22 experience at that point in time in -- with respect
23 to real estate, your time as a lawyer and then also
24 your time on the board of Reading? Is that your
25 only experience in the real estate business? 02:12:50

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

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

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

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

1 significant experience serving as a CFO of a large
2 public REIT.
3 At the time my father wanted to hire a new
4 general counsel, so I hired Bill Ellis, who's a real
5 estate partner at a large law firm here in 03:11:06
6 Los Angeles with a lot of real estate experience.
7 I was in the process of hiring a director
8 of real estate and on the verge of bringing on board
9 an executive who had 25 to 30 years of real estate
10 development experience to preside over our domestic 03:11:28
11 real estate.
12 I -- whether it was as president or as CEO,
13 I was instrumental in the company selling off some
14 of our nonincome-producing properties in Australia
15 and New Zealand. And at that time, I was putting 03:11:59
16 together a business plan for the company and getting
17 management reports from all of the heads of the
18 seven divisions of Reading.
19 Putting to- -- I was on the verge of
20 putting together budgets for the whole company with 03:12:34
21 stretch goals.
22 I had hired a director of real estate --
23 this might have been as president -- a director of
24 real estate for our Australia and New Zealand real
25 estate, who's been very successful in moving all of 03:12:49

1 what the capital needs and what the business plans
2 that each of the divisions had and that that would
3 roll up into a plan for the entire company.
4 Q. So -- and you were -- did you have those
5 bottom-up business plans or not yet by the time you 03:22:15
6 were terminated?
7 A. I don't know exactly when. At some point,
8 maybe it was February, maybe it was March, we
9 completed the business plan for the U.S. cinemas,
10 which was a significant division of the entire 03:22:28
11 company. My sister Margaret was continuing to work
12 on a business plan for the live theaters.
13 But we were almost there in terms of now
14 having each of the divisions preparing business
15 plans and rolling them up into one unified plan for 03:22:44
16 the entire company as well as a unified budget,
17 which Dev had really been tasked with moving forward
18 as well.
19 Q. And did you have a -- I guess my question
20 is, at the time you were terminated, did you have a 03:23:01
21 draft --
22 A. No.
23 Q. -- you had started?
24 A. I did not have a draft.
25 Q. So in terms of putting pen to paper or 03:23:07

1 typewriter keys to the electronic page, you hadn't
2 started writing what would be the business plan that
3 you were contemplating?
4 A. As I said, I was waiting for the completion
5 of all the business plans from the seven divisions 03:23:21
6 of the company.
7 Now, there was some delay in getting those,
8 and I was putting, you know, thought to the overall
9 business plan. But it had not been finalized in a
10 form to be presented to the board. 03:23:36
11 Q. And I understand it hadn't been finalized.
12 My question's a little different. I just want to
13 make sure that I -- that there's not a document out
14 there that I don't recognize, that this is no --
15 A. No. 03:23:45
16 Q. -- draft?
17 A. No, no. No.
18 Q. Okay. In terms of the budget for the -- by
19 the way, was there a date -- had you set an internal
20 deadline for creation of the business plan for the 03:24:00
21 company?
22 A. Did I set a date?
23 Q. Yeah, an internal date.
24 A. No.
25 Q. No? 03:24:10

1 goals as a CEO?
2 A. I do.
3 Q. When you say "Update board to focus on
4 strategy," what did you mean?
5 A. I meant that the board should get involved 04:23:30
6 with creating a strategy and be involved in the
7 process and that the company should operate
8 according to a business plan and that the board
9 should be involved in that process.
10 Q. And was that something that you -- in fact, 04:23:46
11 did you present to the board in a time while you
12 were CEO a business plan with strategy,
13 understanding that you earlier said you didn't write
14 the business plan?
15 A. Right. That was -- I never presented -- 04:24:01
16 MR. KRUM: Object to the characterization
17 of the testimony.
18 THE WITNESS: I never presented a plan to
19 the board prior to being terminated, but that was
20 one of the action items that I thought was important 04:24:10
21 for the company.
22 BY MR. TAYBACK:
23 Q. One of the -- the second one there says,
24 "develop better lines of communication with
25 shareholders." 04:24:20

EXHIBIT 11

1 EIGHTH JUDICIAL DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 JAMES COTTER, JR., derivatively
on behalf of Reading International,
5 Inc.,
Plaintiff,
6
vs. Case No.
7
MARGARET COTTER, ELLEN COTTER, A-15-719860-B
8 Guy Adams, EDWARD KANE, DOUGLAS
McEACHERN, TIMOTHY STOREY,
9 WILLIAM GOULD, JUDY CODDING,
MICHAEL WROTNIAK, and DOES 1
10 through 100, inclusive,
Defendants.
11
and
12
READING INTERNATIONAL, INC.,
13 a Nevada corporation,
Nominal Defendant.
14 _____
15 (CAPTION CONTINUED ON NEXT PAGE.)
16
17 VIDEOTAPED DEPOSITION OF JAMES COTTER, JR.
18 Los Angeles, California
19 Tuesday, May 17, 2016
20 Volume II
21
22 Reported by:
23 JANICE SCHUTZMAN, CSR No. 9509
24 Job No. 2312191
25 Pages 298 - 567

1 T2 PARTNERS MANAGEMENT, LP, a
Delaware limited partnership,
2 doing business as KASE CAPITAL
MANAGEMENT, et al.,
3 Plaintiffs,
4 vs.
5 MARGARET COTTER, ELLEN COTTER,
Guy Adams, EDWARD KANE, DOUGLAS
6 McEACHERN, WILLIAM GOULD, JUDY
CODDING, MICHAEL WROTNIAK, CRAIG
7 TOMPKINS, and DOES 1 through 100,
inclusive,
8 Defendants.
9 and
10 READING INTERNATIONAL, INC., a
Nevada corporation,
11 Nominal Defendant.
12 _____
13
14
15 Videotaped Deposition of JAMES COTTER, JR.,
16 Volume II, taken at 865 South Figueroa Street,
17 10th Floor, Los Angeles, California, commencing
18 at 9:38 a.m. and ending at 4:37 p.m., Tuesday,
19 May 17, 2016, before Janice Schutzman, CSR No. 9509.
20
21
22
23
24
25 PAGES 298 - 567

1 THE WITNESS: I thought it was unusual, but
2 I also found Ellen and Margaret basically refusing
3 to report to me unusual. And routine business
4 matters that ordinarily arose in the company were
5 being converted into issues of personal dispute 09:43AM
6 between my sisters and me and issues about control.
7 And someone recommended that this could be helpful
8 to move the company forward and deal with those
9 issues.
10 BY MR. TAYBACK: 09:43AM
11 Q. And was the discussion forum disbanded at
12 some point in time?
13 MR. KRUM: Objection, vague and ambiguous,
14 foundation.
15 THE WITNESS: I don't know if it was ever 09:44AM
16 officially disbanded. I think it more kind of
17 sputtered out.
18 BY MR. TAYBACK:
19 Q. Approximately when did you last -- was the
20 last discussion forum meeting that you recall? 09:44AM
21 A. There could have been one in December.
22 Q. The -- at some point, Mr. Storey took on --
23 Tim Storey took on a position of ombudsman. We
24 discussed that a little bit yesterday.
25 You recall that? 09:45AM

1 A. I do.
2 Q. Do you recall whose suggestion that was?
3 MR. KRUM: Objection, foundation.
4 THE WITNESS: My recollection is that it
5 was recommended by the so-called independent 09:45AM
6 directors.
7 BY MR. TAYBACK:
8 Q. And did you concur in that recommendation?
9 A. Initially, I was not supportive of the
10 idea. 09:45AM
11 Q. Why not?
12 A. Because I didn't think it was necessary.
13 Q. How was it explained to you? How was the
14 proposal explained to you initially?
15 A. The proposal that was explained to me where 09:46AM
16 Tim took on this official role as ombudsman was on,
17 I believe, March 13th, where Bill Gould asked me and
18 my two sisters to his office in Century City and
19 independently described to me with Tim Storey
20 present that the so-called independent directors had 09:46AM
21 decided that Tim Storey would become involved as an
22 ombudsman. There had been complaints raised against
23 me by my two sisters. I had reported complaints
24 against my two sisters.
25 And the board was at a high level and 09:47AM

1 really wasn't in a position to understand the
2 disputes that were ongoing between me and my two
3 sisters and felt that Tim, who had a lot of
4 experience with corporate governance, could become
5 involved and he would be temporarily given authority 09:47AM
6 to interact with the three of us to investigate what
7 was going on between me and my two sisters and also
8 to help move the business forward.
9 And I understand that that same message was
10 communicated after my meeting with Tim and Bill to 09:47AM
11 my two sisters and that Bill had said that Tim would
12 serve this function at the bequest of the so-called
13 independent directors until sometime in June and
14 would report his findings to either Bill Gould or to
15 the independent committee, and that would be 09:48AM
16 sometime at the end of June.
17 Q. And you said that you initially were not
18 supportive of this.
19 Did you say that to somebody in words or
20 substance, "Hey, this is unnecessary. I don't 09:48AM
21 support this"?
22 A. I don't recall a specific conversation. I
23 felt that.
24 Q. So you felt it, but you can't say that you
25 communicated it? 09:48AM

1 What were you referring to by hating
2 putting him on the spot?
3 MR. KRUM: Objection, asked and answered.
4 If you can answer, go ahead.
5 THE WITNESS: This was just a way of 10:23AM
6 communicating to him an issue that arose or that was
7 continuing between myself and Margaret. And I
8 wanted him to be aware of her expectations so that
9 he could appreciate what was going on at the
10 company. 10:24AM
11 BY MR. TAYBACK:
12 Q. And the question that you ended that email
13 with was, "but if the CEO of DNZ" --
14 That's a company in New Zealand; correct?
15 A. It is. 10:24AM
16 Q. "If the CEO of DNZ came to you as
17 chairman with correspondence like this
18 from one of his lieutenants, what advice
19 would you give him?"
20 Did Mr. Storey respond to your question 10:24AM
21 about what advice he would give to a CEO faced with
22 correspondence from one his lieutenants like this?
23 A. I don't recall.
24 Q. You did find it difficult to run the
25 company with your sisters, Ellen and Margaret, also 10:25AM

1 working at Reading; correct?
2 MR. KRUM: Objection, vague and ambiguous,
3 assumes facts not in evidence.
4 THE WITNESS: I found it difficult working
5 with them because, by that point, the issues that I 10:25AM
6 was having with them relating to the trust and
7 estate matters had permeated the company, spread to
8 employees like Linda Pham and ultimately to the
9 board, and it was difficult because they wanted to
10 run Reading like a family-owned business and really 10:25AM
11 didn't want to be accountable to anyone. And so I
12 found that difficult running the company.
13 BY MR. TAYBACK:
14 Q. And did you trust Mr. Storey's judgment?
15 MR. KRUM: Objection, vague. 10:26AM
16 THE WITNESS: At that point in time?
17 BY MR. TAYBACK:
18 Q. Yes.
19 A. I mean, selectively, I thought he had a lot
20 of experience. I trusted some of the things he said 10:26AM
21 but not everything.
22 Q. You said --
23 (Off the record.)
24 BY MR. TAYBACK:
25 Q. You say at that point in time when I asked 10:26AM

1 Q. Okay. You say in the top part of that
2 email, page 5483, the page ending in that Bates
3 number, the last -- or you say:
4 "Last thing I would want is a
5 board member playing COO." 10:37AM
6 Why is that?
7 A. Because there -- I felt that there was a
8 distinction between the responsibilities of boards
9 and the responsibilities of management.
10 Q. What -- what's the distinction in your 10:38AM
11 mind? What was the distinction at this point in
12 time?
13 A. Well, the board should -- the boards
14 should -- again, I mean, this was also more of a
15 reflection of I wanted to preserve my authority as 10:38AM
16 CEO because I felt that my sisters wanted to hollow
17 out my authority and put limitations and create
18 executive committees that they were reporting to,
19 limit my authorities on approving certain items.
20 And so I wanted to maintain that authority 10:39AM
21 and not have board members playing the role of a
22 chief operating officer.
23 Q. Were you -- do you know of a person named
24 Bryant Crouse, C-R-O-U-S-E?
25 A. I do recall the name. 10:39AM

1 Q. What do you recall?
2 A. I recall that a few years ago, one of the
3 directors -- I believe it was Al Villasenor -- had a
4 conversation with Bill Gould about this Bryant
5 Crouse, and they had recommended that he become 10:40AM
6 involved with the company and perform an assessment
7 of our corporate governance or management structure.
8 And this was the time that my dad was
9 chairman and CEO of the company, before I became
10 president. And they were both recommending that 10:40AM
11 this individual get involved in the company and
12 perform an assessment and provide recommendations to
13 the company, to the board, to the management team,
14 to my father, on ways to improve the management and
15 corporate governance -- management, I believe, of 10:40AM
16 Reading.
17 Q. Were you aware that Mr. Gould and
18 Mr. Storey met with Mr. Crouse about acting as a
19 management consultant for the counsel senior
20 management in the company? 10:41AM
21 A. I recall that there was a discussion, or I
22 learned about it at some point.
23 Q. Do you recall how you learned about it, who
24 told you?
25 A. It may have been Bill Gould. 10:41AM

1 Q. And was it your understanding that they --
2 that Mr. Crouse had proposed that he could provide
3 30 hours of time meeting with you and bringing his
4 expertise to bear on successful management
5 development for $15,000? 10:41AM
6 MR. KRUM: Objection, assumes facts not in
7 evidence, foundation.
8 THE WITNESS: I think it was the same type
9 of proposal that they were looking to implement that
10 they had implemented with my father some years back. 10:41AM
11 And given the issues that had arisen with my two
12 sisters, this proposal had arisen again.
13 BY MR. TAYBACK:
14 Q. And the proposal was to meet -- for him to
15 meet with you for a period of time to explore ways 10:42AM
16 that he could assist in the company's continued
17 successful management development, outstanding
18 leadership, and continued implementation of
19 organizationally sound management structures? Was
20 that your understanding as to what he was being -- 10:42AM
21 A. What --
22 MR. KRUM: Let me interpose the objections.
23 Objection, foundation, the document, which
24 the witness does not have, it speaks for itself.
25 BY MR. TAYBACK: 10:42AM

1 Q. Was that your understanding as to what he
2 was being asked to do by Mr. Gould and Mr. Storey in
3 April of 2015?
4 MR. KRUM: Objection, assumes facts not in
5 evidence, the document speaks for itself, and 10:42AM
6 foundation.
7 THE WITNESS: Again, I had learned that
8 there was a proposal or that there had been
9 discussions with this gentleman that were similar to
10 the proposals that had been made years ago. 10:43AM
11 I don't recall what came of it.
12 THE REPORTER: 185.
13 (Deposition Exhibit 185 was marked for
14 identification.)
15 BY MR. TAYBACK: 10:43AM
16 Q. I'm just going to ask you whether you've
17 ever seen the written proposal that's reflected here
18 at Exhibit 185.
19 A. I can't recall having seen this document.
20 Q. But is it fair to say that in April, or 10:43AM
21 between the time of April 15th, 2015, and the time
22 you were terminated as CEO, you never actually sat
23 down and met with Mr. Crouse?
24 A. No.
25 Q. I'm not going to have any more questions. 10:43AM

1 Q. And are they all in Honolulu?
2 A. They're all on the island of Oahu.
3 Q. Did you visit them all?
4 A. Pretty much. I believe I did.
5 Q. Okay.
6 A. I believe I visited every one of them, yes.
7 Q. Okay. And did you go with anybody.
8 A. On some occasions, I brought my family.
9 On -- for a lot of the theaters, I went alone.
10 Q. When you went with your family, did you 01:55PM
11 actually view a movie, or did you just go and
12 inspect the property?
13 A. We watched a movie.
14 Q. How many did you go with your family to
15 watch a movie? One or two? 01:55PM
16 A. I can't recall. I don't think it was any
17 more than two. I mean, at most.
18 Q. Did -- when you went to the Reading
19 theaters in Hawaii, did you identify yourself to any
20 of the management there as someone who was the CEO 01:55PM
21 of Reading?
22 A. No, I didn't.
23 Q. Okay. Why not?
24 A. Because I wanted to almost be a mystery
25 shopper. I wanted to experience the theater and the 01:56PM

1 theater experience as a normal customer would and as
2 a normal family would. And I did not want any
3 special treatment. I wanted to see how others
4 experienced the theater.
5 Q. And was the trip a business expense? 01:56PM
6 A. The hot- -- one of the hotel rooms that I
7 had during the seven nights, I expensed. I don't
8 believe I expensed any of the dinners or the
9 airfare.
10 Q. Did you write down notes, do a report of 01:56PM
11 what your observations were?
12 A. I did.
13 Q. And whose -- for whose benefit was that?
14 A. It was for my sister's benefit to prompt
15 her to see some of the issues that I had experienced 01:57PM
16 at the theaters and to prompt her to start thinking
17 about addressing the renovation of the theaters and
18 the condition of the theaters in her business
19 report -- business plan that she was preparing.
20 Q. That's your sister Ellen you're talking 01:57PM
21 about?
22 A. Yes.
23 Q. The report that you wrote, did you -- how
24 long after you -- withdraw that.
25 Did you write it while you were in Hawaii, 01:57PM

1 statement there that says:
2 "The board stands behind and
3 supports Jim, Jr. as CEO, however, the
4 board expects him to work respectfully
5 and professionally with his sisters." 02:36PM
6 It then goes on to say:
7 "The office environment and morale
8 must return to normalcy. Independent
9 directors are investigating Linda's
10 claims and, if proven, the independent 02:36PM
11 directors may require Jim, Jr. to take
12 an anger management class."
13 Have you ever taken an anger management
14 class?
15 A. No. 02:36PM
16 Q. Did anybody ever suggest to you you should?
17 A. Never. I mean, outside of this incident
18 with Linda Pham, no.
19 Q. Did you ever hear that the perception at
20 Reading by employees is that you had a volatile 02:36PM
21 temper?
22 A. No.
23 MR. KRUM: Objection, assumes facts.
24 THE WITNESS: I heard it. I heard that.
25 But I believe that those allegations were brought by 02:37PM

1 individuals like Linda Pham and Deb Watson, who, as
2 I described earlier, had been co-opted into this
3 family dispute, including my sister Ellen.
4 BY MR. TAYBACK:
5 Q. By whom did you hear that there was a 02:37PM
6 perception that you had an anger management problem?
7 A. I heard it from the directors.
8 Q. At a meeting or individually?
9 A. I can't recall. It was either -- it's
10 probably individually or it -- maybe even in some of 02:37PM
11 this correspondence, and a lot of it sprung from the
12 episode with Linda Pham.
13 Q. And you said that there also was -- you had
14 an awareness that Ms. Watson also had expressed that
15 perception? 02:38PM
16 A. Again, I don't think there was any merit at
17 all to the allegations that were made by Linda Pham
18 or Deb Watson.
19 Deb Watson is a -- not even a Reading
20 employee. She works for Ellen and Margaret on the 02:38PM
21 trust and estate matters.
22 Linda Pham was working for Ellen and
23 Margaret on the trust and estate matters at one time
24 and had been going through all of the emails at
25 Reading looking for emails from my father, from me, 02:38PM

1 at El- -- at, I believe, Ellen and Margaret's
2 direction.
3 So as I said, the direc- -- I asked the
4 directors, there is no basis to these claims, and
5 you should all investigate them. 02:38PM
6 Q. When you say "these claims," what was your
7 understanding of Ms. Pham's claim?
8 A. I don't know what her claim was. I know
9 that she had filed a complaint with Doug McEachern
10 saying that I had yelled at her one day. But I've 02:39PM
11 never seen the complaint.
12 And once I heard that, I raised the issue
13 with a number of directors, giving them a full
14 timeline of the events, what I thought was happening
15 between Deb Pham -- Linda Pham, my sister Ellen, and 02:39PM
16 my sister Margaret, and that the board should
17 investigate.
18 Q. So when you say you don't know what her
19 claim was, you haven't seen the claim, but you have
20 some understanding of what the claim was? 02:39PM
21 A. That I raised my voice to her at one point,
22 but I haven't seen the claim, so I can't say.
23 Q. And where did you hear -- your
24 understanding that you -- you're expressing here,
25 where did you get that from? 02:40PM

1 A. I can't recall a formal policy being
2 instituted.
3 Q. I'm sorry?
4 A. At some point, my sister Margaret
5 complained about me leaving my door shut. 03:29PM
6 And in response to those complaints, which
7 were communicated to the directors and then
8 communicated to me, I endeavored to keep my door
9 open.
10 Q. So did the directors, then, tell you to 03:30PM
11 keep your door open while you were in the office?
12 A. At some point, someone communicated
13 something to me.
14 Q. Someone from the board?
15 A. I can't recall. 03:30PM
16 Q. I'm going to go back and ask you a few
17 questions about Linda Pham.
18 She had been your father's assistant;
19 correct?
20 A. Yes. 03:30PM
21 Q. And then after your father passed away, at
22 some point she also became Bill Ellis's assistant;
23 correct?
24 A. Yes.
25 Q. Was she ever your assistant? 03:30PM

1 A. No.
2 Q. Did you ever yell or raise your voice at
3 Guy Adams?
4 A. I did.
5 Q. Describe for me -- well, was it once or 03:40PM
6 more than once?
7 A. I only recall once.
8 Q. Describe for me the instance you recall.
9 A. It was sometime in 2014, and I said that he
10 had just taken too long working on certain matters 03:40PM
11 for my father and he had just let things go.
12 And I was upset with Guy. And before the
13 conversation had concluded, I was behind my desk, I
14 stood up, and I apologized to him for raising my
15 voice. 03:41PM
16 That was the only occasion that I had with
17 Guy before my termination.
18 Q. On the day that you were terminated, did
19 Bill Ellis ask you to leave the Reading office?
20 A. He -- 03:41PM
21 MR. KRUM: When?
22 MR. TAYBACK: On the day he was
23 terminated --
24 MR. KRUM: Well --
25 MR. TAYBACK: -- did Bill Ellis ask him to 03:41PM

1 BY MR. TAYBACK:
2 Q. And do you recall -- the meeting you recall
3 where that happened, was that before or after you
4 were terminated?
5 MR. KRUM: Objection, assumes facts not in 03:53PM
6 evidence.
7 THE WITNESS: I don't recall.
8 BY MR. TAYBACK:
9 Q. Do you remember Ellen Cotter talking to you
10 about the possibility of getting an interim CEO at 03:53PM
11 Reading as early as February 2015, someone to
12 replace you?
13 A. I think they brought it up as early as
14 October 2014.
15 Q. And did you share with Mr. Storey, at 03:54PM
16 least, your concerns about that kind of discussion
17 from Ellen Cotter?
18 A. I may have.
19 Q. And when she brought it up, was her
20 proposal that the company hire an interim CEO that 03:54PM
21 was none of the Cotters?
22 A. I don't recall a specific conversation that
23 I had with Ellen in February relating to that.
24 Q. You said you think they brought it up or
25 she brought it up as early as October. 03:54PM

1 What's your first recollection of what she
2 said?
3 A. Well, either Ellen and/or Margaret said
4 that, at some point, hey, you know, we're going to
5 hire an interim CEO to replace you. 03:55PM
6 Q. And what did you say to her or them?
7 A. I don't recall how I responded.
8 Q. Is it fair to say at the time, as of
9 October at least, you weren't in favor of that?
10 A. As of October of 2014? 03:55PM
11 Q. Yes.
12 A. Certainly not.
13 Q. And did you -- by February, did you start
14 to think that maybe that was a more realistic way of
15 Reading managing the business while the trust and 03:55PM
16 estates matters were sorted out?
17 A. No.
18 Q. At any point before you were terminated,
19 did you come to that view?
20 A. No. 03:55PM
21 Q. I'm going to ask you to take a look at --
22 While she's getting a document, I'll ask
23 you a couple of questions unrelated to the documents
24 in front of you.
25 As a board member at Reading, do you 03:56PM

EXHIBIT 12

1 EIGHTH JUDICIAL DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 JAMES COTTER, JR., derivatively
on behalf of Reading International,
5 Inc.,
Plaintiff,
6
vs. Case No.
7
MARGARET COTTER, ELLEN COTTER, A-15-719860-B
8 GUY ADAMS, EDWARD KANE, DOUGLAS
McEACHERN, TIMOTHY STOREY,
9 WILLIAM GOULD, JUDY CODDING,
MICHAEL WROTNIAK, and DOES 1
10 through 100, inclusive,
Defendants.
11
and
12
READING INTERNATIONAL, INC.,
13 a Nevada corporation,
Nominal Defendant.
14 _____
15 (CAPTION CONTINUED ON NEXT PAGE.)
16
17 VIDEOTAPED DEPOSITION OF JAMES COTTER, JR.
18 Los Angeles, California
19 Wednesday, July 6, 2016
20 Volume III
21
22 Reported by:
23 JANICE SCHUTZMAN, CSR No. 9509
24 Job No. 2343561
25 Pages 568 - 838

1 T2 PARTNERS MANAGEMENT, LP, a
Delaware limited partnership,
2 doing business as KASE CAPITAL
MANAGEMENT, et al.,
3 Plaintiffs,
4 vs.
5 MARGARET COTTER, ELLEN COTTER,
GUY ADAMS, EDWARD KANE, DOUGLAS
6 McEACHERN, WILLIAM GOULD, JUDY
CODDING, MICHAEL WROTNIAK, CRAIG
7 TOMPKINS, and DOES 1 through 100,
inclusive,
8 Defendants.
9 and
10 READING INTERNATIONAL, INC., a
Nevada corporation,
11 Nominal Defendant.
12 _____
13
14
15 Videotaped Deposition of JAMES COTTER, JR.,
16 Volume III, taken at 865 South Figueroa Street,
17 10th Floor, Los Angeles, California, commencing
18 at 9:51 a.m. and ending at 5:13 p.m., Wednesday,
19 July 6, 2016, before Janice Schutzman, CSR No. 9509.
20
21
22
23
24
25 PAGES 568 - 838

1 MR. KRUM: This is 90 what?
2 THE REPORTER: 399.
3 MR. TAYBACK: 399.
4 MR. KRUM: 399.
5 MS. LINDSAY: I got it.
6 MR. TAYBACK: And the number is TS_0000697.
7 MR. KRUM: I'm pretty sure that some
8 version of this has been marked previously.
9 MR. TAYBACK: Maybe. I didn't think so.
10 BY MR. TAYBACK: 01:48PM
11 Q. Taking a look at that briefly, had you
12 ever -- I realize you're not on that email, but
13 looking at that email, which purports to describe a
14 conversation between you and your sister Ellen, do
15 you recall her discussing, at least in February of 01:48PM
16 2015, the possibility of an interim CEO?
17 Do you remember having that kind of a
18 conversation with Ellen?
19 A. I remember calling Tim and relating that
20 Ellen had raised this possibility, and that's why I 01:48PM
21 called him.
22 Q. All right. I'm going to show you a
23 document that's been previously marked as Exhibit 11
24 at Mr. Storey's deposition.
25 (Previously marked Deposition Exhibit 11

1 was identified.)
2 BY MR. TAYBACK:
3 Q. And this is an email from Mr. Gould to
4 Mr. Adams, Mr. Kane, Mr. McEachern, Mr. Storey.
5 You're, again, not on this, but it attaches a 01:49PM
6 memorandum from Mr. Gould. And I'm going to -- it's
7 dated March 6th, 2015.
8 If I could direct your attention to the
9 third page of the document, which ends in the Bates
10 stamp 249. 01:50PM
11 A. Okay.
12 Q. Mr. Gould, at the very top of that page --
13 A. The top of page 3?
14 Q. The top of the third page of the document,
15 which is page 2 of the memo. 01:50PM
16 A. Okay.
17 Q. You see that?
18 You see it?
19 A. I do.
20 Q. Okay. At the very top, there's a sentence 01:50PM
21 that starts:
22 We cannot accept a dysfunctional
23 management team under any circumstances.
24 Indeed, the company has said in its
25 public filings that the Cotters will 01:50PM

1 work together notwithstanding the
2 litigation and they do not believe that
3 the litigation will affect its company's
4 operations. But we must ask ourselves,
5 how can we ensure the three Cotters will 01:50PM
6 work together given the 'thermonuclear'
7 hostility currently existing?"
8 Would you agree that as of March of 2015,
9 Mr. Gould's characterization of the hostility
10 between you and your siblings was properly 01:51PM
11 characterized as thermonuclear?
12 MR. KRUM: Objection, vague.
13 THE WITNESS: No. I wouldn't characterize
14 the relationship as thermonuclear.
15 What I would characterize it as -- Margaret 01:51PM
16 simply refused to report to me. It wasn't just me.
17 She really refused to be accountable to anyone. And
18 that created an issue in the company that I believe
19 Ellen and Margaret artificially created.
20 So when it's described as, well, there's an 01:51PM
21 issue in the relationship amongst the Cotters, I
22 would attribute it to Margaret absolutely refusing
23 to report to me and her being responsible for
24 creating this crisis that is being described.
25 BY MR. TAYBACK: 01:52PM

1 Q. Regardless of whoever's fault you believe
2 it is that you could not get along, would you agree
3 that the relationship between you and your sisters
4 within the management of Reading was dysfunctional
5 by March of 2015? 01:52PM
6 MR. KRUM: Object to the characterization
7 of the testimony.
8 You can answer the question.
9 THE WITNESS: Again, if there's an
10 executive or an independent contractor who 01:52PM
11 completely refuses to report to me as CEO and has
12 done so as early as September/October of 2014 and
13 has literally refused to report to me, that's
14 dysfunctional. That's dysfunctional.
15 BY MR. TAYBACK: 01:53PM
16 Q. And did you report -- when your termination
17 was being discussed, you raised the issue of your
18 perception that Margaret was unwilling to report to
19 you to the board; correct?
20 MR. KRUM: Objection -- 01:53PM
21 THE WITNESS: I think my --
22 MR. KRUM: -- assumes facts.
23 THE WITNESS: -- my description might even
24 have been more. It might have been not just that
25 she was unwilling to report to me. She was 01:53PM

1 unwilling to report to anyone. And she didn't want
2 to have any accountability to anyone. So --
3 BY MR. TAYBACK:
4 Q. Go ahead. I'm sorry.
5 Is it -- and is it fair to say that you 01:53PM
6 described to the board a situation which was there
7 was a dysfunctional working relationship between you
8 and your sisters and that they effectively needed to
9 pick either you or your sisters?
10 MR. KRUM: Object to the characterization 01:53PM
11 of the testimony --
12 THE WITNESS: I would nev- --
13 MR. KRUM: Let me interpose my objections.
14 Assumes facts not in evidence.
15 Go ahead. 01:54PM
16 THE WITNESS: I would never characterize
17 the issue that I had, especially with Margaret and
18 her abject refusal to report to me, as a
19 dysfunctional relationship because that implies that
20 two people in a relationship are both contributing 01:54PM
21 to the dysfunctionality of their relationship.
22 BY MR. TAYBACK:
23 Q. So you're saying, in your mind at least,
24 the word dysfunctional suggests you would be
25 contributing to dysfunctionality, but you weren't? 01:54PM

1 MR. KRUM: Objection, assumes facts not in
2 evidence, including of the witness seeing
3 Exhibit 11.
4 MR. TAYBACK: Let me -- I'll rephrase the
5 question. 01:58PM
6 BY MR. TAYBACK:
7 Q. Isn't it correct that in March of 2015, you
8 understood that the board would assess how the
9 management of the company was functioning,
10 specifically you and your sisters, to make an 01:58PM
11 assessment about what they should do?
12 A. No.
13 At the meeting on March 13th, Bill Gould
14 and Tim Storey communicated to me and independently
15 to Ellen and Margaret that Tim would make a 01:58PM
16 recommendation as newly appointed ombudsman and
17 would report his findings and his recommendations to
18 the independent directors of the board, not to the
19 full board, but only to the independent directors.
20 And the independent directors would then, based on 01:59PM
21 his findings, possibly take actions in response to
22 those findings and recommendations.
23 Q. And was that agreement, as you understood
24 it, memorialized in writing somewhere?
25 MR. KRUM: Objection, foundation. 01:59PM

1 BY MR. TAYBACK:
2 Q. Yes or no?
3 A. Well, I mean, I think there may have been
4 memos to that effect.
5 Q. Have you seen a memo that describes that 01:59PM
6 process that you just described?
7 A. I can't recall, sitting here today,
8 without, you know, going through the emails.
9 But yes, I mean, I -- it was clear to me,
10 to Ellen and Margaret, certainly to Bill Gould and 01:59PM
11 Tim Storey and the other directors, that that was
12 the case.
13 Q. Do you agree with me that the board of a
14 company always has the prerogative to make a
15 decision with respect to the hiring and firing of 02:00PM
16 its executives, the company's executives, subject to
17 whatever contracts might exist.
18 MR. KRUM: Objection, vague and ambiguous,
19 may call for a legal conclusion.
20 THE WITNESS: Do I agree what? 02:00PM
21 BY MR. TAYBACK:
22 Q. That the board of a company --
23 A. Right.
24 Q. -- has the power to hire and fire a CEO?
25 MR. KRUM: Same objections, incomplete 02:00PM

1 hypothetical as well.
2 THE WITNESS: Subject to agreements made,
3 written contracts made.
4 BY MR. TAYBACK:
5 Q. Subject to the terms of a contract; 02:00PM
6 correct?
7 A. Subject to the terms of a contract --
8 Q. Yes.
9 A. -- or possibly a resolution. Sure.
10 Q. And is there anything about what you're 02:00PM
11 describing that you think limited the power of the
12 board to terminate you as CEO if it believed doing
13 so was in the best interest of the company?
14 MR. KRUM: Same objections.
15 THE WITNESS: I believe in January of 2015, 02:01PM
16 a resolution was passed at the insistence of my
17 sisters that they couldn't be terminated.
18 Ellen could not be terminated as an
19 executive without the approval of the majority of
20 the independent directors. 02:01PM
21 Margaret's contract with -- for her live
22 theater operation could not be terminated without
23 the majority of the independent directors.
24 And my employment as CEO could not be
25 terminated without a majority of the independent 02:01PM

EXHIBIT 13

1

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4

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

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16 VIDEOTAPED DEPOSITION OF ELLEN COTTER

17 TAKEN ON MAY 18, 2016

18 VOLUME 1

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24 REPORTED BY:

25 PATRICIA L. HUBBARD, CSR #3400

1 **conversation, about a repopulated and newly**
2 **chartered executive committee of the RDI board of**
3 **directors prior to the meeting of June 12, 2015?**
4 MR. SEARCY: Objection. Asked and
5 answered.
6 THE WITNESS: As I said, I don't recall
7 specific conversations with Craig about this.
8 BY MR. KRUM:
9 **Q. You don't recall speaking to him; is**
10 **that right?**
11 A. I don't recall speaking to him. But I
12 speak to Craig a lot, so, very well this -- this
13 subject would have come up.
14 **Q. Did you speak to Bill Ellis prior to the**
15 **meeting of June 12, 2015 with respect to a**
16 **repopulated and newly chartered executive committee**
17 **of the RDI board of directors?**
18 A. I don't recall if I spoke to Bill.
19 **Q. Did you speak to Frank Reddick prior to**
20 **the meeting of June 12, 2015 about a repopulated and**
21 **newly chartered executive committee of the RDI board**
22 **of directors?**
23 A. Frank Reddick of Akin Gump?
24 **Q. Yes.**
25 A. I did.

1 **Q. I'm not asking you who said what.**
2 **When did that conversation or those**
3 **conversations occur?**
4 A. I don't remember.
5 **Q. Was it prior to May 21, 2015?**
6 A. I don't -- I don't recall.
7 **Q. Do you recall that May 21, 2015 was the**
8 **first supposed meeting of the RDI board of directors**
9 **where the subject was the termination of Jim Cotter,**
10 **Jr., as president and C.E.O.? Do you recall that**
11 **date and that meeting?**
12 A. I recall May 21, 2015.
13 **Q. Okay. And you do not recall, with that**
14 **particular meeting and date in mind, whether you had**
15 **spoken with Frank Reddick about a repopulated and**
16 **newly chartered RDI board of directors prior to that**
17 **date May 21?**
18 A. I don't remember.
19 **Q. I'm not asking you what you said and**
20 **what he said.**
21 **Who else was present for or party to**
22 **that conversation or conversations?**
23 A. Conversations about what?
24 **Q. Okay. Directing your attention,**
25 **Ms. Cotter, to your conversation or your**

1 **conversations with Frank Reddick of Akin Gump about**
2 **a repopulated and newly chartered executive**
3 **committee of the RDI board of directors, was anyone**
4 **else present or privy to that conversation or those**
5 **conversations?**
6 A. I don't remember.
7 **Q. Were they in person or by phone or both?**
8 A. I don't -- I don't remember.
9 **Q. Was Guy Adams either present in person**
10 **or telephonically for any such conversation with**
11 **Frank Reddick?**
12 A. I don't recall.
13 **Q. Was Craig Tompkins either present in**
14 **person or telephonically during such conversation**
15 **with Frank Reddick?**
16 A. I don't recall.
17 **Q. Who retained Akin Gump with respect to**
18 **or related to the termination of Jim Cotter, Jr., as**
19 **president and C.E.O. of RDI?**
20 MR. SEARCY: Objection. Vague.
21 THE WITNESS: Akin Gump had been our
22 counsel for a long time.
23 BY MR. KRUM:
24 **Q. When --**
25 A. So --

1 **Q. Go ahead.**
2 A. Yeah. So I mean they've been -- they've
3 been with us probably for 20 years.
4 **Q. Well, is -- so are you saying that they**
5 **weren't -- that they were on retainer and that there**
6 **was no new retainer? Is that your point?**
7 A. They had been working for us for a long
8 time. We didn't have a retainer with them.
9 **Q. Okay. So, who first contacted Akin Gump**
10 **with respect to or related to the termination of Jim**
11 **Cotter, Jr., as president and C.E.O. of RDI?**
12 MR. SEARCY: Objection. Vague.
13 THE WITNESS: Yeah. I don't -- I don't
14 remember.
15 BY MR. KRUM:
16 **Q. Well, how did you first learn or hear**
17 **that Akin Gump was engaged in connection with or**
18 **respect to the termination or possible termination**
19 **of Jim Cotter, Jr., as president and C.E.O. of RDI?**
20 MR. SEARCY: Objection. Assumes facts,
21 lacks foundation.
22 THE WITNESS: I don't recall who reached
23 out to Akin Gump first.
24 BY MR. KRUM:
25 **Q. I'm asking about when you first learned**

1 of something. Okay?
2 And so let me just ask the question --
3 A. Yeah.
4 Q. -- so we have a clear record. And you
5 can answer it or, you know, we'll go to another
6 question.
7 How did you first learn of Akin Gump
8 providing services with respect to or in connection
9 with the termination or possible termination of Jim
10 Cotter, Jr., as president and C.E.O. of RDI?
11 MR. SEARCY: And when you answer that
12 question, only answer it without disclosing the
13 substance of any communications --
14 MR. KRUM: Right.
15 MR. SEARCY: -- that you may have had
16 with Akin Gump.
17 THE WITNESS: Uh-huh. I don't -- sorry,
18 you guys. What --
19 BY MR. KRUM:
20 Q. Do you want me to have the court
21 reporter read it back for you?
22 A. Yeah. Sorry.
23 MR. KRUM: Please.
24 (Whereupon the question was read
25 as follows:

1 "Question: How did you first
2 learn of Akin Gump providing
3 services with respect to or in
4 connection with the termination or
5 possible termination of Jim
6 Cotter, Jr., as president and
7 C.E.O. of RDI?")
8 THE WITNESS: I don't remember how I did
9 it, how I -- if I called or if somebody else called.
10 I don't remember when. But Larry Levien --
11 MR. SEARCY: Okay. You're starting to
12 disclose --
13 THE WITNESS: Oh, okay. Sorry.
14 MR. SEARCY: I don't want you disclosing
15 any -- any conversations that you had.
16 THE WITNESS: Okay.
17 BY MR. KRUM:
18 **Q. Well, if you would please continue about**
19 **Larry Levien, but do so heeding Mr. Searcy's**
20 **admonition. Because I'm not asking you about**
21 **anything that anybody said to anybody at Akin Gump**
22 **or anything that anybody at Akin Gump said to**
23 **anybody else.**
24 A. Larry Levien had been our labor counsel.
25 So, Larry was contacted. And I can't remember who

1 made the first contact. If it was me -- I don't
2 remember.
3 **Q. Was it Guy Adams?**
4 A. I don't remember.
5 **Q. Understand. When I ask a question of**
6 **that nature, I'm testing and prompting your**
7 **recollection.**
8 A. Yeah.
9 **Q. Sometimes it doesn't --**
10 A. No. I appreciate that. I don't
11 remember.
12 MR. SEARCY: Mark, when we're at a
13 natural breaking point, let me know.
14 MR. KRUM: Sure. You want to break,
15 right?
16 MR. SEARCY: Yeah.
17 MR. KRUM: Yeah. We'll do it in a
18 minute -- minute or two.
19 VIDEOTAPE OPERATOR: 35 minutes left.
20 BY MR. KRUM:
21 **Q. Did there come a point in time when you**
22 **had -- strike that.**
23 **Did there come a point in time prior to**
24 **May 21, 2015, when you had communications with Frank**
25 **Reddick?**

1 A. Prior to May 21, 2015?
2 MR. FERRARIO: On anything or some
3 business --
4 MR. KRUM: Anything. It's a threshold
5 foundational question.
6 THE WITNESS: I did.
7 BY MR. KRUM:
8 **Q. And how many such communications were**
9 **there, as best you can recall?**
10 A. I don't remember.
11 **Q. When was the first time you communicated**
12 **with Mr. Reddick?**
13 A. I don't remember.
14 **Q. Was it within a month prior to May 21,**
15 **2015?**
16 A. I don't recall.
17 **Q. Was it in or after September -- well,**
18 **was it in the fall of 2014?**
19 A. No. But I don't remember -- I don't
20 remember our first communication.
21 **Q. Okay. When you say "no," does that mean**
22 **it was after the fall of 2014?**
23 A. Yes.
24 **Q. Understand I'm just asking for your best**
25 **recollection of a time frame. Because I heard you**

1 **when you don't remember the date.**
2 A. Uh-huh.
3 **Q. So it was at some point in 2015, prior**
4 **to May 21, 2015; is that right?**
5 A. Yes.
6 **Q. Was it prior to your meeting with**
7 **Mr. Adams in Beverly Hills?**
8 A. I don't remember.
9 **Q. Was anyone else present for or party to**
10 **the initial communication you had with Mr. Reddick?**
11 A. I don't remember.
12 **Q. Do you recall ever having -- strike**
13 **that.**
14 **At any time prior to May 21, 2015, did**
15 **you ever have any communications with Mr. Reddick to**
16 **which any other person was party or privy?**
17 A. Guy Adams -- yeah. I don't -- I know
18 Guy spoke to Frank with me, but I don't remember
19 anything else.
20 **Q. Do you recall when that was, whether by**
21 **time frame or point of reference to any other event?**
22 A. No.
23 **Q. Was that in person or by telephone?**
24 A. I don't remember.
25 **Q. And do you recall if for any reason**

1 **other than what was discussed?**
2 MR. SEARCY: Objection. Vague.
3 THE WITNESS: What's your question?
4 What did I discuss at these --
5 BY MR. KRUM:
6 **Q. No. No. That's not the question.**
7 **How is it that you -- what is it that**
8 **prompts you to recall that you did have a**
9 **conversation with Mr. Reddick to which Mr. Adams was**
10 **party?**
11 **Do you remember where you were at the**
12 **time? Do you remember what was discussed?**
13 **What enables you to remember that is**
14 **what I'm asking, not what was discussed.**
15 A. I remember Guy because Guy knew who
16 Frank Reddick was. He had worked with him before.
17 So I don't remember the specifics of the
18 conversation.
19 **Q. Okay. I'm not asking about the**
20 **conversation.**
21 MR. KRUM: Marshall, why don't we take a
22 break.
23 MR. SEARCY: Thanks. Yes.
24 VIDEOTAPE OPERATOR: We are off the
25 record.

EXHIBIT 14

1

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4

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

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16 VIDEOTAPED DEPOSITION OF WILLIAM GOULD

17 TAKEN ON JUNE 8, 2016

18 VOLUME 1

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23 JOB NUMBER 315485

24 REPORTED BY:

25 PATRICIA L. HUBBARD, CSR #3400

1 **2015 to terminate Jim Cotter, Jr., as president and**
2 **C.E.O., that Ellen and Margaret both purported to**
3 **vote?**
4 A. I do have that recollection.
5 **Q. Was there any discussion of whether they**
6 **should vote or whether they had standing to vote?**
7 MR. HELPERN: Objection to form.
8 MR. SWANIS: Join.
9 THE WITNESS: I don't -- I actually
10 don't recall that right now. I don't remember it.
11 BY MR. KRUM:
12 **Q. What were your thoughts at the time as**
13 **to whether they should vote or whether they should**
14 **have been recused or disqualified with re- --**
15 **regarding the termination of Jim Cotter, Jr.?**
16 MR. SWANIS: Same objections.
17 MR. HELPERN: Join.
18 THE WITNESS: My thoughts at the time
19 were that even without their votes, the party -- the
20 parties moving to vote for his termination had
21 sufficient votes to -- to accomplish what they
22 wanted to do.
23 BY MR. KRUM:
24 **Q. You mean three -- you mean three of**
25 **five?**

1 A. That would have been in late April,
2 early May 2015.
3 **Q. What happened then?**
4 A. There was a notice sent out to the board
5 indicating there would be a meeting to discuss,
6 among other things, the status of the -- something
7 like this, the status of the C.E.O. or something
8 like that.
9 And I called for an independent board
10 meeting to find out what this was all about and what
11 the issues were.
12 And that's when I first heard it.
13 **Q. How did you first hear?**
14 A. At some meeting we had -- there were
15 several meetings, so excuse me if I'm not specific
16 about which one on which date.
17 But at this meeting I heard the three
18 other directors, Tim -- not Tim Storey, but Guy,
19 Doug and Ed Kane say they felt that -- that Jim's
20 performance was such that he should be replaced.
21 **Q. Was that at the first supposed board**
22 **meeting pursuant to the -- where the agenda item was**
23 **status of president and C.E.O.?**
24 MR. SWANIS: Objection to form.
25 THE WITNESS: No. It was before that.

1 **Does that refresh your recollection**
2 **that -- that it was in March of 2015 that the five**
3 **non-Cotter directors agreed to Tim Storey being a**
4 **committee of one or the ombudsman to work with the**
5 **Cotters?**
6 A. Yes.
7 MR. SWANIS: Objection to form.
8 MR. HELPERN: Join.
9 BY MR. KRUM:
10 **Q. Now, did the -- did the conference call**
11 **of March 12 occur that's referenced both in the**
12 **cover email Exhibit 11 and the --**
13 A. Yes, it did.
14 **Q. And who said what during that call**
15 **regarding Tim Storey serving as a committee of one**
16 **or ombudsman to work with the Cotters?**
17 A. Well, I think all the directors felt
18 that that was a reasonable approach to try. And it
19 was felt by -- by everybody that hopefully Tim could
20 accomplish three things. First of all, he would
21 mediate -- help mediate the disputes among the three
22 family members; secondly, he would monitor the
23 progress of how Jim, Jr., was coming along and how
24 the other siblings were doing, as well; and finally
25 he would report back to the board as to how he

1 viewed the progress of -- of these relationships.
2 And everybody seemed to agree with that.
3 **Q. When you say "everybody seemed to**
4 **agree," you mean that no one said anything in words**
5 **or substance that communicated -- well, strike that.**
6 **Why do you say everyone seemed to agree?**
7 A. Well, the only issue I can remember was
8 the fact that we were worried about Tim's time. He
9 lived in Auckland, and he had to fly over here and
10 spend time. And we knew it would be time consuming
11 and expensive.
12 And he indicated he would be willing to
13 do it.
14 **Q. What did -- when you say he would help**
15 **mediate the disputes among the three family members,**
16 **to what are you referring?**
17 A. I'm referring to the fact that on one
18 hand Jim was saying that Ellen wasn't giving him
19 the -- her business plan, and she -- Margaret was
20 being -- refusing to do -- excuse me -- to provide
21 anything.
22 And they were saying that Jim was making
23 unreasonable demands on them and he was asking them
24 for things that he shouldn't be asking them for.
25 So, Tim, who is a very successful and

1 foundation.
2 MR. HELPERN: Join.
3 THE WITNESS: Yes. We did not wait
4 until the end of June.
5 BY MR. KRUM:
6 **Q. Both you and Mr. Storey expressed to**
7 **Messrs. Kane, Adams and McEachern that the process**
8 **should be completed, correct?**
9 A. Yes.
10 **Q. Did any of them provide any response**
11 **other than to communicate that they were unwilling**
12 **to allow that to happen?**
13 MR. HELPERN: Objection to form.
14 MR. SWANIS: Join.
15 THE WITNESS: They clearly made the
16 statements that you had said, that they -- they felt
17 that they were convinced that Jim's performance was
18 such that it had to be cut off at an earlier point;
19 that the time had come to make a decision, and we
20 should not wait the extra month or so to get Tim
21 Storey's final report.
22 **Q. Did any of the -- any of Messrs. Kane,**
23 **Adams or McEachern ever provide any responses to any**
24 **interim reports provided by Mr. Storey?**
25 MR. HELPERN: Objection. Lacks

1 A. Uh-huh.
2 **Q. Do you see that item number one says**
3 **"Present status"?**
4 A. Right.
5 **Q. To what did that refer?**
6 A. Well, that was intended to refer, as I
7 recall, to how things are going at the company at
8 that time.
9 **Q. Item two, "Tim's involvement," to what**
10 **did that refer?**
11 A. That -- that referred to how Tim was
12 coming along in his capacity as what we called at
13 that time ombudsman.
14 **Q. Ombudsman being the same role as the**
15 **committee of one --**
16 A. The committee of one.
17 **Q. Item three reads, quote,**
18 **"Face-to-face meeting of**
19 **independent directors in June**
20 **before the shareholders meeting to**
21 **assess status," close quote.**
22 **Do you see that?**
23 A. Yes.
24 **Q. To what did that refer?**
25 A. That referred to what we had always

1 said, that we were going to get a report from Tim
2 and then make a final decision on whether some or
3 all of the Cotter family members would have to
4 improve their performance or change their -- what
5 they were doing.
6 **Q. What does that mean when you say**
7 **"improve their performance or change what they were**
8 **doing?**
9 A. Well, in other words, if the -- the
10 situation could not continue the way it was
11 indefinitely with this hostile bickering.
12 And at some point, if certain people
13 were chronic offenders, we'd have to consider
14 terminating them.
15 **Q. As of April 2, 2015, had you had any**
16 **communications with any other non-Cotter member of**
17 **the RDI board of directors about the subject or**
18 **possibility of terminating one or more of the**
19 **Cotters?**
20 A. The subject came up that we had to be
21 prepared, if the situation did not correct itself
22 within a reasonable period of time, to take drastic
23 steps which might involve terminating one or more of
24 the Cotters.
25 **Q. When did that subject first arise?**

1 THE WITNESS: I think it was unclear. I
2 think nobody knew the correct answer there.
3 I mean the letter itself on its face,
4 you know, if you had prior dealings with these
5 people, you knew what their style was -- without
6 more information we wouldn't have a defin- -- we
7 couldn't have a definitive answer.
8 So I don't think anybody had a firm
9 feeling as to what the issue was.
10 BY MR. KRUM:
11 **Q. If Margaret Cotter had felt vindicated**
12 **with respect to how she handled it, at the end of**
13 **that meeting, do you think that she understood what**
14 **people said to her?**
15 MR. SWANIS: Objection. Form,
16 foundation.
17 MR. HELPERN: Join. Calls for
18 speculation.
19 THE WITNESS: No. I can't speculate. I
20 don't know.
21 BY MR. KRUM:
22 **Q. Well, did you say anything that you**
23 **intended to communicate to her that she had been**
24 **vindicated by the discussion?**
25 A. I don't --I don't remember saying

1 anything at that meeting.
2 But she certainly hadn't been vindicated
3 at that point. But she later was vindicated when
4 the Court ruled in Reading's favor, RDI's favor.
5 **Q. When you say she was vindicated, does**
6 **that mean that it was acceptable to have not**
7 **previously disclosed the February 6th letter or that**
8 **on the merits of the issues --**
9 A. On the merits.
10 **Q. -- she was correct?**
11 A. On the merits she was correct.
12 **Q. Did any other RDI director other than**
13 **you and other than Jim Cotter, Jr., say anything**
14 **during that meeting that led you to believe they**
15 **understood the distinction between the subject of**
16 **disclosing the February 6th letter to the C.E.O., at**
17 **least, if not to the board and the subject of the**
18 **merits of the dispute with the Stomp producers?**
19 MR. HELPERN: Object to form, vague.
20 MR. SWANIS: Join.
21 THE WITNESS: There were general
22 discussions among the others, saying -- you know,
23 questioning whether there was sufficient notice in
24 that original February 6th letter to cause Margaret
25 to turn it over to Jim.

EXHIBIT 15

1

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4

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

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16 VIDEOTAPED DEPOSITION OF WILLIAM D. ELLIS

17 TAKEN ON JUNE 28, 2016

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24 REPORTED BY:

25 PATRICIA L. HUBBARD, CSR #3400