IN THE SUPREME COURT OF THE STATE OF NEVADA

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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 XX
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Docket 75053 Document 2019-36503

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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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By: /s/ Gabriela Mercado

1 couch or blow-up mattress in somebody's apartment in New York
2 when they go to visit?
3 MR. FERRARIO: No.
4 THE COURT: It's not like that?
5 MR. FERRARIO: No.
6 THE COURT: Not like sharing pictures of the kids
7 when they --
8 MR. FERRARIO: Absolutely not.
9 THE COURT: Okay.
10 MR. FERRARIO: You're talking sharing pictures with
11 the kids. That's not material. There has to be something more
12 than what we have here.
13 THE COURT: Don't you remember that other case we
14 had?
15 MR. FERRARIO: I'm trying to think of which one that
16 is.
17 THE COURT: Never mind. Keep going.
18 MR. FERRARIO: You know, Judge, again, we have
19 scoured between all the firms all the cases we could find.
20 There's nothing that parallels this. As the authorities --
21 THE COURT: No. Because usually the family sticks
22 together. Usually the family does not let it devolve to this
23 level where the publicly traded company is potentially at risk
24 because they can't get along. I'm not saying the public is at
25 risk here, because there's been a settlement with the T3 [sic]

1 plaintiffs that resolved most of those claims.
2 MR. FERRARIO: Well, that's interesting, too. You
3 get to that point, the people that theoretically were
4 independent and wanted to take a look are not here. But the
5 caselaw that we cite, a plaintiff seeking to show that a
6 director was not independent must meet a materiality standard
7 and show that the director in question's material ties to the
8 person whose proposal or actions she is evaluating are
9 sufficiently substantial that she cannot objectively fulfill
10 her fiduciary duties. That is a high standard. It hasn't
11 been met here.
12 And then there's cases applying Nevada law. The
13 authorities we cited on the same page, it is well settled that
14 a director's independence is not compromised simply by virtue
15 of being nominated to a board by an interested stockholder.
16 There's tons of cases, and we cited them. That friendship
17 doesn't disqualify you.
18 So at the end of the day -- and it'll become
19 crystallized in -- Mr. Krum is arguing this independence thing
20 to then try to get to a doctrine that isn't even applicable in
21 Nevada, the entire fairness doctrine. And it just doesn't
22 apply here. And he gives you no cases, none, not one that
23 says on these facts you can call into question a director's
24 independence. And, you know, I get the fact that this man who
25 was appointed to this position by his father, okay, who then

1 gets fired is angry. He had an employment contract. He's got
2 a separate arbitration going on over that decision. But here
3 he's a derivative plaintiff saying that decision caused harm
4 to the company. That is a much different dynamic. He's
5 entitled to invoke whatever rights he has under the employment
6 contract, which he has. But we're losing sight of the fact --
7 THE COURT: That's a different case. I'm not
8 dealing with that. It's in arbitration.
9 MR. FERRARIO: This is a derivative case. He is
10 speaking for all shareholders, saying, you caused -- this
11 decision caused damage.
12 THE COURT: I'm aware of that.
13 MR. FERRARIO: And we'll get to that. There is no
14 damage. Having said that, I wanted to point out those
15 authorities. It's a high standard. He hasn't met it.
16 Calling somebody Uncle Ed doesn't get it. And all of this
17 stuff about Guy Adams, as Mr. Tayback said, he knew long
18 before.
19 THE COURT: Anything else?
20 Mr. Krum. And after we finish this motion I think
21 we're going to take a break.
22 MR. KRUM: Your Honor, I'm just going to speak to
23 this motion.
24 THE COURT: Yes.
25 MR. KRUM: I'm not going to do as prior counsel did

1 and argue other motions, as well.
2 As among the erroneous legal arguments in their
3 seven summary judgment motions, this one, including the one
4 Mr. Ferrario just articulated, is perhaps the most erroneous,
5 this whole discussion about independence. But on Motion
6 Number 2 it's procedurally deficient. You can move for
7 summary judgment on a claim, you can move for summary judgment
8 on an element of a claim. Independence is neither.
9 Independence is a factual question that arises where directors
10 seek to protect their conduct by invoking the business
11 judgment rule.
12 Now, to illustrate how wrong they are I'm going to
13 talk about something they raise in another point, another
14 motion, which is that, according to them, the business
15 judgment rule is actually not a presumption, it's a rule,
16 because, of course, presumption is rebuttable. And we argue
17 that it's rebuttable and we argue that one of the ways it's
18 rebutted is to show a lack of independence or a lack of
19 disinterestedness on the part of the decision maker.
20 THE COURT: Gosh, that's what the Nevada Supreme
21 Court says.
22 MR. KRUM: Well, that's right. Mr. Ferrario
23 obviously didn't have an opportunity to read our reply brief.
24 And, you know, in fairness, I'm not so sure I got right
25 [unintelligible] myself. So --

1 THE COURT: It was a lot of material. It was very
2 well briefed. Whoever your support staffs were, and I include
3 this for all the different firms, they did an amazing job
4 putting together the appendices and supporting information.
5 MR. KRUM: Thank you, Your Honor.
6 So it's not -- the subject of independence is not
7 properly the subject of a motion for summary judgment as a
8 procedural matter. Now, Mr. Tayback said there is no such
9 thing as a generalized lack of independence. Well, if that's
10 correct, that's another reason this is not a proper motion for
11 summary judgment.
12 Now, here's what the law is. "Independence is a
13 fact specific determination made in the context of a
14 particular case." And how is it made? Ordinarily it's made
15 when the finder of fact assesses all the evidence and
16 determines whether in a particular set of circumstances a
17 director had the requisite disinterest in this and the
18 requisite independence. And they can take into consideration,
19 for example, the kind of things that Mr. Ferrario says don't
20 matter and are legally insufficient, which the cases may well
21 say are legally insufficient in and of themselves. But when
22 we present this case to the finder of fact, they may think
23 it's significant that the Kane family and the Cotter sisters
24 have holiday dinners together and that sort of thing. And so
25 to suggest that they can somehow say to you because on a

1 single discrete issue the close personal relationship between
2 Cotting and Wrotniak, for example, and Cotter family members
3 is in and of itself legally deficient doesn't acknowledge what
4 the nature of this case is and what this motion is. It's a
5 summary judgment motion. And I haven't deposed Ms. Cotting
6 yet. We have statements from Mr. Cotter in his declaration
7 about what she has said to the effect that as far as she's
8 concerned nobody other than a Cotter family member should ever
9 be running this company. Excuse me? What kind of decision is
10 that? To whom does she owe fiduciary obligations? Is it the
11 Cotter family, or is it all of the shareholders? And so
12 perhaps while their cases may say that that relationship alone
13 is insufficient, how can you adjudicate this on summary
14 judgment?
15 And so I want to talk just briefly about a couple of
16 matters that Mr. Tayback raised. So he read this email that
17 Mr. Cotter sent to Mr. Kane in the middle of this series of
18 events where Mr. Cotter had been told, you need to resolve
19 your disputes with your sisters on terms satisfactory to them
20 or you're going to be terminated. And so he wrote this email
21 that Mr. Tayback read to Mr. Kane, and it sounded like he was
22 making a personal plea. He was. In point of fact Mr. Kane's
23 emails throughout and his testimony that we've included in
24 this motion show that's how he acted. Mr. Kane consistently
25 and repeatedly acted as a 50-year friend of the deceased James

1 J. Cotter, Sr., and interacted with everyone else, the Cotter
2 siblings and the board members, and made his decisions based
3 on what he thought his 50-year friend, his lifelong friend
4 wanted him to do. So of course plaintiff interacted with him,
5 because that's how he acted. So I say rhetorically is that
6 how a director of a public company acts, is that the basis on
7 which you make decisions in the interest of the company and
8 all of the shareholders? Well, you know, we think it shows a
9 clear and compelling lack of disinterestedness. But I
10 understand that you may think that matter goes to the finder
11 of fact on this motion and Number 1, as well.
12 Mr. Adams. Now, I was prepared to make this
13 argument without talking about any numbers, because I've been
14 told to treat that information as confidential. So here's how
15 I'm going to do it. There was a number mentioned about his
16 supposed net worth. You saw our papers. He's 65 years old.
17 He has no income, effectively no income other than the income
18 from RDI and other companies controlled by the Cotter sisters.
19 And if you'll look, Your Honor, for example, at our Exhibit
20 16, which is his sworn declaration from his Los Angeles
21 Superior Court divorce, and you'll see on the appendix page
22 261 -- I'm very proud of my team for this; I will convey your
23 comment, thank you -- and 262 it shows aggregate expenses of
24 Mr. Adams and his then wife. Now, I acknowledge you have to
25 go through those and try to figure out what he took and what

1 she took, but just for ease of illustration, if you divvy up
2 those expenses 50-50 and if he had no income from companies
3 that the Cotter sisters controlled, he wouldn't make it to 75
4 before he was out of money. A man of 65 years of age in this
5 country by actuarial standards is going to live beyond that.
6 And a man with a financial background like Mr. Adams isn't
7 going to live that way.
8 So, you know, Mr. Gould -- oh. And there was a
9 statement made that everybody knew about Mr. Adams's financial
10 dependence on the Cotter family. That is absolutely false.
11 In point of fact what happened is that the morning session of
12 the May 27th board meeting -- May 29th, I guess it was, Mr.
13 Cotter, Jr., raised the issue because he'd learned facts in
14 the preceding week or two, I think it was. So what was Mr.
15 Adams's response? Did he say, sure, folks, here's my
16 financial situation, and he told everybody? No. He refused
17 to speak to it. Director after director acknowledged that in
18 their deposition, that on the 27th of May the plaintiff said,
19 Mr. Adams is financially dependent or he may be financially
20 dependent on my sisters and he may not be independent for the
21 purposes of this vote. Nobody, including Mr. Gould, required
22 Mr. Adams to answer that question. They didn't do a thing.
23 And Mr. Adams didn't answer it. He testified that, well,
24 later he called some of the directors and talked about it.
25 In, of course, as you saw from the papers, including Mr.

1 Gould's summary judgment motion, when Mr. Gould actually
2 apparently learned from Mr. Adams's deposition testimony in
3 this case Mr. Gould offered the conclusion which he shared
4 with I believe it was Ellen Cotter and Mr. Tompkins that he
5 didn't view Mr. Adams as independent for the purpose of making
6 any decision about Cotter family compensation. And Mr. Adams
7 coincidentally resigned from the compensation committee.
8 So, Your Honor, the facts are at least material
9 disputed facts, if not compelling facts, which I'll argue on
10 Number 1, but the notion of independence, including with
11 respect to Cotting and Wrotniak, is one that cannot be tested
12 on an incomplete record.
13 THE COURT: Okay.
14 MR. KRUM: And so --
15 THE COURT: So those depositions are ones that are
16 going to be scheduled to be completed prior to the deadline
17 I've given you; right?
18 MR. KRUM: Ms. Cotting is, yes, correct, Your Honor.
19 THE COURT: Anything else?
20 MR. KRUM: No. Thank you, Your Honor.
21 THE COURT: Briefly, please.
22 MR. TAYBACK: Briefly, yes.
23 THE COURT: Just because I don't have the timer on
24 doesn't mean I --
25 MR. TAYBACK: I understand. I don't intend to

1 repeat myself.

2 The lack of independence is the sole basis to rebut

3 the business judgment rule for plaintiff with respect to a

4 whole bunch of allegations that are set forth in Footnote 1 of

5 our reply. Summary judgment is proper where that's the case,

6 where independence is the sole basis to rebut that

7 presumption.

8 THE COURT: It's not summary judgment, but, yeah, I

9 understand you're asking for a pretrial ruling or pretrial

10 determination. But it's not supposed to be summary judgment

11 on that kind of fact.

12 MR. TAYBACK: I would point Your Honor to the Khan

13 case, which is from Delaware, and it's cited in our reply at

14 page 3 along with several other cases where it is decided on

15 summary judgment.

16 THE COURT: It's not summary judgment, Counsel.

17 MR. TAYBACK: The facts here with respect to what

18 Mr. Adams's situation is, I believe we respond to those. The

19 company applied the NASDAQ standards, that's undisputed, with

20 respect to making a determination of independence. What

21 happened subsequently in terms of what committees he sat on or

22 didn't sit on, that's irrelevant to the question of whether

23 independence existed for the specific board action that was

24 contemplated and with respect to the question about

25 depositions. And that is to say that each of those board

1 actions needs to be determined independently from each other
2 as to whether they are protected by the business judgment
3 rule.
4 THE COURT: They absolutely do need to be done
5 individually, which is problematic, since the depos aren't
6 done. Don't you think?
7 MR. TAYBACK: Well, Mr. Wrotniak has never been
8 deposed and has never been scheduled to be deposed and has
9 never been asked to be deposed. And most of the depositions,
10 honestly, are complete. So with respect to those individual
11 defendants and with respect to those allegations that pertain
12 to those defendants the matter is ripe for determination. And
13 there's really been nothing with respect to say, for example,
14 Mr. Wrotniak, although not exclusively him. But he's the most
15 egregious example.
16 THE COURT: All right. Thank you.
17 Because of the request for 56(f) relief and the
18 depositions that have not been concluded, I'm going to set the
19 matter over to December 1st. I anticipate we will discuss
20 whether I need a supplemental brief at that time.
21 It is my belief that the independence issue needs to
22 be evaluated on a transaction- or action-by-action basis,
23 because you have to separately evaluate the independence as
24 related to each. And while there may be facts that overlap
25 between different actions that apply to others, I can't

1 evaluate it in a vacuum. So you're going to give me more
2 information like I've asked for, Mr. Krum, okay, following the
3 completion of that.
4 So we're going to take a short break. When we come
5 back we are going to go to the one on the executive committee.
6 (Court recessed at 2:54 p.m., until 3:06 p.m.)
7 THE COURT: Okay. I said we were going to talk
8 about the executive committee next; right?
9 MR. TAYBACK: Yes.
10 THE COURT: Let's talk about the executive
11 committee.
12 MR. TAYBACK: I was going to start with Nevada
13 Revised Statute 78.138(7) and say there's no evidence that can
14 support a claim for the formation of an executive committee,
15 because there's no misconduct. Now, in light of some of the
16 earlier arguments I'm anticipating that maybe Your Honor and
17 certainly plaintiffs will say, well, that's not an independent
18 claim for the formation of an executive committee.
19 THE COURT: It's not pled as an independent claim.
20 MR. TAYBACK: I'm happy to have that be true. But
21 that's not entirely the way we read the complaint. I don't
22 think it's entirely clear. And in fact I will say when you
23 asked, Your Honor, what is the question you're going to put to
24 the jury --
25 THE COURT: Not the question, questions.

1 MR. TAYBACK: Questions.
2 THE COURT: Because I anticipate there would be more
3 than one special interrogatory submitted to the jurors.
4 MR. TAYBACK: And I anticipate -- well, I would like
5 to anticipate that there wouldn't be any, but what I can
6 certainly anticipate is that this would not be one, since he's
7 apparently conceding that. However, where he can't identify
8 one I do feel like we are reasonably prudent in attacking them
9 all. Because as we stand here now virtually on the close of
10 discovery he couldn't have articulated for you one of the
11 things that he thinks he's going to ask the jury at the end of
12 the close of evidence at a trial. And he wasn't very
13 committal about whether or not the unsolicited offer would or
14 would not be one of them. So at that point I feel like I do
15 need to address the executive committee, because I don't know
16 whether he's going to say it may or may not be one of them.
17 If it's not, then it's not, and it'll be dealt with as a piece
18 of evidence that may or may not be relevant to some other
19 alleged breach of fiduciary duty, which is as yet
20 unidentified.
21 But the fact is it's neither an independent claim,
22 nor is it actually relevant evidence of any other wrong. And
23 here's why it can't be that, can't be either. The fact is
24 it's specifically authorized by Nevada law, the existence of
25 an executive committee, and its specifically authorized by the

1 Reading bylaws. You can't take actions and say, oh, this is
2 an entirely legal, entirely compliant organization that exists
3 and is endorsed by Nevada law and endorsed by the company's
4 bylaws, which set the parameters under which it must act. You
5 can't say it's evidence -- its existence is evidence of some
6 other, again unspecified, breach of fiduciary duty. And when
7 you go further and say, well, what about the actions that that
8 executive committee took, well, we then look at what is the
9 evidence. And the discovery on the executive committee is
10 closed. There is nothing -- we've done all of the depositions
11 on that. And what are the actions? Well, they're setting the
12 annual meeting date, they're effectively administrative.
13 Plaintiff can't and has not identified one thing that it's
14 taken action on that could possibly be a basis for a breach of
15 fiduciary duty or relevant to a breach of fiduciary duty. So
16 notably, understanding that, the simple fact is it's something
17 that should be either adjudicated or conceded as not a part of
18 this case.
19 With that I can sit down.
20 THE COURT: Because it's authorized by the bylaws,
21 so everybody was acting within the scope of the bylaws.
22 Whether it was utilized appropriately is a different issue.
23 But the creation of it or the reestablishment of it, your
24 position is since it's authorized by the bylaws it's not
25 inappropriate.

1 MR. TAYBACK: The bylaws and Nevada law. And the
2 law. And I would also say that as it was utilized my point is
3 the only things that there are evidence about how it was
4 utilized is the setting of the annual meeting date. And that
5 simply isn't enough. Plaintiff may stand up here and say
6 something else, but it'll be the first time we've heard that.
7 MR. FERRARIO: I just have just a couple points to
8 add on. 78.125 is the Nevada law in this. It can't be any
9 clearer. "Unless otherwise provided in the articles of
10 incorporation, the board of directors may designate one or
11 more committees which to the extent provided in the resolution
12 or resolutions or in the bylaws of the corporation have and
13 may exercise the powers of the board of directors in the
14 management of business affairs of the corporation." The
15 bylaws permit this. This committee was in existence -- we've
16 all come to know a new term called "repopulated." You know,
17 to be honest with you, Judge, I don't even know why we're
18 talking about this executive committee; because when Mr.
19 Tayback asked plaintiff what his gripe was and what decisions
20 they had made he couldn't even articulate any. And Mr.
21 Tayback spoke to -- when you asked Mr. Krum what questions are
22 you going to ask the jury, that brought back, you know, on
23 this one in particular, what are you going to ask the jury,
24 what's the complaint here. And when Mr. Krum couldn't answer
25 that question on your previous inquiry regarding the

1 expression of interest it brought to mind a seminar given by
2 one of your mentors, Mr. Jemison. I remember going to Rex's
3 seminar, and he said, after you assess your case, your client
4 tells you what you have, you look at the facts, the first
5 thing you do right when you --
6 THE COURT: [Inaudible].
7 MR. FERRARIO: There you go. I didn't have to say
8 it, did I?
9 THE COURT: Oh, you know, I knew what you were going
10 to say.
11 MR. FERRARIO: All right. So --
12 THE COURT: Because I heard it as a young lawyer.
13 MR. FERRARIO: Yeah. And it's actually good advice.
14 And the fact that you can't articulate now after discovery
15 what you're going to ask the jury, whether it be through a
16 special interrogatory or in the way -- or what you're going to
17 put to the jury in terms of jury instructions really I think
18 undercuts the validity of much of what Mr. Krum is arguing.
19 But here, you know, there really just can't be any issue
20 regarding the formation, repopulation, call it whatever you
21 want, the existence of the executive committee.
22 THE COURT: Now Mr. Krum.
23 MR. KRUM: Well, Your Honor, we've actually covered
24 this in some respects in terms of talking about trial and
25 evidence and discussion and so forth. But this is an

1 opportunity for me to speak to one of the other recurring
2 mistakes in these motions, which is the assertion that because
3 something is legally permissible it therefore cannot give rise
4 to a fiduciary breach. And you obviously understand that,
5 because you talked about the difference between the formation
6 and the utilization of the executive committee. And so, you
7 know, there's -- I've been doing this long enough, perhaps too
8 long. The other day I dictated something about a 1979 case
9 and noted to the assistant that I'd worked on the case. But
10 one of my favorite quotes is from a '71 case, and I didn't
11 work on that. "Inequitable action does not become permissible
12 simply because it is legally possible." That's Shelby-Chris
13 Craft. And we didn't -- we cited elsewhere, you know, the
14 fairly fundamental legal precept, and that is there are two
15 tests, is the act legally permissible, one, and, two, is it
16 inequitable, is it actionable as a breach of fiduciary duty.
17 There's no claim here that the existence or
18 formation, because it already existed, so I've said the same
19 thing twice, the existence of an executive committee
20 constitutes a fiduciary breach. And the reason the word
21 "repopulate" has been used in this case is because it leads
22 into the factual question of why did they activate and
23 repopulate the executive committee. And there's claim that
24 there's no evidence and I didn't ask some question. Well,
25 I've been to these depositions. I asked lots of questions.

1 And the answer to that question at the time as evidenced by
2 contemporaneous emails from Mr. Storey was that the executive
3 committee was a means to effectively preclude him from
4 functioning as a director. I took his deposition in this
5 case. His testimony was his view was that the purpose and
6 effect of the executive committee was to preclude him and
7 plaintiff as functioning as directors.
8 So we cited the law on page 18 of this particular
9 opposition for the proposition that the right of a board of
10 directors to delegate is not unlimited and that delegation by
11 a board may give rise to a claim for fiduciary duty. Of
12 course, this isn't delegation so much as it is appropriation.
13 And so the issue raised by the executive committee is very
14 much a factual issue unique to this case. I omitted to say,
15 Your Honor, that the executive committee didn't just come out
16 of the blue in the ordinary course of business here. This
17 repopulation and activation of the executive committee was
18 part of the seizure of control. It was part of the decision
19 to terminate plaintiff to appoint Ellen Cotter interim CEO and
20 to repopulate and activate the executive committee. The
21 factual context makes perfectly clear that the utilization of
22 the executive committee here was done for the purpose of
23 excluding Storey and plaintiff. And we have the emails
24 between Gould and Adams before the very first meeting talking
25 about who's going to make what motion, who's going to second

1 it. And Adams says, the other motion, and Kane says, what
2 motion, and Adams says, the motion to appoint executive
3 committee or interim CEO. It was all prearranged plan to
4 seize control of the company.
5 Now, the facts also show that in October of 2014
6 Ellen Cotter made a proposal to some of the outside directors,
7 and the proposal included an executive committee to which they
8 would report instead of reporting to their brother as CEO.
9 And that somehow didn't get traction and didn't come to pass
10 then. But by the time of April, when they had Kane and Adams
11 and McEachern lined up, would pick their side in the family
12 dispute the executive committee came to be so that it could
13 exclude plaintiff and Storey. And they say, well, they don't
14 complain about anything they did. Well, first of all, Your
15 Honor, it is sufficient to have misused the structure of an
16 executive committee to exclude other directors. And second,
17 the executive committee did do things. It set the annual
18 shareholders meetings and the record date, unbeknownst to
19 plaintiff. And the point of that was -- this was at the end
20 of 2015, and they were still concerned -- in fact, they were
21 more concerned that the intervening plaintiffs and Mark Cuban,
22 who has something like 14 percent of the Class B voting stock
23 were going to make a run for control of the company.
24 So the answer, Your Honor, is it's a factual
25 question whether it gives rise to a fiduciary breach, and we

1 will have to, as discussed, decide what exactly the special
2 interrogatories are going to be. But it is absolutely,
3 positively compelling evidence of what transpired here. It
4 was a whole exercise to seize and perpetuate control. So it's
5 not -- it's not -- you know, it's legal and therefore
6 everything is copacetic is just wrong as a matter of law.
7 I don't have anything unless you have questions for
8 me.
9 THE COURT: Thank you.
10 The motion related to the executive committee is
11 granted in part. As to the formation and revitalization of
12 the committee the motion is granted.
13 As to the utilization of the committee it's denied.
14 MR. KRUM: Point of clarification, Your Honor. By
15 revitalization are you referring -- is that something
16 different than -- that's activation? Is that what that is?
17 THE COURT: Activation. I think you called it
18 repopulation, putting people on it. I'm not including
19 utilization, which is the activities of the executive
20 committee afterwards.
21 MR. KRUM: And utilization includes the purposes for
22 which these other activities were done?
23 THE COURT: No. Formation and revitalization
24 include a decision by the company, whether it's a decision by
25 the company to make use of their previously dormant executive

1 committee and to put people on that executive committee. What
2 the committee did and the activities it did are still issues
3 that remain for you to discuss whether those are breaches of
4 fiduciary duty. Do you understand what I'm trying to say?
5 MR. KRUM: I think so. Last question on this. In
6 the first half of that, the activization and whatever the
7 other verb was, I could still introduce evidence of that in
8 support of other claims?
9 THE COURT: Absolutely.
10 MR. KRUM: Very well.
11 THE COURT: Right. But it won't be one of the
12 questions --
13 MR. KRUM: Understood.
14 THE COURT: -- you submit to the jury. Because I'm
15 trying to narrow the questions you will eventually submit to
16 the jury.
17 MR. KRUM: Understood.
18 THE COURT: All right. Did you have any questions?
19 MR. TAYBACK: No, Your Honor. I understand.
20 THE COURT: Okay. That takes me to the issue
21 related to plaintiff's termination and reinstatement claims.
22 MR. TAYBACK: Sure. There are cross-motions on this
23 issue.
24 THE COURT: I know.
25 MR. TAYBACK: Would you like to hear from one side

1 or the other first?
2 THE COURT: I don't care.
3 MR. TAYBACK: I'll start.
4 THE COURT: Okay. I carried one box that only
5 included briefs, not exhibits, home. The box was fairly full.
6 I read almost every page that was in the box. Not every page.
7 There were some declarations I skipped over.
8 MR. TAYBACK: You can mind the fact that I know Your
9 Honor's very familiar and has read it. And in fact I'll say
10 --
11 THE COURT: I mean, I agree with you that I read it
12 all.
13 MR. TAYBACK: Well, I mean, I'm going to tell you
14 why I hope you would agree with me, which is I'm going to
15 start with -- I'm going to say there are three bases upon
16 which I think this motion should be granted, Nevada law, the
17 policy that underlies Nevada law, and the undisputed material
18 facts that are presented in both motions. But I'll start by
19 saying, though, when this case began I think we came before
20 you and we said that the case appeared like an effort to turn
21 a disgruntled terminated executive claim by -- with certainly
22 an undercurrent of familial disharmony into a -- into a
23 derivative case. And -- but we have the derivative case.
24 That's what we're looking at right now. We're not looking at
25 the Trust, we're not looking at the estate, we're not looking

1 at -- as you pointed out, not looking at his employment
2 arbitration. And I will say after however much discovery
3 you've taken or how many documents it remains the same thing.
4 It's an effort to turn something that's not a derivative case
5 into a derivative case.
6 In Nevada law nothing comes close to a case that
7 finds that there's a breach of fiduciary duty for terminating
8 an officer. How could it violate a duty to the corporation
9 when the termination of an officer is specifically authorized
10 by Nevada law, specifically authorized by the bylaws,
11 specifically authorized by the contract with that executive?
12 In point of fact the -- given that there's no such case and in
13 fact the termination for no cause is specifically contemplated
14 and allowed at the discretion of the board, it can never --
15 terminating an officer can never meet the standard of
16 liability for a director under the Nevada Revised Statute
17 78.138(7). All of that, all of those arguments, those legal
18 arguments why it's just not actionable are totally 100 percent
19 independent of the business judgment presumption. As a matter
20 of law it's just not actionable.
21 And there's good reason for that. The policy that
22 underlies those statutes and give rise to the bylaws and give
23 rise to a contract that says you can terminate it at will for
24 good cause or for no cause at all is because all CEOs --
25 almost all CEOs, at least in my experience, own some stock in

1 the company. Wrongful termination would be converted into a
2 potential derivative suit in the case of every single
3 termination of an executive. And how would that be remedied?
4 We were -- preparing for the hearing we were talking about
5 amongst ourselves so what would be a remedy here if one could
6 come up with the equitable remedy that Mr. Krum says on
7 occasion at least he's seeking. Would it be for the Court to
8 reinstate the plaintiff as the CEO? That is to say, would it
9 be contemplated that the current CEO would be ordered to be
10 fired? And what remedies, if any, would there be there, and
11 what would be the terms of the continued management of a CEO
12 restored who says that they were terminated and they shouldn't
13 have been? The fact is it doesn't make sense when you start
14 thinking about it. There's no way for that to work. And
15 there's good reasons why there are in o cases, although there
16 are surprisingly many cases where such a claim has been
17 asserted or attempted. They're all dismissed out of hand
18 either at a motion to dismiss or on summary judgment or for
19 different reasons, either because there is no such basis for a
20 claim or because in fact they invoke the business judgment
21 rule or for other reasons, such as there's no damage, there's
22 no harm to the corporation, it can never be proven that
23 there's harm to the corporation of one executive being
24 terminated versus another.
25 The third point here goes to the undisputed facts.

1 And if you had to get there, and I suggest you do not even
2 need to get to the question of the business judgment rule and
3 the presumption under Nevada law, but the fact is it hasn't
4 been rebutted and really can't be rebutted on these facts.
5 There's arguments that have been made about Mr. Kane's alleged
6 bias because he likes -- he preferred one sibling over
7 another, there's arguments about Mr. Adams's alleged bias
8 because of what they contend is a perception of where he would
9 do better, with what executive in office. But the fact is
10 that there's no basis for going beyond the nonexistence of a
11 claim for a breach of fiduciary duty for the termination of an
12 officer.
13 What the plaintiff wants to do and what they've made
14 an effort to do is to try to say, hey, the business judgment
15 rule gets thrown out the window and we should look at some
16 other test that I will submit is one of the plaintiff's own
17 making, an entire fairness test that does not exist in Nevada
18 law. He uses the term "entire fairness." There is a term
19 "fairness," which is used in some respects within Nevada, but
20 it's limited, limited to instances where there's a
21 transaction, for example, where a director is on both sides.
22 Because the kinds of things you look at when you determine
23 fairness in those settings are things like price and objective
24 criteria that you can evaluate, not an operational decision, a
25 subjective judgmental decision, the kind that is entrusted

1 entirely to boards like the hiring or firing of a CEO.
2 And in fact I'll take it one step further. On the
3 undisputed facts not only would you say that the defendants
4 should prevail on partial summary judgment with respect to the
5 termination claim, because there's no harm, it's not
6 actionable, and there's no equitable way to actually
7 accomplish what the plaintiff contends should be accomplished;
8 but when you get to the facts -- in fact, even if you were to
9 apply such a fairness evaluation, the facts are it was fair to
10 the plaintiff. He understood the process. The process
11 existed. If this were an employment case, that process would
12 be more than adequate for the plaintiff to know he was on
13 notice of what his deficiencies were and that in fact he did
14 not -- did not rectify them and the board acted well within
15 its discretion to terminate him, especially where the law, the
16 bylaws, and his employment contract gave him the undisputed
17 right and absolute right to do so for no cause at all.
18 The fact is the undisputed facts, the ones that the
19 plaintiff cites and rely upon, support that decision. This
20 family could not get along. There was a quote earlier about
21 the communications between plaintiff and Mr. Kane, and there
22 was a reference to an email with Mr. Storey, as well, where
23 Mr. Storey says exactly as Mr. Ferrario said, look, I'm not
24 sure we necessarily solve the problem by virtue of -- I'll say
25 it's Exhibit 13, I'm not sure we necessarily solve the problem

1 by terminating the plaintiff, we could terminate all three.
2 And in fact that was a not unreasonable thing to contemplate.
3 But contemplating something, contemplating alternatives and
4 then making a decision is exactly what you entrust to boards.
5 And this is the, the prototypical decision that a board must
6 be entrusted with, that is to say, the decision to terminate a
7 CEO. The fact is they can do it. Their agreements and the
8 law say they can do it. The caselaw all says it can be done.
9 And there's no analysis, no fairness evaluation, no
10 determination about it being a question of fact for the jury,
11 because there is no question of fact for the jury. It's
12 permissible. And it's permissible for very good reasons.
13 THE COURT: Thank you.
14 Mr. Ferrario.
15 MR. FERRARIO: Very briefly, Your Honor.
16 NRS 78.130 speaks to this issue, refers the Court to
17 the bylaws. And, as Mr. Tayback said, the bylaws here make it
18 very clear that -- and even Mr. Cotter in his deposition
19 acknowledged that he served at the pleasure of the board. You
20 know, sometimes you get in cases like this and, you know, I
21 appreciate that the Court at the beginning of the case when
22 you were hit with a flurry of motions, one I filed to say this
23 was an appointed matter, I don't know how your ruling would
24 have been --
25 THE COURT: An emergency motion for a hearing on the

1 probate case that we never had.
2 MR. FERRARIO: Emergency motion, probate case, Mr.
3 Krum's initial request for injunctive relief, they didn't
4 happen. You know, the intervention of T2, they're no longer
5 here. And I appreciate that you -- you know, I may have
6 disagreed with your rulings, thinking maybe you should have
7 forced Mr. Krum to make a demand upon the board. But, having
8 said that, you gave Mr. Krum every opportunity to develop his
9 case. You gave him every opportunity to do discovery. You
10 gave him every opportunity to try to find some law to support
11 his position. And here we are theoretically on the eve of
12 trial and he has found no law to support his -- I'm not aware
13 of any case, I haven't seen a case from him that says you can
14 disregard 78.130, you can disregard the bylaws of the company,
15 and you can disregard the pleasure that the board included in
16 the employment contract to fire him without cause. So that's
17 something he signed up for. He can be fired for any reason or
18 no reason at all.
19 And, Your Honor, you're aware of the law in Nevada.
20 We're probably the most employer-friendly state in the
21 country. You're familiar with the at will employment doctrine
22 here. This isn't a situation where Mr. Cotter was fired
23 because he's in a protected class or like Ponsock where he's a
24 month away from getting his retirement in whatever that case
25 was with Kmart.

1 THE COURT: That was Ponsock. Good memory. Yeah.
2 MR. FERRARIO: It was Ponsock. So, you know, again,
3 when we step back from this you're talking about the most
4 significant decision that a board can make. I sit on a board
5 of directors. I say that all the time, the most important
6 decision we're going to make is hiring our CEO. There's no
7 case that says a court should invade that province that's
8 delegated to the board. None. And this gets to a point I
9 wanted to make. These things that we're talking about have
10 policy implications. They're broader than just this case.
11 You know, we should be able to walk out of here as lawyers
12 and, you know, learn from this and advise our clients. You
13 know, I would always tell a board of directors when I'm
14 talking to them, you have the discretion, the sole discretion
15 to decide whether this CEO serves on this -- you know, in that
16 capacity. I might be constricted by an agreement, there may
17 be consequences that if he or she's terminated they might get
18 severance, those types of things. But it's the board's
19 decision on these bylaws pursuant to 78.130 to decide whether
20 or not Mr. Cotter served in the position of CEO. And the
21 board made the decision to terminate him, nothing more,
22 nothing less. And if the sole reason the board decided to
23 terminate him was because they thought by terminating him it
24 would ease tensions within the company, that's okay. There's
25 nothing that says you can't do that. And you can't morph this

1 case into an entire fairness case where you have to evaluate
2 price and all sorts of other things by simply touting lack of
3 independence and all of a sudden jump into a doctrine that
4 simply has no application. There's no case that's ever
5 applied it.
6 We took the deposition of Justice Steele, who was
7 opining on nothing but Delaware law, which befuddles me how he
8 would even be an expert in Nevada. You know what, he's not
9 aware of any case like this.
10 THE COURT: He's very well informed on Delaware
11 law --
12 MR. FERRARIO: Delaware law.
13 THE COURT: Because he used to be a chief justice.
14 MR. FERRARIO: He did. And he had some --
15 THE COURT: He was on the Business Court before then
16 -- the Chancery Court before them.
17 MR. FERRARIO: He was. And he had a young associate
18 that did a good job of preparing a memo on Delaware law, which
19 is like -- unlike any expert report I've ever seen. Because
20 I'm sure your law clerk could probably go out and probably
21 replicate that if you were so inclined to look to Delaware
22 law. But we're in Nevada, we're not in Delaware.
23 So the point here is this. This decision that was
24 made by the board was a decision vested solely in them. And
25 you can't come up here and say, well, we need to look into

1 their mindset and we need to -- independence and all to
2 sidestep, you can't come in and start saying we've got to
3 invoke the entire fairness doctrine, which I don't even know
4 how it would work. And there's -- you have to have some basis
5 to do that. There is no basis.
6 And I want to now end with what Mr. Tayback said.
7 We're sitting there, and I said, what would be the remedy Your
8 Honor would fashion, would Your Honor now become the board and
9 fire Ellen, would Your Honor then say, Mr. Cotter, you're back
10 in, and then are you going to then negotiate his contract. Or
11 if you put him back in other his other contract where it says
12 he could be terminated without cause, then the next day they
13 just call him in and say, Mr. Cotter, terminated without
14 cause, are we back here again? So I think when you're looking
15 at these things you ought to look at the remedy. Because most
16 of the time remedies make sense. The doctrine that leads to
17 the remedy, it all kind of fits. It never makes sense here.
18 The reason is courts don't go here.
19 And so, Your Honor, this motion should be granted.
20 MR. RHOW: Your Honor, I don't know if you're taking
21 Mr. Gould's position on termination now, but he did have a
22 brief on it. It wasn't --
23 THE COURT: But I thought his brief related to his
24 motion. Does he have a separate brief on this issue?
25 MR. RHOW: Correct. You're right. I just wanted to

1 make sure when you said the --
2 THE COURT: No. I've got his motion down as a
3 separate number to hit.
4 MR. RHOW: Understood.
5 THE COURT: Is that okay?
6 MR. RHOW: That's fine, Your Honor.
7 THE COURT: If you want to chime in, you can.
8 MR. RHOW: If you have it somewhere else, I'm happy
9 to address it then.
10 THE COURT: I do have it someplace else.
11 MR. RHOW: Understood, Your Honor.
12 THE COURT: Okay.
13 MR. KRUM: Mr. Ferrario said that the board's
14 decision with respect to a chief executive is the most
15 significant decision a board can make. Mr. Tayback said the
16 same thing a different way. And yet, Your Honor, they're
17 telling you that the board can never -- or directors can never
18 be liable for breach of their fiduciary obligations in making
19 that decision. Well, that's a non sequitur. Makes no sense
20 logically, and it's flat wrong as a matter of law.
21 Mr. Ferrario said that Chief Justice Steele didn't
22 identify a case, and I think Mr. Tayback argued that we didn't
23 identify a case, a breach of fiduciary duty case like this.
24 Chief Justice Steele in a somewhat self-deprecating and
25 humorous way when asked that question said, well,

1 notwithstanding the characterization of Delaware as having a
2 -- I think it was a rich body of law, and he says, I don't
3 know of a case like this, but there's always a case that is a
4 case of first impression. Doesn't follow that the case hasn't
5 been litigated before that that is because directors in making
6 the most important decision they make cannot breach their
7 fiduciary duties.
8 The business judgment rule is a rebuttable
9 presumption, I said that earlier, where the decision of a
10 board and any action qualifies as a transaction, where a
11 decision is made by less than a majority of disinterested and
12 independent directors there's a different standard. That's
13 not inconsistent with Nevada law. We've covered that already.
14 There's Nevada law on it, and in fact it's consistent with the
15 statute they miscite, 78.140, which is not a definition of
16 interestedness, it's not a limitation on 78.130. .140 is
17 Nevada's statutory codification of a common exemption, common
18 meaning prevailing among jurisdictions. It's a statutory
19 carve-out of a common-law rule that interested transactions
20 and decisions are void. But it sets out how you can make them
21 fit that exception. And oddly enough, Your Honor, .140
22 comports exactly with what I said. One of the ways is to have
23 the decision approved by a majority of disinterested and
24 independent directors.
25 So when the business judgment rule is rebutted, as

1 we've argued in this and several other briefs, the burden
2 shifts to the defendants with respect to that particular set
3 of circumstances to show the fairness, the entire fairness of
4 two things, the process and the result, the objective entire
5 fairness, not what somebody thought on the board, the
6 objective entire fairness. And the reason for that is very
7 simple and very logical. It's because a majority of the
8 people who made the decision lacked disinterestedness, lacked
9 independence, or both.
10 The facts here are incredible. The undisputed facts
11 show that Adams, Kane, McEachern, Ellen and Margaret Cotter
12 threatened plaintiff with termination as president and CEO of
13 a public company if he didn't settle Trust and estate disputes
14 with his sisters on terms satisfactory to them. The
15 undisputed evidence shows they executed that threat when he
16 failed to acquiesce.
17 We've talked about this a little before, and I'm
18 going to refer to it. I'm not going to through all the
19 evidence. The undisputed facts show that Adams is financial
20 dependent on income from companies Margaret and Ellen Cotter
21 control. That puts him squarely into the beholden category at
22 a minimum with respect to any transaction or action that is of
23 any import personally to Margaret and Ellen Cotter. Clearly
24 getting rid of their brother was. In fact, the interested
25 director defendants' opposition concedes that for the purposes

1 of these motions they do not argue that Ellen and Margaret
2 Cotter were independent. And we've talked about the facts
3 with respect to Mr. Kane, and on this decision -- you know, I
4 know you've read the briefs, so I'm going to resist the urge
5 to go through his testimony about what he thought about who
6 should control the voting trust, except to say he testified
7 unequivocally that he understood what the deceased wanted, his
8 understanding was the deceased wanted Margaret to be the sole
9 trustee of the voting Trust and he acted accordingly. He
10 acted to effectuate the wishes of his lifelong friend. And
11 the point of that is two of the three people that voted to
12 terminate Mr. Cotter are shown to lack disinterestedness,
13 independence, or both. We only need to show one, Your Honor,
14 because then it's a 2:2 tie. And under the law as we've
15 briefed it and I've described it, the defendants in response
16 to our motion and in support of theirs have to show the entire
17 fairness of the process and the result.
18 I'm just going to take a couple minutes and just go
19 through the short outline of the facts. In March 2015 the
20 five non-Cotter directors appointed Director Storey as the
21 ombudsman. You're familiar with that. On May 19th, two days
22 before the first board meeting, the May 21 board meeting,
23 special board meeting, supposedly, Ellen Cotter sent out an
24 agenda, the first item of which was, quote, "status of
25 president and CEO." And this isn't clear from our papers, I

1 don't think, but you'll see when we get there, to the
2 evidence, there were other items that talked about status of
3 this executive and status of that executive. But as it turned
4 out, the only one that was -- "status" meant "terminate" was
5 the plaintiff.
6 Prior to the 19th, prior to her sending out that
7 agenda, Kane, Adams, and McEachern had communicated with Ellen
8 Cotter and with each other and reached agreement to vote to
9 terminate plaintiff. So no vote happened at that meeting.
10 That's the meeting where plaintiff raised the issue of Mr.
11 Adams's independence, which nobody investigated, nobody
12 insisted that Adams disabuse them of -- disabused plaintiff of
13 a notion that Mr. Adams was financial dependent on the Cotter
14 sisters. They just let him vote later, on June 12th.
15 So the meeting continues to May 29th. What happened
16 between May 21 and May 29th? The lawyer representing the
17 Cotter sisters in the California Trust action sends a document
18 to the lawyer representing plaintiff in that action, here's a
19 document your client needs to accept to avoid being
20 terminated. So on the morning of May 29th plaintiff tries to
21 discuss the document and negotiate terms with his sisters.
22 They say, no, just take it or leave it. The supposed board
23 meeting reconvenes. Lots of talk, it concludes early in the
24 afternoon of the 29th. According to the contemporaneous
25 handwritten notes of Tim Storey, which he confirmed in his

1 testimony in this case, the three of them, Adams, Kane, and
2 McEachern, told Jim Cotter, Jr., that, you have to go settle
3 your disputes with your sister and if you don't we're going to
4 reconvene at 6:00 o'clock tonight, the Friday before Memorial
5 Day, telephonically, and proceed with a vote to terminate you.
6 So when they get on the phone at 6:00 o'clock Ellen
7 Cotter reports that they have an agreement in principle, the
8 lawyers will do documents and so forth. And then, of course,
9 the next thing is on June 8th Jim Cotter, Jr., says, I can't
10 agree to that. Ellen calls a board meeting on June 12th.
11 They do what they threatened to do. They terminate him.
12 Now, their whole brief talks about what supposedly
13 happened at that meeting. You know, these 13 hours of
14 deliberation or some utter fiction of that nature. The
15 undisputed evidence shows that prior to the first meeting
16 those five people, the two Cotter sisters, Kane, Adams, and
17 McEachern, had agreed to vote to terminate plaintiff. There's
18 no process here, Your Honor. This was executing on taking
19 control of the company and resolving a family dispute when the
20 plaintiff would not acquiesce to doing so by agreeing to a
21 document that, among other things, by the way, resolved the
22 matters being litigated in the California Trust action and
23 made Margaret Cotter the sole trustee of the voting Trust, one
24 of the biggest points of contention.
25 So, you know, the briefing was somewhat like ships

1 passing in the night. I wrote far less when I listened to the
2 arguments than I normally did, but I do have one more thing.
3 And that's on the remedy. This is on page 27 of our reply
4 brief, and we've briefed it before. You've seen it. Courts
5 may fashion any form of equitable relief as may be
6 appropriate. When they aborted the CEO search and made Ellen
7 Cotter the CEO I was dumbfounded, Your Honor. If I was -- you
8 know, it was a good thing for the company that they were going
9 to do a CEO search, they're going to bring in a CEO, they're
10 going to act like a public company. And then they didn't do
11 that. And as a practical matter it's no big deal. As a legal
12 matter the Court absolutely can provide that equitable relief.
13 Chief Justice Steele was asked about that, and he said the
14 saying in equity, for every wrong there is a remedy. And with
15 respect to this he said, it is void the action and order
16 reinstatement.
17 And so the last thing on this particular motion to
18 which I want to speak is the contention that, well, no, you
19 can't order -- you can't or at least you shouldn't provide
20 equitable relief because, you know, the Cotter sisters are
21 controlling shareholders, they'll just undo it. Your Honor,
22 that is a very, very telling statement. Because what it is is
23 an unequivocal announcement that the Cotter sisters don't view
24 themselves as having an fiduciary obligations as controlling
25 shareholders. That's wrong as a matter of law, but clearly

1 the manner in which they've conducted themselves throughout.
2 And, yes, the answer is were they to do that we'd be
3 back and we'd be entitled to relief again. It's not a matter
4 of the board substituting its judgment, it's a matter of the
5 -- excuse me, the Court substituting its judgment for the
6 board, it is a matter of protecting the interests of all RDI
7 shareholders, the minority shareholders, who obviously don't
8 exist in the decision-making minds of Kane and Adams and
9 Margaret and Ellen Cotter. And that the brief says, well, you
10 know, we're going to act like they don't exist again, simply
11 confirms why it is equitable relief can and should be ordered.
12 Thank you.
13 THE COURT: Thank you.
14 MR. TAYBACK: There are no other shareholders who
15 are seeking to have the plaintiff reinstated or undo his
16 termination. And to answer the question -- that's telling, by
17 the way, and we make an argument about the plaintiff's
18 inadequacy of understanding for this case based in part on
19 that. But I'll say -- I'll start with this. If everything
20 that Mr. Krum said is true were true, this motion should still
21 be granted. And it's not --
22 THE COURT: I disagree with you, Counsel. Anything
23 else?
24 MR. TAYBACK: Well, I would say yes. I would say
25 why I think that that's true, which is to say that as -- from

1 the first principles it's true that if it's the -- if it's the
2 -- just because it is the -- one of the most important powers
3 that a board has, it is one that there is a long record of
4 allowing boards the entire latitude to terminate for no reason
5 at all. And how it can ever be a breach of fiduciary duty
6 when the law provides unequivocally that right to boards of
7 directors is the reason that there is no case that supports
8 the plaintiff's claim. The best case that he cites concludes
9 with the language, "Plaintiffs have neither articulated a
10 theory as to how the plaintiff's removal as president and
11 director could be a basis for fiduciary duty claims, nor
12 proved any such breach." And that's the best case they cite.
13 The fact is the law is clear and unequivocal that there is no
14 basis for a breach of fiduciary duty claim in Nevada and
15 frankly or any other jurisdiction for this action.
16 MR. FERRARIO: Your Honor, just very quickly.
17 The bylaws parrot the employment contract, clearly
18 states that Mr. Cotter held the position at the pleasure of
19 the board of directors, could be terminated with or without
20 cause at any time by a vote of not less than the majority of
21 the entire board at any meeting thereof by written consent.
22 This whole nonsense about process that we've been hearing is
23 inconsistent with the bylaws. I don't know what process Mr.
24 Krum thinks should be invoked. We haven't been able to get
25 that from him. When we asked Mr. Storey what he was talking

1 about in terms of process he was saying, well, he thought that
2 the -- this mentoring process that had to be employed by the
3 board prior to Mr. Cotter's termination should have been
4 allowed to run its course. The fact that you have to mentor a
5 CEO or ombudsman a CEO kind of tells you what was really going
6 on there. And this is before the May event.
7 But I think the thing that's missing from Mr. Krum's
8 argument -- and he talks about this unprecedented effort by
9 the board to try to resolve this familial dispute, and he
10 talks about that, but he doesn't go to the next step. The
11 familial dispute was impacting the operation of the company.
12 When that happens the board then has to deal with that. And
13 that's what they did here. But he doesn't say that. He acts
14 like the board came in as mediator for no reason to try to
15 settle the Trust case. That's not what happened. He concedes
16 that this familial dispute was impacting the operation of the
17 company. So the board looked at its options and then what is
18 in the record happened. And at the end of the day the board
19 made a very basic decision, I'm going -- because the family
20 dispute would not resolve despite the parties' best efforts,
21 despite Mr. Krum's client at once agreeing to the terms of the
22 deal and then reneging, despite his client enlisting the
23 services of Uncle Ed and trying his damnedest to get this
24 thing resolved, he couldn't do it. So the board then is left
25 with the same situation that occurred before all of these

1 meetings, three siblings who are fighting. And the board
2 picks two Cotters over one. That's it. And that -- there's
3 no case that he's -- he always talks about law, law. Where's
4 the law that that decision could ever be challenged? And then
5 what's the remedy he says that the Court could fashion?
6 Because no matter how you cut it you would be substituting
7 your judgment for the judgment of the board there, who is
8 sitting there living with this day to day. And they look at
9 it and because the underlying dispute doesn't resolve, they
10 cannot afford, consistent with their fiduciary duties, to let
11 that dispute impact the operation of this company. Had they
12 done that, they would have probably gotten sued by T2 or by
13 other folks, because then you would have heard the claim, you
14 should have taken action. The only action that's left when
15 the parties can't voluntarily resolve it is you have to do
16 what they did, fire one, fire two, or fire all three. I
17 submit they made the prudent decision. They took the ones
18 with the most experience.
19 So matter how Mr. Krum wants to sidestep the bylaws,
20 no matter how he wants to sidestep Nevada law, no matter how
21 many times he's says there law to support this and then
22 doesn't cite it, the simple fact of the matter is the board
23 could have done this by simply calling a meeting and saying
24 nothing other than, Mr. Cotter, you're terminated without
25 cause, we don't have to have a reason to do it.

1 And so the only way this claim could survive is for
2 this Court to rewrite the bylaws, rewrite Nevada law, and
3 import a doctrine into this case, the entire fairness, that
4 has no application -- I can't find a case in Nevada, and I
5 argued this in a case in front of Judge Scann a couple years
6 ago, whether that doctrine even has any application in Nevada.
7 It's an open question. He cites to 78.140 that deals with
8 restrictions on transactions involving interested directors.
9 What he doesn't say, that even in that context in Nevada if
10 those holding a majority of the voting power approve or ratify
11 the interested transaction, it's good. Nevada's adopted that
12 statute. So even if this was an interested party -- even if
13 there was lack of independence, the majority of those
14 controlling the voting power voted to ratify that act. So
15 there's just nowhere for him to turn here.
16 So, you know, again, Judge, these decisions have to
17 apply just beyond this case. And, you know, of all the things
18 that he's alleged here, from the beginning we've been saying
19 this isn't a derivative case, there's no case he cites.
20 Justice Steele certainly didn't come up with any. I don't
21 remember Justice Steele saying for every wrong there's a
22 remedy, because I don't know what the wrong is here. You got
23 fired. You signed a contract that said they could fire you.
24 That's not a wrong. And if he thinks it's wrong, he's got a
25 remedy. Go to the arbitration. Here he's a derivative

1 plaintiff. There's no wrong to the company for the company
2 following the bylaws, following Nevada law, following the
3 terms of the contract, and on these facts, taking them as he
4 said, where people are fighting and its infecting the
5 operation of the company for the board to say, I'm picking
6 these two over that one. It's literally that simple.
7 THE COURT: Okay. Are you done?
8 MR. FERRARIO: Yes.
9 THE COURT: All right. The motion's denied, as
10 there are genuine issues of material fact and issues related
11 to interested directors participating in a process.
12 If I could go to the motion in limine related to
13 plaintiff's experts.
14 So, for the record, in September of 2013 I spoke on
15 a panel called Multijurisdiction Case Management Litigation
16 Being Pursued in Multiple Forums with Chief Justice Myron
17 Steele. I don't think it affects my ability to be fair and
18 impartial, but I make that disclosure to you just in case you
19 need it.
20 MR. SEARCY: Thank you, Your Honor. I'll try and go
21 through the four experts that were touched upon in our motion
22 in limine fairly briefly, because it's getting late.
23 THE COURT: And I've got to find them in the book.
24 So you keep going.
25 MR. SEARCY: Okay. If the Court has any questions,

1 please --
2 THE COURT: You keep going. No. There are no Post-
3 It notes on this one.
4 MR. SEARCY: All right. I'll start --
5 THE COURT: I went through the Post-It notes
6 already.
7 MR. SEARCY: I'll start with Justice Steele. His
8 name has come up a couple of times today. I took the
9 deposition of Mr. -- of Chief Justice Steele, the former chief
10 justice.
11 THE COURT: They get to keep their titles when they
12 retire here in Nevada.
13 MR. SEARCY: And by his own admission Chief Justice
14 Steele agreed that he was submitting a legal opinion. It's
15 not meant to assist a jury. What Chief Justice Steele did is
16 he took the facts that were given to him by plaintiff and he
17 assumed that they were true, and then he provided a legal
18 analysis under Delaware law as to how he thought that might
19 come out in a Chancery Court. He didn't look to Nevada law,
20 he doesn't claim any expertise in Nevada law, he didn't
21 conduct any research of Nevada law. His opinion in short,
22 Your Honor, is really a research memo that's aimed to assist
23 you, the Court, and not the jury. And because of the fact
24 that Chief Justice Steele in a prior opinion simply assumed
25 the facts, didn't have any expertise on the facts, didn't

1 offer any opinion on the facts, didn't even go to ultimate
2 facts, another court has already excluded an opinion just like
3 the one he submitted here.
4 Now, Your Honor, if I may, from his deposition
5 testimony Chief Justice Steele wrote -- or he said -- he
6 testified about his opinion, "I'm definitely not impertinent
7 enough to suggest what the Nevada court should do, nor am I
8 suggesting that they would follow this pattern that's used in
9 Delaware, just that this opinion is designed to be helpful to
10 the court should the court choose to look at it and understand
11 how the analysis would occur in Delaware. That's all. That's
12 all I was asked to do." So, Your Honor, he's not providing
13 anything that would be helpful to a finder of fact, and he's
14 not providing anything to the Court that the Court can't do on
15 its own. That's Chief Justice Steele.
16 THE COURT: So let's do all of them together.
17 MR. SEARCY: Okay.
18 THE COURT: Okay. Because then I'm going to ask Mr.
19 Krum questions. Because I was wrong. I did have a Post-It
20 note. Luckily, I found it.
21 MR. SEARCY: Moving now to the damages expert that
22 plaintiff has put forth, that's Dr. Duarte-Silva, Dr. Silva --
23 or Duarte-Silva has literally just thrown out numbers. He's
24 thrown out two numbers to say that the EBITDA of the company
25 and the share price of the company haven't risen as much as he

1 thought that they might if you compare them to what he
2 considers to be the comparable companies. He doesn't engage
3 in any sort of statistical methodology here, Your Honor. But
4 more importantly, he doesn't seek to opine on any causal
5 connection between the numbers that he throws out and what is
6 being examined, namely, that is the term of Ellen Cotter as
7 CEO. And when he was asked at his deposition, do you have any
8 opinion on causation, he said, no. Do you agree that your
9 opinion is not statistically significant; he agreed with that,
10 Your Honor. So he has literally just thrown out large numbers
11 without any causation connecting those numbers to any
12 allegations in this case that will have no other purpose than
13 to prejudice the jury. And, Your Honor, for those numbers to
14 be presented to a jury plaintiff has to show that they
15 encompass, they involve some sort of causation of damages.
16 Otherwise it's just prejudicial. Otherwise it's irrelevant.
17 And, Your Honor, that's Dr. Duarte-Silva. Do you have any
18 questions on Dr. Silva?
19 THE COURT: Nope. So let's go to Spitz.
20 MR. SEARCY: Spitz. He's the expert on the CEO
21 search. Mr. Spitz does not provide anything more in his
22 opinion other than a subjective opinion. He doesn't cite to
23 any literature about CEO searches, he doesn't cite to any
24 standards, he doesn't even cite to his own personal
25 experience, other than the occasional anecdotal way about how

1 a CEO search would be conducted. Instead, what Mr. Spitz does
2 is he provides credibility determinations, questioning the
3 motives of various persons on the CEO search committee,
4 various persons on the board, of Ellen Cotter that he's -- he
5 has no expertise and shouldn't be able to provide those types
6 of opinions anyway about the credibility of witnesses for a
7 jury. He wasn't there, he wasn't involved in the CEO search.
8 That's completely inadmissible. And in terms of what he
9 opines on for the CEO search, notwithstanding his prior
10 experience at Korn Ferry, he doesn't provide you with any
11 standards, any methodologies, anything that shows a basis of
12 expertise by which to judge the CEO search that was conducted.
13 Finally, Your Honor, that's expert Nagy. He was
14 offered as a rebuttal expert. He is clearly, however, just a
15 late-submitted report. His opinion went to the qualifications
16 and salary of Margaret Cotter. That's not anything that was
17 submitted in Mr. Osborne's report that he is supposedly
18 rebutting. Mr. Osborne's report was instead confined to a
19 one-time payment that was made to Margaret Cotter. Mr. Nagy's
20 report clearly is not a rebuttal to that, and therefore should
21 also be excluded as untimely. Thank you.
22 THE COURT: Are we still talking about Mr. Finnerty?
23 MR. SEARCY: Mr. Finnerty -- we've withdrawn our
24 motion with regard to Mr. Finnerty.
25 THE COURT: Thank you.

1 For what purpose are you offering Chief Justice
2 Steele's conclusions?
3 MR. KRUM: The very same purposes for which they are
4 offering two defendants -- two experts, Mr. Osborne and Mr.
5 Klausner. And the difference between Chief Justice Steele on
6 one hand and those two gentlemen on the other is that the
7 analytical framework Chief Justice Steele offers is based on
8 Delaware, and the analytical framework their experts offer is
9 based on, so they say, industry practice. So Chief Justice
10 Steele is not opining about Nevada law, he's not opining about
11 the ultimate facts. The assertion that he was unfamiliar with
12 the facts is incorrect, staggering, because he testified about
13 what he did, which was read depositions, including the four
14 half-day volumes of Mr. Kane and read the summary judgment
15 motions. But, of course, that postdated his initial report.
16 But what he does, Your Honor, is he explains an analytical
17 framework based on Delaware law that could have been used by
18 the director defendants at the time they were engaging in the
19 activities in which they engaged, and could be helpful to the
20 finder of fact, I submit, Your Honor, far more so than some
21 assertion that, the boards on which I haven't done it this
22 way, or, I haven't heard about it, or, this is what industry
23 practice is, which is what Osborne and Klausner are saying.
24 It's undisputed that Nevada courts, like many other
25 jurisdictions, may and do look to Delaware corporate law and

1 jurisprudence for guidance in the absence of a Nevada law on
2 point. You're going to -- we're going to have instructions
3 about what Nevada law is, presumably, right?
4 THE COURT: Yes, we are.
5 MR. KRUM: And this is in effect opinions with
6 respect to how it might have been done using a framework. But
7 that doesn't go to the instructions, and as our summary
8 judgment papers demonstrated, I hope, Nevada law is consistent
9 with Delaware law insofar as there is Nevada law. It's an
10 issue about which we've disagreed from time to time today.
11 The motion with respect to Chief Justice Steele also
12 asserts some erroneous legal conclusions that are repeated in
13 the summary judgment motion. And they challenge his opinions
14 that are not about what Nevada law is by erroneous assertions
15 of Nevada law. But the short answer, Your Honor, is he's
16 speaking to exactly the same issues as Osborne and Klausner,
17 which is what should the directors have considered, did they
18 do it in a manner consistent with one case Delaware law and
19 practice and another case industry practice, whatever that is,
20 which I'll find out, I hope, when I take their depositions.
21 THE COURT: Okay. Anything else?
22 MR. KRUM: Not with respect to Chief Justice Steele.
23 THE COURT: Okay. Duarte-Silva.
24 MR. KRUM: Duarte-Silva. Exact same thing. He
25 analyzed the same set of events, namely, the performance of

1 RDI stock following the termination of plaintiff and under the
2 guidance of Ellen Cotter as CEO that were analyzed by
3 defendants' expert Richard Roll. The two of them reached
4 different conclusions about what that performance showed.
5 According to Professor Roll, based on his conclusions about
6 that performance, there were no damages, there was no
7 irreparable harm. Dr. Duarte-Silva says otherwise. In point
8 of fact, he comes up with a number, which obviously has
9 troubled the defendants.
10 So what we have here, Your Honor, is clearly expert
11 testimony that the defendants acknowledge is appropriate,
12 because they're offering the very same testimony but using a
13 different methodology and reaching a different conclusion.
14 And it's not appropriate, I respectfully submit, to make a
15 decision on a motion of this nature that a methodology is
16 unacceptable without hearing the witness himself describe it.
17 And we haven't had that happen. So that's Dr. Duarte-Silva.
18 Richard Spitz. This is -- this is pretty easy,
19 except for I don't have Mr. Osborne's report here, so I can't
20 cite you to the exact line and page. But I can certainly
21 provide it, because it's highlighted sitting in my office or
22 my litigation bag or perhaps my closet when I unpacked the bag
23 and got on the next plane.
24 Defendants effectively have invoked NRS 78.138.2(b)
25 with respect to the CEO search by their use of an outside

1 search firm, Korn Ferry. Setting aside the factual issues
2 about whether they themselves undermine that by effectively
3 firing Korn Ferry and aborting the search, Mr. Spitz is
4 offered to testify about whether the search was conducted in a
5 manner in which he as a search executive, a former Korn Ferry
6 executive, would have conducted it and ultimately as to
7 whether as a search process it succeeded or failed. And, yes,
8 Mr. Ferrario's right, process is important. That's the basis
9 on which the individual defendants are going to claim they
10 fulfilled their duty of care. And in this instance Mr. Spitz
11 is going to speak to the failed process. So he's going to go
12 to the issue of their invocation of NRS 78.138.2(b). And I'm
13 sure they're going to claim -- I know they're going to claim,
14 we've seen it in the briefing, well, we didn't really
15 terminate the process and it was all fine and we just made a
16 decision and so we stopped. Well, okay. He's going to speak
17 to how CEO searches go. We have percipient witness testimony
18 from the Korn Ferry witness, which is, interestingly, pretty
19 consistent with Mr. Spitz's opinions, but he goes to an issue
20 that they're going to raise in this case. They have raised
21 it. That's the point -- that was the very point from the
22 outset of hiring a search firm.
23 Mr. Nagy -- I misspoke, Your Honor. It's not Mr.
24 Spitz, it's Mr. Nagy who responds to a particular paragraph or
25 two in the Osborne report. Mr. Nagy's an expert on real

1 estate matters, including with respect to the qualifications
2 of executives with responsibilities for development of real
3 estate. As of March 2016 that's Margaret Cotter.
4 One of the matters as to which the director
5 defendants' conduct is challenged is their decision to hire
6 Margaret Cotter in March 2016 as the senior executive at RDI,
7 a public company, responsible for the development of its
8 valuable New York state -- New York City real estate. And
9 this is in one of their summary judgment motions, Your Honor,
10 under 6, I think, to compensate her in a manner that
11 apparently reflects those responsibilities. And the Osborne
12 report does in fact have a paragraph or two that refers to
13 hiring Margaret Cotter in that position and paying her the
14 money she's being paid. And the director defendants are going
15 to defend their decision by relying on a third-party
16 compensation consultant that advised the compensation
17 committee regarding salary for the position. They, you know,
18 had committees do it, they had the board approve it, and Mr.
19 Osborne talks at length about this wonderful process. So Mr.
20 Osborne's with Mr. Krum and not Mr. Ferrario about how
21 important process is. And he talks about the process, he
22 talks about the position, and among other conclusions Osborne
23 reaches in his original expert report is that the compensation
24 paid to Margaret Cotter is appropriate.
25 Well, that's -- what am I going to do, hire somebody

1 that says the compensation committee exercise was a ruse? No.
2 But how about this? Starting in the fall of 2014 all the way
3 up to March of 2015 when they made the decision there had been
4 discussions about what role, if any, Margaret Cotter would
5 have in terms of the city's [sic] valuable New York City real
6 estate. And from the fall of 2014 through at least the spring
7 of 2015 most, if not all, of the five non-Cotter director
8 defendants had articulated, orally and in contemporaneous
9 emails, the view that Margaret Cotter did not have the
10 qualifications to be the senior person in that role. As a
11 matter of fact, undisputed fact, Your Honor, she has no prior
12 real estate development experience. What is her job? She
13 supervises their live theater operations, which amount to next
14 to nothing. It's not even in the company's description of its
15 two principal businesses. And she was there with her father,
16 now deceased, in the early pre-development stages.
17 So Mr. Nagy's opinion is that Margaret Cotter is not
18 qualified to hold the position she holds and that the
19 compensation paid to her therefore is not appropriate. And he
20 says, as to Osborne, Osborne neglects to address and analyze
21 her qualifications or lack of qualifications. He says it's
22 industry custom and practice for the two, qualifications and
23 compensation, to be closely linked, it's my opinion that she's
24 not qualified, and because she's not qualified -- I'm
25 paraphrasing -- her compensation is not proper. He directly

1 disagrees with one of the conclusions of Mr. Osborne.
2 THE COURT: Anything else?
3 MR. KRUM: No. Thank you.
4 THE COURT: Okay. Anything else?
5 MR. SEARCY: Yes, Your Honor.
6 A couple of points that lack of foundation raised in
7 their argument just now in just responding to my reply, first
8 there was the statement that Chief Justice Steele, the former
9 Vice Chancellor, was familiar with the facts of the case. The
10 deposition showed otherwise. And if I may also just read to
11 you this portion of his deposition testimony, he assumed
12 simply for this purpose, for his expert analysis that the
13 allegations in the complaint were true. It's Exhibit A to our
14 reply, Your Honor, at page 44, 19, through 45, 2, where I
15 asked him the question, "I take it that in looking at the
16 pleadings you assumed that the allegations contained in the
17 pleadings were true; correct?" Answer, "Yes, that's correct."
18 "As you might on a motion to dismiss, in other words?" "Very
19 similar perhaps in Delaware, not quite as strict as a motion
20 to dismiss, but very similar."
21 So it's clear that what Chief Justice Steele did is
22 he provided a legal opinion based upon assumed facts about
23 Delaware law. It's not going to assist a jury, and, to be
24 honest, Your Honor, I don't think it will assist you any more
25 than having a clerk do the same research if you're called upon

1 to look at an issue of Delaware law for this case. So Chief
2 Justice Steele's opinions should be excluded. He should not
3 be able to provide testimony in this case.
4 With respect to Dr. Duarte-Silva there was never any
5 statement made in the opposition just now or otherwise that
6 Dr. Duarte-Silva has any information about causation. He
7 doesn't show any causation, any connection between the big
8 numbers that he throws out and any of the allegations in this
9 case. And he doesn't even purport to. He admits that he
10 doesn't have any information and not offering any opinion
11 about causation of any damages.
12 With respect to Mr. Spitz you heard the argument.
13 Mr. Spitz doesn't offer any analysis, he doesn't offer any
14 methodology. You heard Mr. Krum make reference to a failed
15 process. There's nothing, however, in Mr. Spitz's report that
16 would lead you to know what a successful process would be,
17 what's the methodology for that, what's the analysis for how a
18 CEO search under Mr. Spitz's view is supposed to go. There's
19 no comparison there. It's strictly for Mr. Spitz a
20 credibility determination that he's making on the witnesses in
21 this case. That's inappropriate. Mr. Spitz's opinions should
22 also be excluded.
23 Finally, Mr. Nagy, notwithstanding the fact that
24 plaintiff said he didn't have the papers here to show that it
25 was actually a rebuttal, there wasn't a showing in their

1 opposition, either, Your Honor, that Mr. Nagy's opinion was
2 anything other than a late opinion and not a rebuttal to
3 anything that was in Mr. Osborne's report. And so, as a
4 result, Mr. Nagy's opinion should also be excluded.
5 THE COURT: Thanks.
6 The motion is granted in part. With respect to
7 Chief Justice Steele, he may testify the limited purpose of
8 what appropriate corporate governance activities would have
9 been, included activities where directors are interested.
10 It's on his list of things. He's got it in his list. Let me
11 read it. Because I read it from your motion.
12 MR. FERRARIO: Did you read his report?
13 THE COURT: I didn't read his whole report. I read
14 your motion. So here's what you say in your motion. I'm on
15 page -- hold on, let me get there -- the one you did in small
16 type. It's on page 6. To the extent he is talking about the
17 interested and disinterested directors and the process that
18 would be followed based upon the governance of an appropriate
19 company for disinterested and interested directors, that
20 testimony is permitted. And every one of these goes to that.
21 I'm on page 6.
22 MR. KRUM: That's from his report, Your Honor.
23 That's what they're quoting.
24 THE COURT: I know it's from his report. That's why
25 I read that. Because it says, "Based on the facts as I

1 understand them," which I assume to be Chief Justice Steele
2 and not Mr. Ferrario.
3 MR. FERRARIO: We're lost here, Judge. Sorry.
4 THE COURT: Okay.
5 MR. FERRARIO: Where are you at?
6 THE COURT: So you understand how at least today
7 I've told you that the issues as to whether people are
8 interested or disinterested on particular actions or
9 transactions is a factual issue that we may have to resolve
10 later. The framework of what the appropriate activities for
11 someone who is interested or disinterested are appropriate for
12 Chief Justice Steele to talk about, and they appear to appear
13 here on 1(a), 1(b), 2, 3, and 4. Because every single one of
14 those talks about independent and disinterested or interested.
15 MR. FERRARIO: What Justice Steele says is if the
16 jury finds that --
17 THE COURT: That is correct.
18 MR. FERRARIO: -- then --
19 THE COURT: "So here's an appropriate corporate
20 governance activity for a corporation to find if directors are
21 interested. You don't have the interested directors
22 participate." Next step. "Okay. So how do you evaluate if
23 they're interested or not?" "You do an evaluation to
24 determine if they have a financial interest, if they have some
25 other binding interest.

1 MR. FERRARIO: That's under Delaware law, though.
2 THE COURT: It's under Nevada law, too.
3 MR. FERRARIO: No. He's only testified under
4 Delaware law.
5 THE COURT: Then tell me why these conclusions are
6 not the same as what they'd be under Nevada law. I understand
7 your problem and your concern, but the framework is --
8 MR. FERRARIO: Well, I'll tell you what. There's
9 not a case in Nevada that uses the entire fairness doctrine.
10 Not one.
11 THE COURT: It doesn't use that term. It says you
12 evaluate the entire transaction.
13 MR. FERRARIO: What's the transaction?
14 THE COURT: In this case there are multiple
15 different activities that we may be submitting questions to
16 the jury on.
17 MR. FERRARIO: What's the transaction? Just speak
18 to terminating the CEO. Is that a transaction?
19 THE COURT: Yes.
20 MR. FERRARIO: Then who's on --
21 THE COURT: It's an activity.
22 MR. FERRARIO: Who's on what -- wow. Where does
23 activity show in the statute or in a case? This is part of
24 the problem, Judge.
25 THE COURT: So, Mr. Ferrario, I'm back to the we're

1 going to give the jury special interrogatories, I'm going to
2 let Chief Justice Steele and your expert testify about what
3 the appropriate activities for a company to use when they are
4 faced with a situation of interested or disinterested
5 shareholders and how they should govern themselves if we get
6 to that point.
7 MR. FERRARIO: I think the problem I'm having here
8 -- and I listened in for most of Justice Steele -- all of his
9 deposition, quite frankly, and Mr. Searcy took it. It's this
10 Court's role to say what law applies, not Justice Steele, and
11 not an expert.
12 THE COURT: So do you want me to exclude your
13 experts who are talking about industry practices? Because
14 it's exactly the same thing on what appropriate corporate
15 governance is.
16 MR. FERRARIO: Ah. No, that's different.
17 THE COURT: No, it's not different.
18 MR. FERRARIO: It's a completely different inquiry,
19 because Justice Steele only opined on Delaware law, not
20 specific practices employed -- Justice Steele's never been on
21 a board. The only board he said he was on was some volunteer
22 board, I think it was a volunteer board for what, a hospital
23 or something?
24 MR. TAYBACK: Right.
25 MR. FERRARIO: He didn't come at this from an

1 industry practice standpoint. He didn't say, I serve on a
2 number of boards. He said, I am giving you --
3 THE COURT: It doesn't have to be industry practice.
4 What I'm trying to say is I am comparing this to your industry
5 practice experts. If you don't want any of them to testify,
6 then I'm happy to go there. If your position is that I
7 shouldn't let any of those folks testify, then we'll handle it
8 through jury instructions. But that's not the position you're
9 presenting me. You're presenting me in a case where you have
10 experts on industry standards, and am I going to exclude
11 someone who has information that may be of assistance to the
12 jury in a limited framework, not the entire framework, not the
13 memo, not what the law is, but what the options for a board
14 are under the law.
15 MR. FERRARIO: But, again, the threshold issue there
16 is what's the law. That's Your Honor's job.
17 THE COURT: Absolutely it's my job.
18 MR. FERRARIO: Okay. So he -- not Justice Steele.
19 THE COURT: I understand that.
20 MR. FERRARIO: So Your Honor has to say what the law
21 is, then Justice Steele would then have to give his opinion.
22 We're not there yet. That's what I'm saying. That was the
23 problem with his --
24 THE COURT: No. Let me see if I can say it a
25 different way. Boards and companies have certain corporate

1 governance structures that they're supposed to follow when
2 they have a --
3 MR. FERRARIO: I read the bylaws to you earlier.
4 THE COURT: Yeah. Well, okay. And when we are
5 faced with a situation where a board has interested members,
6 whether they're directors or shareholders participating in a
7 vote, there are certain things that need to happen.
8 MR. FERRARIO: Depending on what the deal is.
9 THE COURT: Sometimes.
10 MR. FERRARIO: I mean, we have NRS 78.140 that talks
11 about interested party transactions.
12 THE COURT: Yes, there are some --
13 MR. FERRARIO: That Justice Steele never read, by
14 the way.
15 THE COURT: There are some interested-party
16 transactions that are permissible under bylaws, but they have
17 to be disclosed interested-party transactions; right?
18 MR. FERRARIO: 78.140 dictates exactly what --
19 THE COURT: Right.
20 MR. FERRARIO: -- has to happen, and they can become
21 void or voidable.
22 THE COURT: Right. But --
23 MR. FERRARIO: I agree that that's Nevada law. He
24 didn't even read this.
25 THE COURT: But let's go back to the Schoen case,

1 okay. The Schoen case we have interested parties who may not
2 be interested in a way that people would find under NASDAQ or
3 SEC reporting requirements. But the Nevada Supreme Court
4 found that for purposes of us discussing that case, at least
5 at the pleading stage, those individuals were interested or at
6 least were alleged to be interested, where it was very
7 different than what you would see in a publicly traded case.
8 You have a similarities here with people being called Uncle
9 Ed, you have similarities in the way people are receiving
10 their primary compensation. There are similarities here that
11 lead me to believe that there are factual issues on
12 interested-disinterested which may cause many of the
13 activities that have occurred to be drawn into evaluation by
14 an ultimate finder of fact.
15 My position is that they need to have expert
16 opinions if they're going to evaluate what an appropriate
17 board would do when they're faced with those interested-
18 disinterested conflicts in making a decision. We can either
19 have experts testify, or you can not have experts testify. If
20 you don't want to have experts testify, then I won't let
21 Justice Steele testify, and we won't have your guys testify.
22 If you want experts to testify, he's going to testify, too;
23 but he's going to be limited to appropriate corporate
24 governance options when faced with interested-disinterested
25 transactions, because that's what he talks about in his

1 report.

2 MR. FERRARIO: I followed you all the way --

3 It's their experts, so they'll decide whether they

4 want to call these other fellows.

5 -- until you got to the point of [unintelligible].

6 If you're saying that the actions of the board will now be

7 evaluated under 78.140 --

8 THE COURT: I didn't say that.

9 MR. FERRARIO: I know. But that's where -- that's

10 where -- I'm with --

11 THE COURT: You're making me pull out books.

12 Because, see, I don't remember numbers. Hold on.

13 MR. FERRARIO: I was with you up to the point where

14 what law is going to govern here. Because if it's 78.140, I

15 have a framework of which I can look and we can then argue

16 that.

17 THE COURT: Hold on a second. Let me go to 78.140

18 so you and I are talking about the same thing.

19 78.140 is not exclusive. Remember, the Schoen case

20 goes beyond that. It's not exclusive. Or Americo or whatever

21 we call it in the second or third case.

22 MR. FERRARIO: Americo, Schoen, whatever. I don't

23 think --

24 THE COURT: Whichever decision of the group of

25 multiple decisions it is.

1 MR. FERRARIO: But that was a completely -- that was
2 a different fact pattern. It had --
3 THE COURT: Absolutely.
4 MR. FERRARIO: It had nothing to do with hiring and
5 firing of a CEO.
6 THE COURT: It was a very different fact pattern.
7 I'm not saying it's the same. I don't have a lot of law in
8 Nevada. I have to be instructed on the law I have, and then
9 I've got to make a jump to where I'm going to get based on the
10 law I have. And --
11 MR. FERRARIO: Well, actually, I mean, you could
12 take another contrary position. I know you heard this in the
13 Wynn-Okada case, but Nevada actually does have a pretty robust
14 statutory scheme that was put in place to be more protective
15 than Delaware, to actually shield decisions from courts, you
16 know, back in '91 and I think '97.
17 THE COURT: Uh-huh. We did.
18 MR. FERRARIO: So we actually do have a robust body
19 of law here, and it's called NRS 78. So that's why I point to
20 78.140. If we're talking about --
21 THE COURT: Mark, we all look at that, because
22 that's what we look at. That's what governs our corporations.
23 That's our corporate --
24 MR. FERRARIO: I agree.
25 THE COURT: But we have case decisions from our

1 Nevada Supreme Court that supplement the statutory language.
2 So I've made my ruling on that. If there's
3 something else you want to talk about, I can talk about it as
4 soon as I finish my 4:30 conference call with whichever group
5 of folks needs to talk to me.
6 MR. SEARCY: Your Honor, if I may, we did have an
7 additional point on Chief Justice Steele. However, I don't
8 believe you rendered an opinion or gave a ruling on any of the
9 other experts.
10 THE COURT: It's denied on all the other experts.
11 MR. SEARCY: Denied on all the others. All right.
12 THE COURT: So did you want to ask me another
13 question on Justice Steele?
14 MR. SEARCY: No. But go ahead.
15 MR. RHOW: I was just going to say we -- actually,
16 Mr. Gould, on Mr. Gould's --
17 THE COURT: You joined in that motion.
18 MR. RHOW: I know. But he also has his separate
19 motion for summary judgment.
20 THE COURT: I'm not on your motion for summary
21 judgment yet. It's still on my list.
22 MR. RHOW: Okay. I'm just making sure. You're
23 asking if there's other things.
24 THE COURT: Well, yeah. There's a lot of other
25 things.

1 MR. RHOW: Understood.
2 THE COURT: But I'm running out of time.
3 MR. KRUM: Your Honor, what's going to be next? I'm
4 running out of gas. I need to prepare.
5 THE COURT: I'm going to go to the Ellen Cotter
6 appointment as CEO and compensation motion.
7 MR. KRUM: Okay. Thank you.
8 (Court recessed at 4:27 p.m., until 4:40 p.m.)
9 THE COURT: So we're on the issues related to
10 appointment of Ellen Cotter, compensation of Ellen and
11 Margaret Cotter, and those issues. And I think there's two or
12 three different motions that are all interrelated on these.
13 MR. TAYBACK: These would be Motions 5 and 6, and
14 there is a number of issues that are all interrelated.
15 THE COURT: Okay.
16 MR. TAYBACK: So I'll --
17 THE COURT: I'm not big on numbers, I'm big on
18 subjects.
19 MR. TAYBACK: I understand. And I'll --
20 THE COURT: So it's hard for me on numbers.
21 MR. TAYBACK: I'll address them. There's probably
22 four or five issues.
23 THE COURT: Okay.
24 MR. TAYBACK: Our motion that we entitled Number 5
25 was the CEO search and appointment ultimately hiring of Ellen

1 Cotter. You know, I'll be relatively succinct here, which is
2 to say it's the -- it's the tag-along to the firing of Jim
3 Cotter, Jr. Like that, there's no case which finds a board
4 liable for hiring a long-time executive who runs -- who has
5 run for 16 years at the time of her hiring one of the primary
6 two business lines of the company and had served as an interim
7 CEO such that the board actually saw how she performed. And
8 every director, excluding the plaintiff and Ellen Cotter
9 herself, supported her hiring. The only attack on that
10 decision is this kind of ongoing what I'll call amorphous and
11 shifting claim that directors lacked independence. He hasn't
12 articulated, other than the general claims of lack of
13 independence, that a majority of the directors had some
14 specific interest in the hiring of Ellen Cotter or lacked
15 independence.
16 THE COURT: It's the majority of directors
17 participating in --
18 MR. TAYBACK: Yes.
19 THE COURT: -- in a process, whether it's a decision
20 or an action, that I have to evaluate --
21 MR. TAYBACK: Correct.
22 THE COURT: -- not the majority of all the
23 directors.
24 MR. TAYBACK: Correct.
25 THE COURT: Okay.

1 MR. TAYBACK: And so you're excluding only plaintiff
2 and Ellen Cotter. The remainder of the directors -- okay.
3 And the question, though, is what's the allegations that say
4 that the vote of Michael Wrotniak, to take an example, or any
5 director on any issue -- and now I'm going to look at this
6 particular issue -- amounted to a breach of fiduciary duty.
7 And there just isn't -- there isn't fact -- there aren't facts
8 that have been proffered that say, you know what, with respect
9 to this decision this director was -- lacked independence
10 because of this. We've heard the generalized allegations that
11 Guy Adams supported Margaret and Ellen Cotter because he
12 thought that he might get paid, we've heard generalized
13 allegations about some of the others, Uncle Ed Kane; but those
14 generalized allegations of interest don't relate to the
15 transaction that is being looked at. And I'll call it a
16 transaction even though it's not a transaction, it's a
17 decision.
18 THE COURT: And that's why I tried to use all sorts
19 of different words, and I don't know which word to use, but
20 it's an activity of some sort.
21 MR. TAYBACK: I agree with that. I do think that
22 there's a difference, and so I've tried to be careful to not
23 call it a transaction, because I think the law --
24 THE COURT: Yeah. Because they're not really
25 transactions.

1 MR. TAYBACK: Because they're not. And I think the
2 law is different when it's a transaction, because the
3 framework for evaluating interestedness, frankly, has more
4 applicability when it's a transaction. That's what I say.
5 And I see you shaking your head, but I do --
6 THE COURT: Yeah. I agree with you. It's a hard
7 issue. That's why we're having this long afternoon and I
8 didn't make you come on a motion calendar where you had
9 10 minutes to argue all 40 or so motions you filed.
10 MR. TAYBACK: The second point that I would make,
11 and really the last point I would make, on the identification
12 and hiring of Ellen Cotter is that the -- that the nature of
13 the claim really only sounds, I think, in corporate waste.
14 And the standard for determining corporate waste, that is to
15 say, the decision I think is really I think inarguable that
16 there's the kind of latitude one would have on these
17 undisputed facts given who she was and her connection to the
18 company that that's a reasonable decision.
19 The only question is this hiring and then
20 termination of the external search firm, Korn Ferry. And
21 there's an argument that's --
22 THE COURT: In mid search.
23 MR. TAYBACK: In mid search -- well, not mid search.
24 At the point of which they made the decision.
25 THE COURT: Near the end of the search, yeah.

1 MR. TAYBACK: At the point at which they made a
2 decision. And whether there's -- I mean, I don't -- haven't
3 seen any case or I haven't seen any theory where a company
4 ever has an obligation to hire a search firm or to conclude
5 the search once they've identified a candidate that they want
6 to hire. The fact is that happens all the time. But whether
7 it does or doesn't doesn't matter. Because, if you look back
8 even to the plaintiff's hiring, there was no search. There
9 wasn't a search firm at all. He was hired because he was the
10 son of the founder. And he doesn't seem to be complaining
11 about that. And so I don't know that the legal term is a pot-
12 kettle issue, but it's definitely the pot calling the kettle
13 black. The fact is they engaged an indisputably reputable
14 search firm, they engaged in a search, and they decided on the
15 sitting CEO, who they always are going to know better than an
16 external candidate. That's not something that can be second
17 guessed. And I don't think on these facts it should be second
18 guessed. And to the extent it's a corporate waste claim the
19 standard, as you well know, is quite high for that.
20 Do you want me to address the other issues, as well,
21 while I'm up here?
22 THE COURT: Yeah. Because they're all interrelated.
23 MR. TAYBACK: Okay. The I'll call them the other
24 four issues which are really the subject of our Motion
25 Number 6 is the estate's exercise of options, the appointment

1 of Margaret Cotter, compensation for Ellen Cotter and Margaret
2 Cotter, and the -- there was an additional compensation voted
3 for Margaret Cotter and Guy Adams.
4 Just to take them in order, with respect to the
5 exercise of the -- the estate's exercise of options plaintiff
6 really cites zero evidence. There's additional evidence that
7 he's seeking regarding the advice of counsel upon which two
8 directors sought. I don't know whether Your Honor's ruling
9 with respect to 56(f) is going to apply here, but it would
10 seem logically that your prior rulings probably dictate how
11 you're going to come out on this one.
12 THE COURT: Maybe.
13 MR. TAYBACK: So I'm not going to spend much time on
14 that -- or any more time. But I think that in fact the
15 evidence, the undisputed evidence that's proffered supports
16 summary adjudication of that as an issue.
17 With respect to the appointment of Margaret Cotter
18 if you now say that it's the board's ultimate fiduciary duty
19 to shareholders, including in this case this one shareholder
20 who's been the terminated CEO, to not only evaluate the
21 board's exercise of its fiduciary duties with respect to the
22 hiring of the CEO or firing of a CEO, but now to subordinate
23 executives, I think you're really entering the realm of
24 micromanagement of a company.
25 The challenge here is she wasn't qualified because

1 she hadn't engaged in sufficient real estate-related
2 activities. The fact is, and the undisputed facts are, she'd
3 been affiliated with the company as a consultant through her
4 own -- her own consulting entity that was by contract with the
5 company had been running their live theater business for
6 years, for 15 years, I think. Even though he just -- said in
7 a prior motion plaintiff's lawyer said, well, the live theater
8 business isn't even one of the two main lines, the fact is
9 when he tried to go around or fire Margaret Cotter because he
10 believed she mismanaged other litigation related to a show
11 called "Stomp," the fact is he described -- plaintiff describe
12 it as one of the most significant lines of business that the
13 company had, which was why he was so agitated with how he
14 perceived she handled that litigation, which ultimately came
15 out successful and vindicated her position all along.
16 THE COURT: And that was the litigation over the
17 lease of the theater; right?
18 MR. TAYBACK: Exactly.
19 THE COURT: Okay.
20 MR. TAYBACK: My point is with respect to the hiring
21 of Margaret Cotter she -- the record shows and we identified
22 in our motion three or four relevant documents and facts that
23 show she had ample qualifications to be responsible for the
24 real estate side of the business. It's a reasonable decision.
25 The generalized attacks on the independence of the directors

1 who voted on that, who approved that don't warrant piercing
2 into the facts to justify, you know, this decision is right or
3 this decision is wrong at that level of decision making. It's
4 a reasonable decision under the circumstances. It doesn't
5 rise to the level of corporate waste, and it definitely does
6 not satisfy -- based on the evidence that the plaintiff has
7 proffered satisfy the high standard for director liability.
8 And that's true for all of these.
9 With respect to the compensation decisions obviously
10 the argument is the same. These are decisions made by and
11 endorsed by a subdivision or subcomponent compensation
12 committee, and it's done through ordinary channels. The
13 undisputed evidence is with respect to Ellen Cotter and
14 Margaret Cotter's compensation they hired an external firm,
15 Towers Watson. Willis Towers Watson is actually the full
16 name. And they came in they do a study and they say, we've
17 looked at these companies and we think that for this purpose
18 they are comparable and they should be -- kind of give you a
19 guide for what range you fall within. And they fall well
20 within that range. I think it's the 25th percentile. Just
21 objectively looking at that determination and the process in
22 which it made, the general allegations that a director was
23 more or less favorable to one of them on that issue doesn't
24 say that everything that happened then goes to a trial. I
25 think the undisputed facts on that issue, the compensation

1 decisions, warrant summary judgment.
2 The same is true with the one-time payment of
3 $200,000 the Margaret Cotter which was intended and identified
4 in the minutes, undisputed and not debated -- or rather
5 debated, but not disputed, to compensate her for work that she
6 did outside the consulting arrangement. She did work for a
7 period of time with respect to -- ironically, given the
8 plaintiff's contention that she didn't have experience -- with
9 the land entitlements to one of the historical buildings
10 that's being redeveloped in New York under her oversight.
11 And the same is true with respect to the single
12 payment to Guy Adams. Interestingly, plaintiff himself
13 approved a single payment to all the directors based on the
14 extraordinary work they had done up to a point in time while
15 he was the CEO. He approved that, including $75,000 to Tim
16 Storey and $25,000 to the other directors because the tumult
17 within the company and the family upon the death of the father
18 warranted the directors frankly spending a lot more time on
19 the business of the company than they had ever had to so
20 before, and it justified that payment. Not extraordinary,
21 well within the board's discretion. The generalized
22 allegations that he's put forward about people be interested
23 don't warrant overturning that. And the fact is this payment
24 to Mr. Adams, who undertook a lot of other activities later
25 on, the only difference between this one the one that he

1 previously approved is, oh, yeah, he'd been terminated. So if
2 there was anybody who was interested in that transaction that
3 had an axe to grind, it was the plaintiff.
4 I believe that addresses all of the outstanding
5 issues on the motions. So unless you have a specific
6 question --
7 MR. FERRARIO: Your Honor, I think Mr. Tayback
8 started off by saying --
9 THE COURT: Yes, I'm probably going to grant 56(f)
10 relief if Mr. Krum asks it.
11 MR. FERRARIO: Okay. And that's -- because then
12 otherwise we'll just come back and argue this, because --
13 THE COURT: I have that note here. I'm waiting for
14 Mr. Krum to say it, and then I'm going to wait for him to say
15 it and then once he says --
16 MR. FERRARIO: Fine. Then I'm going to be quiet. I
17 would point out, though, that if you listen to the dialogue
18 here -- and we'll -- I'll shut up after this.
19 THE COURT: No, you won't.
20 MR. FERRARIO: I will. It shows you why courts
21 don't get involved. These are discretionary, because this
22 isn't like --
23 THE COURT: Mr. Ferrario, I know why I don't get
24 involved in management. I've managed them in settlement
25 conferences as part of the resolution process of these things.

1 I got stuck helping manage one, so I don't ever want to do it
2 again.
3 MR. FERRARIO: Because this is not --
4 THE COURT: But I do want parties to be accountable
5 and perform in a manner that appears to be consistent with
6 Nevada law. So there may be something the parties decide to
7 do between now and when I see them next.
8 MR. FERRARIO: It's the Nevada law we're waiting
9 for, though.
10 THE COURT: But the Nevada law is the Nevada Supreme
11 Court. And I keep telling you what I think the Schoen case
12 says when you have interested directors.
13 MR. FERRARIO: Well, we're going to go back and read
14 that. This isn't --
15 THE COURT: Interested directors, lots of -- you
16 lose a lot of protections.
17 MR. FERRARIO: I think we'll be back.
18 THE COURT: And interested directors is a very
19 intense factual analysis.
20 Go.
21 MR. KRUM: Thank you, Your Honor.
22 THE COURT: Are you going to ask for 56(f) relief?
23 MR. KRUM: Yes, Your Honor.
24 THE COURT: All right. It's granted on Motions 5,
25 6, and there was one other one related to --

1 MR. TAYBACK: It's 3, Your Honor. It was related to
2 the unsolicited offer I believe is the one you identified
3 previously.
4 THE COURT: No. 5 and 6 were the only two we're
5 talking about right now; correct?
6 MR. TAYBACK: Oh. Yes. Got it. Yeah. 5 and 6.
7 THE COURT: Okay. So 5 and 6. So there. It's
8 4:54.
9 So here's the question. What do you want to do with
10 the rest of them? Is everybody agreeable the motions to seal
11 that are on calendar today can be granted because they include
12 confidential and significant financial information that needs
13 to remain protected given the company's activities?
14 MR. FERRARIO: Yes, Your Honor.
15 MR. KRUM: Yes.
16 THE COURT: Okay. So all the motions to seal are
17 granted. Or redact. Seal and/or redact.
18 So what do you want to do next? Because I've got
19 through in almost four hours not much.
20 MR. RHOW: Everyone's looking at me. I would love
21 to. I hope we're last and least in terms of liability.
22 THE COURT: Well, it's 4:55.
23 MR. RHOW: Yeah. So, look, I want it to be heard
24 and I do want to argue it, but --
25 THE COURT: Okay. Well, but you're not the last

1 one.
2 MR. RHOW: I understand. So --
3 THE COURT: I mean, I've got tons of them.
4 MR. RHOW: -- I don't want to be squeezed in --
5 THE COURT: But I am breaking at 5:00 o'clock, so
6 you've got five minutes.
7 MR. FERRARIO: Do you want just come back on the 1st
8 when we're going to come back anyhow?
9 MR. KRUM: I can't come back on the 1st.
10 MR. FERRARIO: Of December?
11 MR. KRUM: Oh. December.
12 MR. FERRARIO: I think that's when she reset --
13 MR. KRUM: Yes. Of course.
14 THE COURT: 12/1. 12/1.
15 MR. FERRARIO: We're going to get all this done,
16 read, supplement, and come back on the 1st.
17 THE COURT: That was the hope. But I wasn't sure
18 you were physically going to be here on 12/1. And here's the
19 reason I'm not sure you're physically going to be here on
20 12/1. I don't have the same hope and security that you do in
21 believing that everyone will appear for deposition in the
22 fashion that you guys think they will. I just as a person who
23 practiced in complex litigation with lots of people, I could
24 never get them all to show up when they were supposed to. So
25 -- as a judge I can't get them to show up when they're

1 supposed to. I don't know if you heard the conference call I
2 just had with my trial I finished two months ago. They still
3 can't figure out when to come back for the post-trial motions.
4 MR. FERRARIO: We're going to get it done.
5 THE COURT: I don't believe you. So do you want to
6 have a status conference where you guys together tell me
7 whether you want to argue anything on 12/1, or not? Will you
8 all get together and tell me that a couple days ahead of time
9 so I can at least re-read what needs to be read before 12/1?
10 MR. FERRARIO: Yes.
11 MR. KRUM: Of course.
12 THE COURT: And if there are going to be
13 supplemental briefs, that I can pull the supplemental briefs
14 and read them?
15 MR. FERRARIO: Yes.
16 THE COURT: So when are you going to tell me that?
17 MR. FERRARIO: Three weeks out set a status
18 conference?
19 THE COURT: No. I don't want you to -- I want you
20 to do depositions. I don't want you coming back here. I
21 don't want to see you for a long time.
22 MR. FERRARIO: What do you want, a week before the
23 hearing?
24 THE COURT: I would like a few days, at least a few
25 days before the hearing you to say, yes, Judge, we're coming

1 and we're arguing A, B, and C --
2 MR. FERRARIO: Okay.
3 THE COURT: -- or, no, Judge, we're not coming, can
4 you give us a new date.
5 MR. TAYBACK: I think a week before --
6 THE COURT: Well, let's see what you guys negotiate.
7 I don't really care what it is as long as you do it a couple
8 of days before.
9 MR. FERRARIO: We'll know by the 23rd.
10 MR. KRUM: What day is --
11 MR. FERRARIO: That's the day before Thanksgiving.
12 THE COURT: And you all will send an email copied on
13 each other to my people saying, Judge, we're either coming on
14 December 1 and here's what we're doing, or, we're not coming
15 on December 1 and can you give us a different date.
16 MR. KRUM: Yes.
17 THE COURT: Plan.
18 MR. KRUM: Thank you, Your Honor.
19 THE COURT: Good luck on your discovery.
20 MR. KRUM: Thank you.
21 THE PROCEEDINGS CONCLUDED AT 4:56 P.M.
22 * * * * *
23
24
25

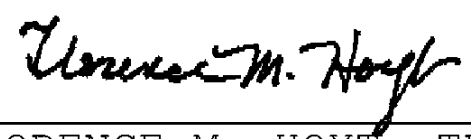
CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

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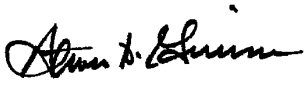

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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, et al, Defendants.	**Case No. A-15-719860-B** Dept. No. XI **Coordinated with:** Case No. P 14-082942-E Dept. XI Case No. A-16-735305-B Dept. XI
In the Matter of the Estate of JAMES J. COTTER, Deceased.	**READING INTERNATIONAL, INC.'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT**
JAMES J. COTTER, JR., Plaintiff, v. READING INTERNATIONAL, INC., a Nevada corporation; DOES 1-100, and ROE ENTITIES, 1-100, inclusive, Defendants.	

NOMINAL DEFENDANT'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Nominal Defendant Reading International, Inc. ("Nominal Defendant" or "RDI") hereby sets forth the following Answer to the Second Amended Verified Complaint, filed by Plaintiff on September 2, 2016 ("Complaint"). Any allegation, averment, contention or statement in the Complaint not specifically and unequivocally admitted is denied. Nominal Defendant responds to each of the paragraphs of the Complaint as follows:

RESPONSE TO "NATURE OF THE CASE"

1. RDI denies the allegations of paragraph 1 of the Complaint.

2. RDI denies the allegations of paragraph 2 of the Complaint.

3. RDI denies the allegations of paragraph 3 of the Complaint.

4. RDI denies the allegations of paragraph 4 of the Complaint

5. RDI denies the allegations of paragraph 5 of the Complaint.

6. RDI denies the allegations of paragraph 6 of the Complaint.

7. RDI denies the allegations of paragraph 7 of the Complaint.

8. RDI denies the allegations of paragraph 8 of the Complaint.

9. RDI denies the allegations of paragraph 9 of the Complaint.

10. RDI admits that Ellen Cotter and Margaret Cotter acting in their capacity as the Co-Executors of the Estate of James J. Cotter, Sr. ("Estate") exercised on behalf of the Estate an option to acquire 100,000 shares of RDI Class B Voting Stock. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant, defers to the answers filed on behalf of the individual defendants. RDI denies the allegations in paragraph 10 in all other respect.

11. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant, defers to the answers filed on behalf of the individual defendants. RDI denies the allegations in paragraph 11 in all other respect.

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12. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant, defers to the answers filed on behalf of the individual defendants. RDI denies the allegations in paragraph 12 in all other respect.

13. RDI denies the allegations of paragraph 13 of the Complaint.

14. RDI admits Ellen Cotter was appointed CEO following the termination of James Cotter, Jr. as President and CEO, that RDI retained Korn Ferry to conduct a search for a permanent CEO and that Ellen Cotter was approved by RDI's board to be the company's permanent CEO. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant, defers to the answers filed on behalf of the individual defendants. RDI denies the allegations in paragraph 14 in all other respect.

15. RDI admits Margaret Cotter was appointed as an executive Vice President of RDI and has responsibilities for real estate development in New York. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant, defers to the answers filed on behalf of the individual defendants. RDI denies the allegations in paragraph 15 in all other respect.

16. RDI admits it received an unsolicited expression of interest from a third party. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant, defers to the answers filed on behalf of the individual defendants. RDI denies the allegations in paragraph 16 in all other respect.

17. RDI admits that, at all times relevant hereto, James Cotter, Jr. was and is a stockholder of RDI. RDI admits that James Cotter, Jr. has been a director of RDI. RDI admits that James Cotter, Jr. was appointed Vice Chairman of RDI's Board of Directors, then later President of RDI. RDI admits that James Cotter, Jr. was appointed CEO by RDI's Board of Directors after James Cotter, Sr. resigned from that position. RDI admits that James Cotter, Jr. is the son of the late James Cotter, Sr. and the brother of Ellen Cotter and Margaret Cotter. RDI admits that there is a dispute regarding stock held by the James J. Cotter Living Trust, dated

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August 1, 2006. RDI denies the allegations of paragraph 17 of the Complaint in all other respects.

18. RDI admits that Margaret Cotter is a director of RDI. RDI admits that Margaret Cotter is the owner and President of OBI, LLC, a company that, until recently, provided theater management services to live theaters indirectly owned by RDI through Liberty Theatres, LLC, of which Margaret Cotter is President. RDI admits that Margaret Cotter has been and is involved in development of real estate in New York owned directly or indirectly by RDI. RDI denies the allegations of paragraph 18 of the Complaint in all other respects.

19. RDI admits that Ellen Cotter is and at all times relevant hereto was a director of RDI and now serves as the CEO of RDI. RDI denies the allegations of paragraph 19 of the Complaint in all other respects.

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

21. RDI admits that Guy Adams is an outside director of RDI. RDI denies the allegations of paragraph 21 of the Complaint in all other respects.

22. RDI admits that Douglas McEachern is an outside director of RDI. RDI denies the allegations of paragraph 22 of the Complaint in all other respects.

23. RDI admits that William Gould is an outside director of RDI. RDI denies the allegations of paragraph 23 of the Complaint in all other respects.

24. RDI admits that Judy Codding is an outside director of RDI. RDI denies the allegations of paragraph 24 of the Complaint in all other respects.

25. RDI admits that Michael Wrotniak is an outside director of RDI. RDI denies the allegations of paragraph 25 of the Complaint in all other respects.

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26. RDI admits it is a Nevada corporation. Defendants admit that RDI has two classes of stock—Class A stock and Class B stock. The other allegations of paragraph 25 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 26 of the Complaint.

27. RDI denies the allegations of paragraph 27 of the Complaint.

RESPONSE TO "ALLEGATIONS COMMON TO ALL CLAIMS"

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

29. RDI denies the allegations of paragraph 29 of the Complaint,

30. RDI denies the allegations of paragraph 30 of the Complaint.

31. RDI admits that James J. Cotter, Jr., attended management meetings in 2005, was appointed as Vice Chair of RDI's board in 2007 and appointed as President of RDI in June 2013. RDI denies the allegations in paragraph 31 of the Complaint in all other respects.

32. RDI admits James J. Cotter Sr. passed on September 13, 2014. The allegations in the trust and estate litigation speak for themselves. RDI denies the allegations in paragraph 32 of the Complaint in all other respects.

33. RDI admits that, as President and CEO of RDI, James Cotter, Jr. had disagreements with his sisters regarding RDI. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 33 of the Complaint in all other respects.

34. RDI denies the allegation of paragraph 34 of the Complaint.

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35. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 35 of the Complaint in all other respects.

36. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 36 of the Complaint in all other respects.

37. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 37 of the Complaint in all other respects.

38. To the extent that the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. To the extent the allegations of paragraph 38 of the Complaint are purportedly based on written documents, the documents speak for themselves. RDI denies the remaining allegations of paragraph 38 of the Complaint.

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

40. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 40 of the Complaint in all other respects.

41. RDI denies the allegations of paragraph 41 of the Complaint.

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

43. RDI admits that the quoted resolutions were approved. RDI denies the allegations of paragraph 43 of the Complaint in all other respects.

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44. RDI admits the price of RDI stock has varied over time. RDI denies the allegations in paragraph 44 in all other respects.

45. The allegations of paragraph 45 of the Complaint are purportedly based on written documents which speak for themselves. RDI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 45 of the Complaint, and therefore denies them.

46. RDI admits the price of RDI stock has varied over time. RDI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 46 of the Complaint, and therefore denies them.

47. RDI admits the price of RDI stock has varied over time. RDI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 47 of the Complaint, and therefore denies them.

48. RDI denies the allegations of paragraph 48 of the Complaint.

49. RDI denies the allegations of paragraph 49 of the Complaint.

50. RDI admits Tim Storey worked as an ombudsman with James Cotter Jr., RDI denies the allegations of paragraph 50 of the Complaint in all other respects.

51. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 51 of the Complaint in all other respects.

52. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 52 of the Complaint, in all other respects.

53. RDI admits that discussions took place between Margaret Cotter and RDI regarding her retention as a full time employee of RDI. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to

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the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 53 of the Complaint, in all other respects.

54. RDI admits that the non-Cotter directors sought additional compensation for time expended on RDI matters. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 54 of the Complaint, in all other respects.

55. RDI admits that former director Storey resides in New Zealand and that Storey traveled between New Zealand and Los Angeles on RDI business. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 55 of the Complaint, in all other respects.

56. RDI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 56 of the Complaint, and therefore denies them.

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

58. RDI admits that the Stomp Producers gave a purported notice of termination of Stomp's lease at the Orpheum Theatre on or about April 23, 2015. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 58 of the Complaint in all other respects.

59. The allegations of paragraph 59 of the Complaint are purportedly based on written documents which speak for themselves. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed

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on behalf of the individual defendants. RDI denies the allegations of paragraph 59 of the Complaint, in all other respects.

60. RDI denies the allegations of paragraph 60 of the Complaint.

61. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 61 of the Complaint, in all other respects.

62. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 62 of the Complaint, in all other respects.

63. RDI denies the allegations of paragraph 63 of the Complaint.

64. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 64 of the Complaint, in all other respects.

65. RDI denies the allegations of paragraph 65 of the Complaint, and therefore denies them.

66. RDI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 66 of the Complaint, and therefore denies them.

67. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 67 of the Complaint, in all other respects.

68. RDI denies the allegations of paragraph 68 of the Complaint.

69. RDI denies the allegations of paragraph 69 of the Complaint.

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70. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 70 of the Complaint, in all other respects.

71. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 71 of the Complaint, in all other respects.

72. RDI admits that Ellen Cotter distributed an agenda for the May 21, 2015 RDI board meeting on or about May 19, 2015, and that the first action item on the agenda was entitled "Status of President and CEO." RDI denies the remaining allegations of paragraph 72 of the Complaint.

73. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 73 of the Complaint, in all other respects.

74. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 74 of the Complaint, in all other respects.

75. RDI denies the allegations of paragraph 75 of the Complaint.

76. RDI denies the allegations of paragraph 76 of the Complaint.

77. RDI admits that James Cotter, Jr. was not terminated at the May 21, 2015 board meeting. RDI denies the allegations of paragraph 77 of the Complaint, in all other respects.

78. RDI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 78 of the Complaint, and therefore denies them.

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79. RDI admits EC sent an email to RDI Directors on May 27, 2015. The email is a document of independent significance and speaks for itself.

80. RDI denies the allegations of paragraph 80 of the Complaint.

81. The allegations of paragraph 81 of the Complaint are purportedly based on written documents, which speak for themselves. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the remaining allegations of paragraph 81 of the Complaint, in all other respects.

82. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 82 of the Complaint in all other respects.

83. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 83 of the Complaint in all other respects.

84. To the extent the allegations in this paragraph relate to action taken in board meetings, the minutes of the meetings are the best evidence of the same. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 84 of the Complaint in all other respects.

85. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 85 of the Complaint in all other respects.

86. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 86 of the Complaint in all other respects.

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87. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 87 of the Complaint in all other respects.

88. RDI admits that the RDI Board meeting reconvened. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 88 of the Complaint, in all other respects.

89. RDI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 89 of the Complaint, and therefore denies the same.

90. RDI is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 90 of the Complaint, and therefore denies the same.

91. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 91 of the Complaint in all other respects.

92. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 92 of the Complaint in all other respects.

93. The allegations of paragraph 93 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 93 of the Complaint.

94. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 94 of the Complaint, in all other respects.

95. RDI denies the allegations of paragraph 95 of the Complaint.

96. RDI denies the allegations of paragraph 96 of the Complaint.

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97. RDI denies the allegations of paragraph 97 of the Complaint.

98. RDI denies the allegations of paragraph 98 of the Complaint.

99. RDI denies the allegations of paragraph 99 of the Complaint.

100. RDI denies the allegations of paragraph 100 of the Complaint, and therefore deny them.

101. Documents filed with the SEC are of independent significance and speak for themselves. RDI denies the remaining allegations of paragraph 101 of the Complaint and its subparts.

102. RDI admits Class B Voting Stock is held in the name of James J. Cotter Living Trust and that litigation is pending. RDI denies the allegations of paragraph 102 of the Complaint in all other aspects.

103. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 103 of the Complaint in all other respects.

104. RDI denies the allegations of paragraph 104 of the Complaint.

105. RDI denies the allegations of paragraph 105 of the Complaint.

106. RDI denies the allegations of paragraph 106 of the Complaint.

107. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 107 of the Complaint in all other respects.

108. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 108 of the Complaint in all other respects.

109. The allegations of paragraph 109 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 109 of the Complaint.

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110. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 110 of the Complaint, in all other respects.

111. The allegations of paragraph 111 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 111.

112. RDI denies the allegations of paragraph 112 of the Complaint.

113. RDI denies the allegations of paragraph 113 of the Complaint.

114. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 114 of the Complaint, in all other respects.

115. The allegations of paragraph 115 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 115 of the Complaint.

116. The allegations of paragraph 116 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 116 of the Complaint.

117. The allegations of paragraph 117 of the Complaint are purportedly based on written documents, which speak for themselves. RDI denies the remaining allegations of paragraph 117 of the Complaint.

118. RDI denies the allegations of paragraph 118 of the Complaint.

119. RDI denies the allegations of paragraph 119 of the Complaint.

120. RDI denies the allegations of paragraph 120 of the Complaint.

121. RDI denies the allegations of paragraph 121 of the Complaint.

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122. RDI denies the allegations of paragraph 122 of the Complaint.

123. RDI denies the allegations of paragraph 123 of the Complaint.

124. RDI admits that Mary Cotter knows Judy Codding. RDI denies the allegations of paragraph 124 of the Complaint in all other respects.

125. RDI admits that, on October 5, 2015, Judy Codding was made a director of RDI. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 125 of the Complaint in all other respects.

126. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 126 of the Complaint in all other respects.

127. RDI denies the allegations of paragraph 127 of the Complaint.

128. RDI denies the allegations of paragraph 128 of the Complaint.

129. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 129 of the Complaint in all other respects.

130. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 130 of the Complaint in all other respects.

131. RDI admits Michael Wrotniak was nominated as a director of RDI. RDI denies the allegations of paragraph 131 of the Complaint in all other respects.

132. RDI denies the allegations of paragraph 132 of the Complaint.

133. RDI admits Michael Wrotniak was nominated as a director of RDI. RDI denies the allegations of paragraph 133 of the Complaint in all other respects.

134. RDI denies the allegations of paragraph 134 of the Complaint.

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135. RDI admits is issued a Proxy Statement which is a written document, which speaks for itself. RDI denies the remaining allegations of paragraph 135 of the Complaint.

136. RDI admits is issued a Proxy Statement which is a written document, which speaks for itself. RDI denies the remaining allegations of paragraph 136 of the Complaint.

137. RDI admits a Board meeting was held on June 30, 2015 and that a CEO Search Committee was formed. RDI denies the allegations of paragraph 137 of the Complaint in all other respects.

138. RDI admits that Korn Ferry was selected as an outside search firm. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 138 of the Complaint in all other respects.

139. RDI admits Korn Ferry interviewed candidates for the position of CEO. Defendants deny the allegations of paragraph 139 of the Complaint. To the extent the allegations of paragraph 139 of the Complaint are purportedly are based on written documents, such documents speak for themselves. RDI denies the remaining allegations in paragraph 139.

140. RDI admits Ellen Cotter resigned from the CEO Search Committee and decided to be a candidate for the positions of President and CEO of RDI. RDI denies the allegations in paragraph 140 of the complaint in all other respects.

141. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 141 of the Complaint in all other respects.

142. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 142 of the Complaint in all other respects.

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143. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 143 of the Complaint in all other respects.

144. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 144 of the Complaint in all other respects.

145. RDI admits the allegations of paragraph 145 of the Complaint.

146. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 146 of the Complaint in all other respects.

147. The allegations of paragraph 147 of the Complaint are purportedly based on written documents which speak for themselves. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 147 of the Complaint, in all other respects.

148. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 148 of the Complaint in all other respects.

149. RDI admits Margaret Cotter was appointed as an Executive Vice President of RDI and has real estate responsibilities in New York. RDI denies the allegations in paragraph 149 of the Complaint in all other respects.

150. RDI admits the allegations of paragraph 150 of the Complaint.

151. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 151 of the Complaint in all other respects.

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152. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 152 of the Complaint in all other respects.

153. To the extent the allegations in this paragraph relate to the actions of individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 153 of the Complaint in all other respects.

154. RDI admits it received an unsolicited expression of interest from a third party. RDI denies the allegations of paragraph 154 of the Complaint in all other respects.

155. The allegations of paragraph 155 of the Complaint are purportedly based on written documents which speak for themselves. To the extent the allegations in this paragraph relate to the actions of the individual defendants, RDI as a nominal defendant defers to the answers filed on behalf of the individual defendants. RDI denies the allegations of paragraph 155 of the Complaint, in all other respects.

156. RDI admits the unsolicited expression of interest of was distributed to RDI Board Members and a meeting was held on June 2, 2016. RDI denies the allegations of paragraph 156 of the Complaint in all other respects.

157. RDI admits its Board of Directors reconvened on June 23, 2016 and that the majority of its Board agreed the price offered was not adequate. RDI denies the allegations of paragraph 157 of the Complaint in all other respects.

158. RDI denies the allegations of paragraph 158 of the Complaint.

159. RDI denies the allegations of paragraph 159 of the Complaint.

160. RDI denies the allegations of paragraph 160 of the Complaint.

161. RDI denies the allegations of paragraph 161 of the Complaint.

162. RDI denies the allegations of paragraph 162 of the Complaint.

163. RDI denies the allegations of paragraph 163 of the Complaint.

164. RDI denies the allegations of paragraph 164 of the Complaint.

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165. RDI denies the allegations of paragraph 165 of the Complaint.

166. RDI denies the allegations of paragraph 166 of the Complaint.

167. RDI denies the allegations of paragraph 167 of the Complaint.

168. RDI denies the allegations of paragraph 168 of the Complaint.

169. RDI denies the allegations of paragraph 169 of the Complaint.

170. RDI denies the allegations of paragraph 170 of the Complaint.

171. RDI denies the allegations of paragraph 171 of the Complaint.

172. RDI denies the allegations of paragraph 172 of the Complaint.

RESPONSE TO "FIRST CAUSE OF ACTION

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

173. RDI reasserts and incorporates its responses to paragraphs 1 through 173 of the Complaint.

174. The allegations of paragraph 174 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 174 of the Complaint are denied.

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

176. RDI denies the allegations of paragraph 176 of the Complaint.

177. RDI denies the allegations of paragraph 177 of the Complaint.

178. RDI denies the allegations of paragraph 178 of the Complaint.

179. RDI denies the allegations of paragraph 179 of the Complaint.

RESPONSE TO "SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty – Against All Defendants)"

180. RDI reasserts and incorporates its responses to paragraphs 1 through 180 of the Complaint.

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181. The allegations of paragraph 181 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 181 of the Complaint are denied.

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

183. RDI denies the allegations of paragraph 183 of the Complaint.

184. RDI denies the allegations of paragraph 184 of the Complaint.

185. RDI denies the allegations of paragraph 185 of the Complaint.

186. RDI denies the allegations of paragraph 186 of the Complaint.

RESPONSE TO "SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty – Against All Defendants)"

187. RDI reasserts and incorporates its responses to paragraphs 1 through 187 of the Complaint.

188. The allegations of paragraph 188 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is deemed required, the allegations of paragraph 188 of the Complaint are denied.

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

190. RDI denies the allegations of paragraph 190 of the Complaint.

191. RDI denies the allegations of paragraph 191 of the Complaint.

192. RDI denies the allegations of paragraph 192 of the Complaint.

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RESPONSE TO "THIRD CAUSE OF ACTION

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

193. RDI reasserts and incorporates its responses to paragraphs 1 through 193 of the Complaint.

194. Nominal Defendant RDI is not a party to this cause of action and as such, no response is required. To the extent the Court deems a response necessary, RDI denies the allegations of paragraph 194 of the Complaint.

195. Nominal Defendant RDI is not a party to this cause of action and as such, no response is required. To the extent the Court deems a response necessary, RDI denies the allegations of paragraph 195 of the Complaint.

196. Nominal Defendant RDI is not a party to this cause of action and as such, no response is required. To the extent the Court deems a response necessary, RDI denies the allegations of paragraph 196 of the Complaint.

197. Nominal Defendant RDI is not a party to this cause of action and as such, no response is required. To the extent the Court deems a response necessary, RDI denies the allegations of paragraph 197 of the Complaint.

198. Nominal Defendant RDI is not a party to this cause of action and as such, no response is required. To the extent the Court deems a response necessary, RDI denies the allegations of paragraph 198 of the Complaint.

199. RDI denies the allegations of paragraph 199 of the Complaint.

200. RDI denies the allegations of paragraph 200 of the Complaint.

Irreparable Harm

201. RDI denies the allegations of paragraph 201 of the Complaint.

202. RDI denies the allegations of paragraph 202 of the Complaint.

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RESPONSE TO "PRAYER FOR RELIEF"

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

AFFIRMATIVE DEFENSES

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

1. FAILURE TO STATE A CLAIM

The Complaint, and each purported cause of action therein, is barred, in whole or in part, for failure to state a claim.

2. FAILURE TO MAKE DEMAND

Plaintiff has failed to make a demand prior to filing the purported derivative suit.

3. CORPORATE GOVERANCE

Plaintiff's claims are barred because RDI has at all times acted, through its Board of Directors, in good faith consistent with corporate governance standards.

4. IRREPAIRABLE HARM TO COMPANY

Plaintiff's claims are barred because RDI would be irreparably harmed by the relief Plaintiff seeks.

5. STATUTES OF LIMITATIONS AND REPOSE

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

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6. UNCLEAN HANDS

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

7. SPOLIATION

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

8. WAIVER, ESTOPPEL, AND ACQUIESCENCE

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

9. RATIFICATION AND CONSENT

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

10. NO UNLAWFUL ACTIVITY

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

11. PRIVILEGE AND JUSTIFICATION

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

12. GOOD FAITH AND LACK OF FAULT

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

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13. NO ENTITLEMENT TO INJUNCTIVE RELIEF

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

14. DAMAGES TOO SPECULATIVE

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

15. MITIGATION OF DAMAGES

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

16. COMPARATIVE FAULT

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

17. EQUITABLE ESTOPPEL

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

18. NEVADA REVISED STATUTE 78.138

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

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duties as a director or officer; and (b) the breach of those duties involved intentional misconduct, fraud or a knowing violation of law.

19. CONFLICT OF INTERST AND UNSUITABLITY TO SERVE AS REPRESENTATIVE

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

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

DATED this 20th day of December, 2016.

GREENBERG TRAURIG, LLP

/s/ Kara B. Hendricks

MARK E. FERRARIO, ESQ. (NV Bar No. 1625)
KARA B. HENDRICKS, ESQ. (NV Bar No. 7743)
3773 Howard Hughes Parkway
Suite 400 North
Las Vegas, Nevada 89169

Counsel for Reading International, Inc.

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

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I certify that on this day, I caused a true and correct copy of the forgoing ***Reading International, Inc.'s Answer to Second Amended Complaint*** to be filed and served via the Court's Wiznet E-Filing system. The date and time of the electronic proof of service is in place of the date and place of deposit in the mail.

DATED this 20th day of December, 2016.

/s/ Andrea Lee Rosehill
AN EMPLOYEE OF GREENBERG TRAURIG, LLP

GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400 North
Las Vegas, Nevada 89169
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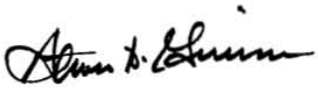

CLERK OF THE COURT

ORDR

Mark G. Krum (SBN 10913)
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Tel: 702-949-8200
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E-mail:mkrum@lrrc.com

Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant. T2 PARTNERS MANAGEMENT, LP, a Delaware limited partnership, doing business as KASE CAPITAL MANAGEMENT, et al., Plaintiffs, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, CRAIG TOMPKINS, and DOES 1 through 100, inclusive, Defendants.	CASE NO.: A-15-719860-B DEPT. NO. XI Coordinated with: Case No. P-14-082942-E Dept. No. XI Case No. A-16-735305-B Dept. No. XI Jointly Administered **Business Court** **[PROPOSED] ORDER REGARDING DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT NOS. 1–6 AND MOTION *IN LIMINE* TO EXCLUDE EXPERT TESTIMONY** Date of Hearing: October 27, 2016 Time of Hearing: 8:30 a.m.

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

100040057_2

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

THESE MATTERS HAVING COME BEFORE the Court on October 27, 2016, Mark G. Krum appearing for plaintiff James J. Cotter, Jr. ("Plaintiff"); H. Stanley Johnson, Christopher Tayback, and Marshall M. Searcy appearing for defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding and Michael Wrotniak; Mark E. Ferrario and Kara Hendricks appearing for Reading International, Inc.; and Ekwan Rhow, Shoshana E. Bannett appearing for William Gould, on the following motions:

- Individual Defendants' Motion for Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims;
- Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence;
- Individual Defendants' Motion for Partial Summary Judgment (No. 3) On Plaintiff's Claims Related to the Purported Unsolicited Offer;
- Individual Defendants' Motion for Partial Summary Judgment (No. 4) On Plaintiff's Claims Related to the Executive Committee;
- Individual Defendants' Motion for Partial Summary Judgment (No. 5) On Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO;
- Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re: Plaintiff's Claims Related to the Estate's Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation to Margaret Cotter and Guy Adams; and
- Defendants' Motion *In Limine* to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty;

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

IT IS HEREBY ORDERED THAT the Motion for Partial Summary Judgment No. 1 is DENIED. There are genuine issues of material fact as to the issues related to interested directors participating in the process.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is GRANTED with respect to Motion for Partial Summary Judgment No. 2, and supplemental briefing will be discussed once the relevant discovery is complete. The independence issue needs to be evaluated on a transaction or action-by-action basis, because the independence related to each needs to be separately evaluated; even though facts overlap, the Court cannot evaluate this in a vacuum. Motion for Partial Summary Judgment No. 2 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is GRANTED with respect to Motion for Partial Summary Judgment No. 3, because depositions have not been completed and the relevant documents have not been produced. Motion for Partial Summary Judgment No. 3 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT Motion for Partial Summary Judgment No. 4 is GRANTED IN PART. As to the formation and revitalization (activation) of the Executive Committee, the motion is GRANTED; as to utilization of the committee, the motion is DENIED. Formation and revitalization includes a decision by the company to make use of their previously dormant Executive Committee and put people on that Executive Committee.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is granted with respect to Motion for Partial Summary Judgment No. 5. Motion for Partial Summary Judgment No. 5 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is granted with respect to Motion for Partial Summary Judgment No. 6. Motion for Partial Summary Judgment No. 6 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT the Motion *in Limine* to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty is GRANTED IN PART. With respect to Chief Justice Steele, he may testify only for the limited purpose of

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

identifying what appropriate corporate governance activities would have been, including activities where directors are interested, including how to evaluate if directors are interested. As to Dr. Finnerty, the Motion *In Limine* was WITHDRAWN. As to the other experts, the motion is DENIED.

DATED this 20 day of December, 2016.

DISTRICT COURT JUDGE

Submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Mark G. Krum*
MARK G. KRUM (SBN 10913)
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, NV 89169
Attorneys for Plaintiff

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

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CLERK OF THE COURT

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E-mail:mkrum@lrrc.com

Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

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

Plaintiffs,

vs.

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

Defendants.

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

Coordinated with:

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

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

Jointly Administered

Business Court

NOTICE OF ENTRY OF ORDER

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

100173155_1

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

PLEASE TAKE NOTICE that on the 21st day of December, 2016, an "Order Regarding Defendants' Motions for Partial Summary Judgment Nos. 1-6 and Motion *in Limine* to Exclude Expert Testimony on Order Shortening Time" was entered in the above-entitled action. A copy of said Order is attached hereto.

DATED this 22nd day of December, 2016.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Mark G. Krum*
Mark G. Krum (SBN 10913)
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5958
(702) 949-8200
Attorneys for Plaintiff
James J. Cotter, Jr.

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

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December, 2016, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** to be electronically served to all parties of record via this Court's electronic filing system to all parties listed on the E-Service Master List.

/s/ Jessie M. Helm
An employee of Lewis Roca Rothgerber Christie LLP

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

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CLERK OF THE COURT

ORDR
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E-mail:mkrum@lrrc.com

Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant. T2 PARTNERS MANAGEMENT, LP, a Delaware limited partnership, doing business as KASE CAPITAL MANAGEMENT, et al., Plaintiffs, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, CRAIG TOMPKINS, and DOES 1 through 100, inclusive, Defendants.	CASE NO.: A-15-719860-B DEPT. NO. XI Coordinated with: Case No. P-14-082942-E Dept. No. XI Case No. A-16-735305-B Dept. No. XI Jointly Administered **Business Court** **[PROPOSED] ORDER REGARDING DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT NOS. 1–6 AND MOTION *IN LIMINE* TO EXCLUDE EXPERT TESTIMONY** Date of Hearing: October 27, 2016 Time of Hearing: 8:30 a.m.

100040057_2

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

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

THESE MATTERS HAVING COME BEFORE the Court on October 27, 2016, Mark G. Krum appearing for plaintiff James J. Cotter, Jr. ("Plaintiff"); H. Stanley Johnson, Christopher Tayback, and Marshall M. Searcy appearing for defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding and Michael Wrotniak; Mark E. Ferrario and Kara Hendricks appearing for Reading International, Inc.; and Ekwan Rhow, Shoshana E. Bannett appearing for William Gould, on the following motions:

- Individual Defendants' Motion for Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims;
- Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence;
- Individual Defendants' Motion for Partial Summary Judgment (No. 3) On Plaintiff's Claims Related to the Purported Unsolicited Offer;
- Individual Defendants' Motion for Partial Summary Judgment (No. 4) On Plaintiff's Claims Related to the Executive Committee;
- Individual Defendants' Motion for Partial Summary Judgment (No. 5) On Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO;
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Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

IT IS HEREBY ORDERED THAT the Motion for Partial Summary Judgment No. 1 is DENIED. There are genuine issues of material fact as to the issues related to interested directors participating in the process.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is GRANTED with respect to Motion for Partial Summary Judgment No. 2, and supplemental briefing will be discussed once the relevant discovery is complete. The independence issue needs to be evaluated on a transaction or action-by-action basis, because the independence related to each needs to be separately evaluated; even though facts overlap, the Court cannot evaluate this in a vacuum. Motion for Partial Summary Judgment No. 2 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

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IT IS FURTHER ORDERED THAT Rule 56(f) relief is granted with respect to Motion for Partial Summary Judgment No. 5. Motion for Partial Summary Judgment No. 5 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is granted with respect to Motion for Partial Summary Judgment No. 6. Motion for Partial Summary Judgment No. 6 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT the Motion *in Limine* to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty is GRANTED IN PART. With respect to Chief Justice Steele, he may testify only for the limited purpose of

Lewis Roca ROTHGERBER CHRISTIE
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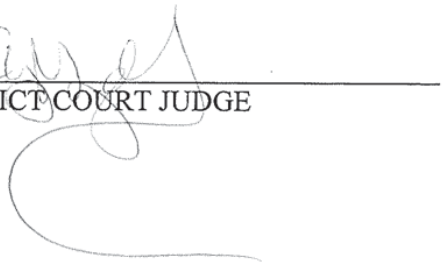
Las Vegas, NV 89169-5996

identifying what appropriate corporate governance activities would have been, including activities where directors are interested, including how to evaluate if directors are interested. As to Dr. Finnerty, the Motion *In Limine* was WITHDRAWN. As to the other experts, the motion is DENIED.

DATED this 20 day of December, 2016.



DISTRICT COURT JUDGE

Submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Mark G. Krum*

MARK G. KRUM (SBN 10913)
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, NV 89169
Attorneys for Plaintiff

Lewis Roca ROTHGERBER CHRISTIE
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Las Vegas, NV 89169-5996

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Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES COTTER, JR. ET AL, Plaintiff(s), vs MARGARET COTTER, ET AL, Defendant(s), READING INTERNATIONAL, INC, Nominal Defendant. AND ALL COORDINATED MATTERS.	**Case No.** 15 A 719860 Coordinated With; 16-A-735305 14-P-082942 **Dept. No.** XI **Date of Hearing:** 09/25/17 **Time of Hearing:** 8:30a.m.

1st AMENDED ORDER SETTING CIVIL JURY TRIAL, PRE-TRIAL CONFERENCE AND CALENDAR CALL

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set to be tried to a Jury on a **Five week stack** to begin,

#35 **January 2, 2018 at 1:30 p.m.**

B. A calendar call will be held on **December 18, 2017 at 8:15 a.m.** Parties must bring to Calendar Call the following:

(1) Typed exhibit lists;
(2) List of depositions;
(3) List of equipment needed for trial, including audiovisual equipment;[1] and
(4) Courtesy copies of any legal briefs on trial issues.

The Final Pretrial Conference will be set at the time of the Calendar Call.

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[1] If counsel anticipate the need for audio visual equipment during the trial, a request must be submitted to the District Courts AV department following the calendar call. You can reach the AV Dept at 671-3300 or via E-Mail at CourtHelpDesk@clarkcountycourts.us

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CLERK OF THE COURT

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C. A Pre-Trial Conference with the designated attorney and/or parties in proper person will be held on **December 4, 2017 at 8:30 a.m.**

D. The Pre-Trial Memorandum must be filed no later than **December 3, 2017,** with a courtesy copy delivered to Department XI. All parties, (Attorneys and parties in proper person) **MUST** comply with **All REQUIREMENTS** of E.D.C.R. 2.67, 2.68 and 2.69. Counsel should include the Memorandum an identification of orders on all motions in limine or motions for partial summary judgment previously made, a summary of any anticipated legal issues remaining, a brief summary of the opinions to be offered by any witness to be called to offer opinion testimony as well as any objections to the opinion testimony.

E. All motions in limine, must be in writing and filed no later than **November 9, 2017.** ***Omnibus Motions in Limine are not allowed.*** **Orders shortening time will not be signed except in extreme emergencies.**

F. All original depositions anticipated to be used in any manner during the trial must be delivered to the clerk prior to the final Pre-Trial Conference. If deposition testimony is anticipated to be used in lieu of live testimony, a designation (by page/line citation) of the portions of the testimony to be offered must be filed and served by facsimile or hand, two (2) judicial days prior to the final Pre-Trial Conference. Any objections or counterdesignations (by page/line citation) of testimony must be filed and served by facsimile or hand, one (1) judicial day prior to the final Pre-Trial Conference commencement. Counsel shall advise the clerk prior to publication.

G. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All exhibits must comply with EDCR 2.27. Two (2) sets must be three hole punched placed in three ring binders along with the exhibit list. The sets must be delivered to the clerk prior to the final Pre-Trial Conference. Any demonstrative exhibits including exemplars anticipated to be used must be disclosed prior to the calendar call. Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall be prepared to stipulate or make specific objections to individual

proposed exhibits. Unless otherwise agreed to by the parties, demonstrative exhibits are marked for identification but not admitted into evidence.

H. In accordance with EDCR 2.67, counsel shall meet, review, and discuss items to be included in the Jury Notebook. Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall be prepared to stipulate or make specific objections to items to be included in the Jury Notebook.

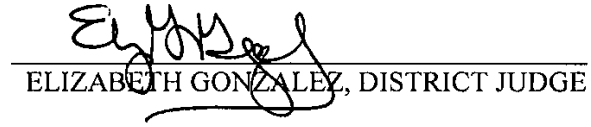
I. In accordance with EDCR 2.67, counsel shall meet and discuss pre-instructions to the jury, jury instructions, special interrogatories, if requested, and verdict forms. Each side shall provide the Court, at the final Pre-Trial Conference, an agreed set of jury instructions and proposed form of verdict along with any additional proposed jury instructions with an electronic copy in Word format.

J. In accordance with EDCR 7.70, counsel shall file and serve by facsimile or hand, two (2) judicial days prior to the final Pre-Trial Conference voir dire proposed to be conducted pursuant to conducted pursuant to EDCR 2.68.

Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order shall result in any of the following: (1) dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.

Counsel is required to advise the Court immediately when the case settles or is otherwise resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether a Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be given to Chambers.

DATED this 29th day of September, 2017.



ELIZABETH GONZALEZ, DISTRICT JUDGE

Certificate of Service

I hereby certify that on or about the date filed, this document was Electronically Served to the Counsel on Record on the Clark County E-File Electronic Service List or mailed to the proper party as follows:

James L Edwards, Esq. (Cohen Johnson, et al)

Mark E Ferrario, Esq. (Greenberg Traurig)

Erik J Foley, Esq. (Lewis Roca)

Dan Kutinac

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Steven D. Grierson
CLERK OF THE COURT

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255 East Warm Springs Road, Suite 100
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Telephone: (213) 443-3000

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

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR. individually and derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, and DOES 1 through 100, inclusive, Defendants. READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No.: A-15-719860-B Dept. No.: XI Case No.: P-14-082942-E Dept. No.: XI Related and Coordinated Cases **BUSINESS COURT** **MOTION FOR EVIDENTIARY HEARING REGARDING JAMES COTTER, JR.'S ADEQUACY AS DERIVATIVE PLAINTIFF**

02686-00002/9535292.5

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

TO: ALL PARTIES, COUNSEL, AND THE COURT:

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

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

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

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Dated: October 11, 2017

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson

H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
255 East Warm Springs Road, Suite 100
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QUINN EMANUEL URQUHART & SULLIVAN, LLP
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MARSHALL M. SEARCY, ESQ.
California Bar No. 169269, *pro hac vice*
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Los Angeles, CA 90017
Telephone: (213) 443-3000

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

NOTICE OF MOTION

TO: ALL PARTIES, COUNSEL, AND THE COURT:

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

Dated: October 11, 2017

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson

H. STAN JOHNSON, ESQ.
Nevada Bar No. 00265
sjohnson@cohenjohnson.com
255 East Warm Springs Road, Suite 100
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
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Los Angeles, CA 90017
Telephone: (213) 443-3000

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

DECLARATION OF COUNSEL NOAH HELPERN

I, Noah Helpern, state and declare as follows:

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

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

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

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

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

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

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

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

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

/s/ *Noah Helpern*
Noah Helpern

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

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

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

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

II. FACTUAL BACKGROUND

A. Plaintiff's Termination and Filing of this Action

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

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

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

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

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

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

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

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

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

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

[redacted]

[redacted]

[redacted]

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

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

[redacted]

[redacted]

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

[redacted]

Id. at 895:13-25.

[redacted]

[redacted]

[redacted]

Id. at 896:13-25.

[redacted]

[redacted] *Id*. at 938-9:18.

III. ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. CONCLUSION

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

DATED THIS 11TH DAY OF OCTOBER, 2017.

COHEN|JOHNSON|PARKER|EDWARDS

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Exhibit A

FILED UNDER SEAL

Exhibit A

Exhibit B

Exhibit B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

In re the JAMES J. COTTER LIVING TRUST dated August 1, 2000, as amended	Case No. BP159755 Assigned for All Purposes to: The Hon. Clifford L. Klein ***EX PARTE* PETITION OF CO-TRUSTEE JAMES J. COTTER, JR. FOR APPOINTMENT OF TRUSTEE *AD LITEM*** Date: February 9, 2017 Time: 8:30 a.m. Dept: Room 260

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

I. INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

II. JURISDICTIONAL ALLEGATIONS

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

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

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

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

III. FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. Patton vision additionally explained,

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

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

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

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

25. Ellen did nothing substantive in response.

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. CLAIMS

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

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

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

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

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

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

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

B. <u>Nomination of Andrew Wallet, Esq. as Trustee *Ad Litem*</u>

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

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

VI. PERSONS ENTITLED TO NOTICE

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

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

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

V. PRAYER FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: February 8, 2017

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By

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

Exhibit C

FILED UNDER SEAL

Exhibit C

Exhibit D

FILED UNDER SEAL

Exhibit D

Exhibit E

Exhibit E

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 72261

FILED

APR 14 2017

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

ORDER DENYING PETITION FOR WRIT OF PROHIBITION OR MANDAMUS

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

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

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

ORDER the petition DENIED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Stiglich

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

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

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., Plaintiff, vs. MARGARET COTTER, et al., Defendant. READING INTERNATIONAL, INC., Nominal Defendant.	CASE NO. A-15-719860-B **DEFENDANT WILLIAM GOULD'S JOINDER TO MOTION FOR EVIDENTIARY HEARING REGARDING JAMES COTTER, JR.'S ADEQUACY AS DERIVATIVE PLAINTIFF** Date of Hearing: November 17, 2017 Place of Hearing: In Chambers Assigned to Hon. Elizabeth Gonzalez, Dept. XI Trial Date: January 2, 2018

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

October 17, 2017

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

By _____

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Attorneys for Defendant William Gould

CERTIFICATE OF SERVICE

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

DATED this 17th day of October, 2017.

Katie Arnold
EMPLOYEE

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Steven D. Grierson
CLERK OF THE COURT

JOIN
MARK E. FERRARIO, ESQ.
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Counsel for Reading International, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, et al, Defendants.	**Case No. A-15-719860-B** Dept. No. XI **Coordinated with:** Case No. P 14-082942-E Dept. XI Case No. A-16-735305-B Dept. XI **READING INTERNATIONAL, INC.'S JOINDER TO MOTION FOR EVIDENTIARY HEARING REGARDING JAMES COTTER, JR.'S ADEQUACY AS A DERIVATIVE PLAINTIFF** **Date of Hearing: November 17, 2017** **Time: In Chambers**
In the Matter of the Estate of JAMES J. COTTER, Deceased.	

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

JAMES J. COTTER, JR.,

Plaintiff,

v.

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

Defendants.

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

DATED: this 18th day of October, 2017.

GREENBERG TRAURIG, LLP

/s/ Mark E. Ferrario
MARK E. FERRARIO, ESQ.
(NV Bar No. 1625)
KARA B. HENDRICKS, ESQ.
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TAMI D. COWDEN, ESQ.
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CERTIFICATE OF SERVICE

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

DATED this 18th day of October, 2017.

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR. individually and derivatively on behalf of Reading International, Inc., Plaintiffs, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, and DOES 1 through 100, inclusive, Defendants. READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No.: A-15-719860-B Dept. No.: XI Case No.: P-14-082942-E Dept. No.: XI Related and Coordinated Cases **BUSINESS COURT** **DEFENDANTS MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK'S SUPPLEMENT TO MOTIONS FOR PARTIAL SUMMARY JUDGMENT NOS. 1, 2, 3, 5 AND 6**

TO ALL PARTIES, COUNSEL, AND THE COURT:

Pursuant to Nevada Rule of Civil Procedure 56, Defendants Margaret Cotter, Ellen Cotter, Guy Adams, Edward Kane, Douglas McEachern, Judy Codding, and Michael Wrotniak (collectively, the "Moving Defendants"), by and through their counsel of record, CohenJohnsonParkerEdwards and Quinn Emanuel Urquhart & Sullivan, LLP, hereby submit this Supplement to their Motions for Partial Summary Judgment Nos. 1, 2, 3, 5 and 6.

This Supplemental Motion is based upon the following Memorandum of Points and Authorities; the accompanying Declaration of Noah S. Helpern and exhibits thereto; the pleadings, declarations, and exhibits previously-submitted in connection with Individual Defendants' Motions for Partial Summary Judgment Nos. 1, 2, 3, 5 and 6; the pleadings and papers on file; and any oral argument at the time of a hearing on this motion.

Dated: November 9, 2017

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NOTICE OF MOTION

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

PLEASE TAKE NOTICE that the above-referenced Motions will be heard on December 11, 2017 at 8:30 am in Department XI of the above designated Court or as soon thereafter as counsel can be heard.

Dated: November 9, 2017

COHEN|JOHNSON|PARKER|EDWARDS

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DECLARATION OF COUNSEL NOAH HELPERN

I, Noah Helpern, state and declare as follows:

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

2. Attached hereto as **Exhibit A** are excerpts of a true and correct copy of the transcript from this Court's October 27, 2016 hearing in the above-referenced matter.

3. Attached hereto as **Exhibit B** are excerpts of a true and correct copy of the deposition transcript of Judy Codding.

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

5. Attached hereto as **Exhibit D** is true and correct copy of the Court's Order Regarding Defendants' Motions for Partial Summary Judgment Nos. 1-6 and Motion *in Limine* to Exclude Expert Testimony.

6. 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 November 9, 2017, in Los Angeles, California.

/s/ *Noah Helpern*
Noah Helpern

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In his Second Amended Complaint, Plaintiff James Cotter, Jr. ("Plaintiff") alleges that members of the Board of Directors of Reading International, Inc. ("RDI" or the "Company") breached their fiduciary duties by, among other things: terminating Plaintiff as President and CEO; determining not to pursue a non-binding expression of interest in purchasing all of the stock of the Company; selecting Ellen Cotter as the Company's CEO; approving the exercise of an option by the Estate of James Cotter, Sr.; hiring Margaret Cotter as a full-time RDI employee; approving market compensation packages for Ellen and Margaret Cotter; and approving one-time additional earned compensation payments for Margaret Cotter and Guy Adams. Moving Defendants previously moved this Court for partial summary judgment on the claims based on each of these issues. At an October 27, 2016 hearing, the Court deferred ruling on motions for partial summary judgment until completion of all fact discovery. All discovery is now complete.[1]

Moving Defendants respectfully request that the Court grant their motions for partial summary judgment based on the original points and authorities submitted, as well as the additional points and authorities referenced herein. The law is clear: in order for there to be liability, the burden in on Plaintiff to present evidence sufficient for the trier of fact to conclude that Defendants did not act in good faith, on an informed basis, and with a view to the interests of RDI. In particular, the Nevada Supreme Court's decision in *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 399 P.3d 334 (Nev. 2017) and recent amendments to Nevada Revised Statute ("NRS") §§ 78.138 and 78.139 confirm Nevada's protections for director and officer decision-making under the business judgment rule. Both new and previously-cited Nevada authority, as well as the factual record developed in this case, make clear there is no reasonably-disputed issue of fact: the RDI Board is entitled to the presumption that their actions were

[1] Plaintiff has appealed a discovery order of this Court. *See* Nevada Supreme Court Case No. 71267. Moving Defendants expressly reserve all rights with respect to the documents that are the subject of that order.

consistent with the proper exercise of business judgment, a presumption that Plaintiff cannot muster evidence to rebut.[2]

Plaintiff alleges—based entirely on his own assumptions and speculation—that certain Moving Defendants do not satisfy his own definition of "independence." However, Plaintiff's own baseless speculation is not sufficient to rebut Nevada's statutory presumption that corporate directors act in good faith. Moreover, even if Plaintiff's speculation were true (it is not), generalized allegations that some Moving Defendants, on a personal level, are closer with Ellen and Margaret Cotter than him, or believe in Ellen and Margaret Cotter's vision for RDI over that of Plaintiff, does not strip them of the protections of the business judgment rule. Having opinions and preferences as to the future of RDI does not somehow prevent Moving Defendants, as a matter of law, from acting as independent directors. Indeed, directors *should* have views as to the future of a corporation, otherwise they are not doing their job. The Nevada Legislature did not craft a statutory scheme that removed the presumption of the business judgment rule any time there was a baseless allegation of lack of independence, and Plaintiff has failed to proffer evidence showing that any of RDI's Directors made any particular decision (let alone *every* decision that is the subject of this suit) based on any conflicted or improper motive such that the legal presumptions of NRS § 78.138 would disappear. As the *Wynn* court confirmed, Nevada's business judgment rule is designed to keep courts out of the business of running corporations and second-guessing corporate boards. Yet Plaintiff asks this Court to do precisely that by inserting itself in RDI's decision-making because of some still-unarticulated lack of independence that, *even if true*, would be insufficient to rebut Nevada's statutory presumptions.

II. PROCEDURAL HISTORY

At the October 27, 2016 hearing on Moving Defendants' motions for partial summary judgment, the Court granted Rule 56(f) relief relating to Individual Defendants' Motions for Partial Summary Judgment Nos. 2, 3, 5, and 6, deferring a ruling until after the close of discovery.

---

[2] A thorough review of the facts and legal standard is contained in the original motions for partial summary judgment. Moving Defendants incorporate such discussion by reference herein.

See Helpern Decl., Exh. A, at 62:21-63:3; 84:17-85:3; 150:22-151:8; Exh. D, at 3. Since that time, the parties have taken six additional fact depositions: the 30(b)(6) deposition of Ellen Cotter, the deposition of Judy Codding, the deposition of Craig Tompkins, and the conclusion of Doug McEachern, Guy Adams, and James Cotter, Jr.'s depositions. All discovery is now complete.

III. ARGUMENT

A. The Nevada Supreme Court and Legislature Both Recently Confirmed the Broad Scope of Nevada's Business Judgment Rule

The decision-making process of each Moving Defendant with respect to each challenged decision is protected by the business judgment rule. 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 v. SAC Holding Corp.*, 122 Nev. 621, 632 (2006) (internal citation omitted); NRS § 78.138(3) (codifying the business judgment rule under Nevada law). The business judgment rule "not only protect[s] individual directors from personal liability, rather, it expresses a sensible policy of judicial noninterference with business decisions and is designed to limit judicial involvement in business decision-making so long as a minimum level of care is exercised in arriving at the decision." *Wynn*, 399 P.3d at 342 (internal quotation omitted).

In its 2017 *Wynn* decision, the Nevada Supreme Court held that while Nevada's business judgment statute is a modified version of Section 8.30(e) of the Model Business Corporation Act, a plain reading of both texts demonstrates that the Nevada Legislature **intentionally omitted** the Model Act's "reasonableness" standard for judging whether a director's conduct should be protected. "This signals legislative rejection of a substantive evaluation of director conduct." *Id.* at 343 (citing *WLR Foods, Inc. v. Tyson Foods, Inc.*, 857 F. Supp. 492, 494 (W.D. Va. 1994)). The *Wynn* court also "reiterate[d] that the business judgment rule goes beyond shielding directors from personal liability in decision-making. Rather, it also ensures that courts defer to the business judgment of corporate executives and prevents courts from substituting their own notions of what is or is not sound business judgment if 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." *Id*. at 344 (internal quotations and citations omitted).

Through recent amendments to NRS §§ 78.138 and 78.139, the Nevada Legislature has also emphasized their intention to protect director and officer decision-making through the statutory business judgment rule. For example, NRS § 78.138(7)), which defines the threshold necessary to establish director or officer liability, now includes an additional element establishing that a director or officer cannot be held liable for damages unless: "(a) The trier of fact determines that the presumption established by subsection 3 has been rebutted . . ." The referenced subsection, NRS § 78.138(3), provides that "directors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." Thus, in addition to the ample protections already provided by NRS § 78.138(7) (*e.g.*, that the director or officer's breach involve "intentional misconduct, fraud or a knowing violation of law"), this amendment to the statute requires a plaintiff to overcome a statutory presumption that an officer or director acted in good faith in order to bring a claim against corporate directors or officers.

Here, for reasons discussed below and in Moving Defendants' original motions for partial summary judgment, there is no triable issue of fact regarding whether or not Plaintiff has successfully rebutted the presumption that Moving Defendants acted in good faith and subject to the protections of the business judgment rule, let alone that they committed the intentional misconduct, fraud or a knowing violation of law that would subject them to individual liability. Their conduct falls squarely within Nevada law's protections, and Plaintiff's claims fail as a matter of law.

B. <u>The Court Should Grant Partial Summary Judgment on Plaintiff's Claims Related to the Purported Unsolicited Offer (Motion for Partial Summary Judgment No. 3)</u>

1. Moving Defendants are protected by the business judgment rule

As the original briefing demonstrates, the decision of whether or not to sell a company is one the law commits to the sound discretion of a board of directors. *Horwitz v. Sw. Forest Indus.*,

Inc., 604 F. Supp. 1130, 1135 (D. Nev. 1985) ("Traditionally, the board's managerial function includes making the decision whether to welcome or oppose a proposed merger or takeover."). Here, it is undisputed that the Board met to discuss Patton Vision's letter (the "Indication of Interest"); the Board considered a presentation by RDI's management about the value of the Company; and, after a thorough deliberation, the Board determined that RDI's interests would be best served in the long-term by not pursuing Patton Vision's inadequate Indication of Interest. Indeed, Director Codding testified at her deposition that "Reading has enormous possibilities to bring shareholder value, and we need to stick" with the Company's existing plan to grow. Helpern Decl., Exh. B, at 172:10-173:9.

The Nevada Legislature—in addition to its amendments to NRS § 78.138—recently amended § 78.139, which sets forth the standard a board must follow in considering a change of control transaction. The Legislature added the following language:

> Without limiting the provisions of NRS 78.138, a director may resist a change or potential change in control of the corporation if the board of directors determines that the change or potential change is opposed to or not in the best interest of the corporation upon consideration of any relevant facts, circumstances, contingencies or constituencies pursuant to subsection 4 of NRS 78.138 . . .

NRS § 78.139(4)). Subsection 4 of NRS § 78.138, referenced above, states:

> Directors and officers, in exercising their respective powers with a view to the interests of the corporation, may:
>
> (a) Consider all relevant facts, circumstances, contingencies or constituencies, including, without limitation:
>
> (1) The interests of the corporation's employees, suppliers, creditors or customers;
>
> (2) The economy of the State or Nation;
>
> (3) The interests of the community or of society;
>
> (4) The long-term or short- term interests of the corporation, including the possibility that these interests may be best served by the continued independence of the corporation; or
>
> (5) The long-term or short-term interests of the corporation's stockholders, including the possibility that these interests may be best served by the continued independence of the corporation.
>
> (b) Consider or assign weight to the interests of any particular person or group, or to any other relevant facts, circumstances, contingencies or constituencies

In reaching its decision to not pursue Patton Vision's Indication of Interest, the Board indisputably considered relevant facts and circumstances relating to the Company's long-term or short-term interests, including the possibility that these interests may be best served by the continued independence of the corporation, as required by NRS §§ 78.138 and 78.139. For example, at the June 23, 2016 Board meeting, RDI's management presented the Board with an overview of the Company's cinema and real estate assets. *See* Motion for Partial Summary Judgment No. 3 at 5-6. When appropriate multiples were applied, RDI's net asset value was determined to be somewhere between [redacted] more than the $400 million valuation assessed by Patton Vision. *See id*. at 6. Thus, in reaching its ultimate decision, the Board properly informed itself with information available to the Company, as well as with the Directors' own knowledge of RDI. While Plaintiff asks this Court to second-guess the Board's decisions, the Nevada Legislature has made clear that its courts should not substitute their own notions of what is or is not sound business judgment. Indeed, such a "substantive evaluation" of director conduct has been rejected. *Wynn*, 399 P.3d at 343 (citation omitted).

Plaintiff has failed to rebut the statutory presumption of good faith under recently amended NRS § 78.138(7). It is *Plaintiff's burden* to rebut NRS § 78.138(3), which provides that "directors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." Here, the undisputed facts demonstrate that RDI's Board is entitled to the statutory presumption of good faith. Even if Plaintiff could point to an undisputed fact rebutting the presumption that Moving Defendants' conduct falls under the ambit of Nevada's business judgment rule (he cannot), a director cannot be personally liable for breaching their fiduciary duties unless "the breach of those duties involved intentional misconduct, fraud or a knowing violation of law." NRS § 78.138(7). Here, Plaintiff cannot cite any cognizable evidence (beyond his own speculation) to support a finding of intentional misconduct, fraud or a knowing violation of the law. Accordingly, this Court should grant Individual Defendants' Motion for Partial Summary Judgment (No. 3) on Plaintiff's Claims Related to the Purported Unsolicited Offer.

2. There are no damages, as a matter of law, from a decision not to pursue a nonbinding expression of interest

Summary judgment is also appropriate on this claim because, as a matter of law, Plaintiff cannot demonstrate any injury from the Board's decision not to pursue the **nonbinding** Indication of Interest. To avoid summary judgment, Plaintiff must produce cognizable evidence showing damages, an essential element of a breach of fiduciary duty claim. *Brown v. Kinross Gold U.S.A., Inc.*, 531 F. Supp. 2d 1234, 1245 (D. Nev. 2008) (A claim for breach of fiduciary duty requires a plaintiff to demonstrate "the existence of a fiduciary duty, the breach of that duty, and that the breach proximately caused the damages.") (applying Nevada law). Where a company receives a nonbinding proposal subject to conditions, such as due diligence and the execution of definitive agreements, that does not "constitute[] [an] offer[] the acceptance of which would bind the offeror to acquire [the company,]" a plaintiff cannot demonstrate an injury. *See Cooke v. Oolie*, No. CIV. A. 11134, 2000 WL 710199, at *13 n. 38 (Del. Ch. May 24, 2000).

At his recent deposition, Plaintiff [redacted] Helpern Decl., Exh. C, at 940:12-18. [redacted] *Id*. at 941:13-19. The Indication of Interest merely communicated a proposal that was contingent upon (1) negotiation and execution of a definitive merger agreement and (2) due diligence. Thus, because the Indication of Interest was nonbinding, Plaintiff cannot demonstrate injury—a deficiency fatal to all claims to the extent they are based on the unsolicited Indication of Interest.

C. <u>The Court Should Grant Partial Summary Judgment on Plaintiff's Claims Related to the Issue of Director Independence (Motion For Partial Summary Judgment No. 2)</u>

At the October 27 hearing, in connection with Motion for Partial Summary Judgment No. 2, the Court requested that Plaintiff provide additional information so that each director could be evaluated on an "action-by-action basis[.]" *See* Helpern Decl., Exh. A, at 84:22; Exh. D, at 3. Plaintiff has not provided the Court with any supplemental factual or legal authority since that

hearing or the conclusion of discovery. Plaintiff's generalized allegations that certain Directors lack independence, by virtue of their friendship with members of the Cotter family, also misses the mark. Plaintiff cannot point to any cognizable evidence that any Director lacks independence, or more importantly—and as evaluated by Nevada courts—that any Director stood on both sides of a transaction.

For none of the challenged Board decisions is there a disputed fact that would create a triable issue regarding independence of Moving Defendants. "No issue of self-interest exists where directors did not stand on both sides of the transaction or receive any personal financial benefit." *La. Mun. Police Emps.' Ret. Sys. v. Wynn*, No. 2-12-cv-509 JCM, 2014 WL 994616, at *4 (D. Nev. Mar. 13, 2014) (applying Nevada law); NRS 78.140(1)(a)) (defining "interested director"). Here, there are no allegations, let alone evidence, that any director stood on both sides of any transaction. Instead, Plaintiff manufactured a theory that certain non-Cotter directors—as a result of friendship or economic ties—are somehow "beholden" to Ellen and Margaret Cotter. However, that is not the standard. "Allegations of mere personal friendship or mere outside business relationship, standing alone, are insufficient to raise a reasonable doubt about a director's independence." *Beam ex rel. Martha Stewart Living Omnimedia, Inc. v. Stewart*, 845 A.2d 1040, 1050 (Del. 8 2004).

Furthermore, Plaintiff's belief that the Moving Defendants [redacted] (*see* Helpern Decl., Exh. C, at 971:6-14; 975:7-20) is contrary to the law. The mere fact of a director's service and compensation—sometimes higher than their normal salaries—does not alone "lead to a reasonable doubt as to the[ir] independence." *See In re Walt Disney Co. Derivative Litig.*, 731 A.2d 342, 360 (Del. Ch. 1998), *aff'd in part, rev'd in part and remanded sub nom. Brehm v. Eisner*, 746 A.2d 244 (Del. 2000). Indeed, to hold otherwise would call into question anytime a director voted against a potential acquisition, no matter how inadequate the terms.

Part of Plaintiff's request for Rule 56(f) relief relating to this motion was a need for more time to depose Moving Defendants. Tellingly, Plaintiff has *never* sought the deposition of

Director/Defendant Michael Wrotniak. At the deposition of Director/Defendant Judy Codding, taken by Plaintiff since the original summary judgment hearing, Ms. Codding stated in no uncertain terms that she acts independently: "What my job is as an independent director is to [] do the best I can to bring the most shareholder value to all shareholders. I'm very clear about what my obligation is. . . . I have to make an independent judgment. And that's what I've done." Helpern Decl., Exh. B, at 174:5-18. Plaintiff has neither obtained nor proffered to the Court any additional evidence or authority that creates a triable issue of fact as to Moving Defendants' independence.

D. The Court Should Grant Partial Summary Judgment on Plaintiff's Claims Relating to the Appointment of Ellen Cotter as CEO, Approval of the Option Exercise, Hiring of Margaret Cotter, Approval of Market Compensation Packages to Ellen and Margaret Cotter, and Approval of One-Time Compensation Paid to Margaret Cotter and Guy Adams (Motions for Partial Summary Judgment Nos. 5 and 6)

Plaintiff's remaining claims, which were the subject of Individual Defendants' Motions for Partial Summary Judgment Nos. 5 and 6, were heard together, as the Court determined these issues were "all interrelated[.]" *See* Helpern Decl., Exh. A, at 140:12; Exh. D, at 3. Since the time that the Court granted Plaintiff's requested Rule 56(f) relief, Plaintiff has not obtained any new evidence—and no evidence exists—to create a triable issue of fact on these issues.

As discussed above (*supra* Section III.A.), the Nevada Supreme Court recently confirmed that the business judgment rule goes beyond shielding directors from personal liability in decision-making—it also prevents courts from substituting their own notions of what is or is not sound business judgment. *See Wynn*, 399 P.3d at 344. Moreover, NRS § 78.138(7), as amended, puts the burden on derivative plaintiffs to rebut NRS 78.138(3)'s presumption that directors and officers acted in good faith, on an informed basis, and with a view to the interests of the corporation. Plaintiff has not come close to meeting the high threshold that is required under NRS § 78.138(7).

For example, the evidence demonstrates that the Board's decision to appoint Ellen Cotter as CEO was made on an informed basis, in good faith, and with the honest belief that Ms. Cotter's leadership was in the best interest of the Company—there is no triable issue here. Ms. Cotter's

appointment was attributable to many rational business purposes, including without limitation her extensive experience in the cinema industry, her unique knowledge of the Company's assets, her familiarity with the Company's goals and existing management, and more. *See* Moving Defendants' Motion for Partial Summary Judgment No. 5 at 8-9. While Plaintiff seeks to create a supposed disputed issue through the "Position Specification" created by Korn Ferry for the initial CEO search, which emphasized real estate experience, [redacted] Helpern Decl., Exh. C, at 877:22-878:20.

Additionally, while Plaintiff alleges that the certain Directors were "beholden" to Ellen Cotter by reason of her status as a controlling stockholder, such a fact had no effect on the Board's decision. Ms. Codding testified at her deposition that it did not occur to her that it might be difficult not to support the candidacy of someone who might be a controlling shareholder. *See* Helpern Decl., Exh. B, at 95:20-23. Ms. Codding stated that she has a "fiduciary responsibility to all shareholders, and that's our obligation to select the best person for the job." *Id*. at 95:25-96:3. Beyond his own speculation, Plaintiff has not proffered any evidence that any Moving Defendants acted with improper motivation.

Plaintiff's remaining claims regarding the exercise of the option by the Estate of James Cotter, Sr., Margaret Cotter's employment as a full-time RDI employee, Ellen and Margaret Cotter's market compensation, and Margaret Cotter and Guy Adam's one-time additional compensation are also defeated by application of Nevada's business judgment rule. Discovery is closed, and Plaintiff has yet to identify evidence of bad faith on the part of RDI's Board such that the statutory presumption afforded by the business judgment rule could be rebutted. Instead, the facts demonstrate that Moving Defendants acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interest of the Company.

E. <u>The Court Should Grant Partial Summary Judgment on Plaintiff's Claims Related to His Termination (Motion For Partial Summary Judgment No. 1)</u>

Nevada's statutory protections for Board of Director decision-making—including the clarification to the scope of the business judgment result and amendments to NRS § 78.138—

apply equally to the Board's decision to terminate Plaintiff as President and CEO. For the reasons previously articulated in Moving Defendants' Motion for Partial Summary Judgment No. 1, Plaintiff cannot meet the showing required to avoid summary judgment on claims relating to his termination. While the Court previously stated its view that "there are genuine issues of material fact and issues related to interested directors participating in a process," (*see* Helpern Decl., Exh. A, at 117:9-11; Exh. D, at 3), new issues of law presented in this Motion merit reconsideration of any previously-issued order regarding Motion for Partial Summary Judgment No. 1. *See, e.g.*, *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737 (1997); *Moore v. City of Las Vegas*, 92 Nev. 402, 405 (1976). Specifically, as discussed *supra*, recent clarification to Nevada law make clear that suggestions of a purported lack of independence cannot rebut that statutory presumption that "directors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." NRS § 78.138(3). It was Plaintiff's burden to rebut this statutory presumption and he failed to do so. Here, as with the Board's other decisions, the undisputed facts demonstrate that the Moving Defendants thoroughly reviewed, deliberated, and ultimately decided what they believed was in the best interest of the Company. Accordingly, absent any contrary evidence from Plaintiff (beyond a supposed lack of ill-defined "independence" based only on Plaintiff's' suspicions and speculation) , the Moving Defendants are entitled to the statutory presumption of good faith.

F. Plaintiff Cannot Demonstrate a Triable Issue of Fact Exists Regarding Any Supposed Intentional Misconduct, Fraud, or Knowing Violation of the Law by Moving Defendants

Even if Plaintiff could proffer evidence rebutting the statutory presumption that the business judgment rule applies (he cannot), and even if Plaintiff could identify evidence showing that any of Moving Defendants breached a fiduciary duty (he cannot), Moving Defendants' motions should still be granted because they are statutorily immune to individual liability where, like here, the purported breaches did not involve intentional misconduct, fraud, or a knowing violation of law. NRS § 78.138(7) provides, in relevant part:

> [A] director or officer is not individually liable to the corporation or its stockholders or creditors for any damages as a result of any act or failure to act in his or her capacity as a director or officer unless it is proven that: ... (b) The breach of those duties involved intentional misconduct, fraud or a knowing violation of law.

In other words, "directors and officers may only be found personally liable for breaching their fiduciary duties if that breach involves intentional misconduct, fraud, or a knowing violation of the law." *Shoen*, 122 Nev. at 640 (citing NRS § 78.138(7)).

Even after Rule 56(f) relief was granted, there is still no cognizable evidence showing that, in connection with the Board's termination of Plaintiff, consideration of the Indication of Interest, the appointment of Ellen Cotter as CEO, the Estate's Option exercise, the employment of Margaret Cotter as a full-time employee, Ellen or Margaret Cotter's compensation packages, or the additional one-time compensation paid to Margaret Cotter and Guy Adams, Moving Defendants engaged in any intentional misconduct, fraud, or knowing violation of the law. After almost years of discovery, Plaintiff cannot not point to a shred of evidence to support his bare allegations. Additional discovery in this matter has proved fruitless and has not changed the fact that Plaintiff has offered nothing but his own speculation to support his claims that Moving Defendants lacked independence. Summary judgment is therefore appropriate.

IV. <u>CONCLUSION</u>

For the foregoing reasons, Moving Defendants respectfully request that the Court grant summary judgment as to the First, Second, Third, and Fourth Causes of Action set forth in Plaintiff's Second Amended Complaint, to the extent that they assert claims and damages related to (1) a purported unsolicited offer to buy all of the outstanding stock of RDI; (2) the appointment of Ellen Cotter as CEO; (3) the Estate's Option exercise; (4) the hiring of Margaret Cotter as a full-time RDI employee; (5) Ellen and Margaret Cotter's market compensation packages; and (6) the additional, one-time compensation paid to Margaret Cotter and Guy Adams.

/ / /

/ / /

Dated: November 9, 2017

COHEN|JOHNSON|PARKER|EDWARDS

By: /s/ H. Stan Johnson

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

CERTIFICATE OF SERVICE

I hereby certify that, on November 9, 2017, I caused a true and correct copy of the foregoing **DEFENDANTS MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK'S SUPPLEMENT TO MOTIONS FOR PARTIAL SUMMARY JUDGMENT NOS. 1, 2, 3, 5 AND 6** to be served on all interested parties, as registered with the Court's E-Filing and E-Service System.

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

Exhibit A

Exhibit A

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON MOTIONS

THURSDAY, OCTOBER 27, 2016

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

1 Okay. What else?
2 MR. KRUM: Well, Your Honor, so I'm going to skip
3 over the 56(f) issues. You understand those. The facts here
4 are rather curious. The board decided after an oral
5 presentation from Ellen Cotter of information that we've seen
6 only in lawyer-prepared board minutes that the company would
7 not respond to the offer and would continue, according to
8 their press release and 8K, on their independent stand-alone
9 business plan, or words to that effect. But there isn't any.
10 There is no long-term business plan. There's no long-term
11 business strategy. And in fact, you may recall this, in the
12 opposition to our motion to compel discovery regarding the
13 offer the company argued, well, Your Honor, the document
14 requests are overbroad, when they call for a business plan
15 that's everything in the company. And, of course, the reason
16 it was everything in the company is because there is none.
17 And so I'm going to -- I'm going to try to answer the question
18 you asked that I said I couldn't answer. I'm going to have to
19 have some good questions at deposition about that. And other
20 questions. So --
21 THE COURT: Okay. The request for 56(f) relief on
22 the motion for partial summary judgment on the claims related
23 to purported unsolicited offer is granted because the
24 depositions have not been completed and the document has not
25 yet been produced. I'm going to continue that motion till

1 December 1st, where I will get an update on whether I need get
2 a supplemental opposition from Mr. Krum related to those
3 issues. I'm going to write 12/1 on here and hand it to John.
4 Okay. I have written down that I want to go next to
5 -- hold on a second -- the motion on the independence issue.
6 You've got all of these motions, Mr. Tayback?
7 MR. TAYBACK: Mr. Krum and I, Your Honor.
8 The motion we filed on the independence issue we
9 filed because we -- the complaint, the second amended
10 complaint, it's an issue that seems to run like a thread
11 through all of the allegations. And we've identified the many
12 allegations that I think are made in the complaint in the
13 first footnote of our reply brief where we say he's at least
14 thrown out -- plaintiff has at least thrown out there the idea
15 that somehow those actions are wrongful because a director or
16 directors were, quote, unquote, "interested" or not
17 disinterested in what was being discussed. And so as a
18 starting point, though, there is no such thing as a
19 generalized lack of independence as a theory under which one
20 says that they breached fiduciary duties. The plaintiff --
21 and this really goes back to the question that we were just
22 discussing and the question that you asked Mr. Krum when he
23 stood up here, which is for the plaintiff to survive summary
24 judgment he has to put forward specific evidence that shows
25 that a specific board action -- and it's usually a transaction

1 actions needs to be determined independently from each other
2 as to whether they are protected by the business judgment
3 rule.
4 THE COURT: They absolutely do need to be done
5 individually, which is problematic, since the depos aren't
6 done. Don't you think?
7 MR. TAYBACK: Well, Mr. Wrotniak has never been
8 deposed and has never been scheduled to be deposed and has
9 never been asked to be deposed. And most of the depositions,
10 honestly, are complete. So with respect to those individual
11 defendants and with respect to those allegations that pertain
12 to those defendants the matter is ripe for determination. And
13 there's really been nothing with respect to say, for example,
14 Mr. Wrotniak, although not exclusively him. But he's the most
15 egregious example.
16 THE COURT: All right. Thank you.
17 Because of the request for 56(f) relief and the
18 depositions that have not been concluded, I'm going to set the
19 matter over to December 1st. I anticipate we will discuss
20 whether I need a supplemental brief at that time.
21 It is my belief that the independence issue needs to
22 be evaluated on a transaction- or action-by-action basis,
23 because you have to separately evaluate the independence as
24 related to each. And while there may be facts that overlap
25 between different actions that apply to others, I can't

1 evaluate it in a vacuum. So you're going to give me more
2 information like I've asked for, Mr. Krum, okay, following the
3 completion of that.
4 So we're going to take a short break. When we come
5 back we are going to go to the one on the executive committee.
6 (Court recessed at 2:54 p.m., until 3:06 p.m.)
7 THE COURT: Okay. I said we were going to talk
8 about the executive committee next; right?
9 MR. TAYBACK: Yes.
10 THE COURT: Let's talk about the executive
11 committee.
12 MR. TAYBACK: I was going to start with Nevada
13 Revised Statute 78.138(7) and say there's no evidence that can
14 support a claim for the formation of an executive committee,
15 because there's no misconduct. Now, in light of some of the
16 earlier arguments I'm anticipating that maybe Your Honor and
17 certainly plaintiffs will say, well, that's not an independent
18 claim for the formation of an executive committee.
19 THE COURT: It's not pled as an independent claim.
20 MR. TAYBACK: I'm happy to have that be true. But
21 that's not entirely the way we read the complaint. I don't
22 think it's entirely clear. And in fact I will say when you
23 asked, Your Honor, what is the question you're going to put to
24 the jury --
25 THE COURT: Not the question, questions.

1 plaintiff. There's no wrong to the company for the company
2 following the bylaws, following Nevada law, following the
3 terms of the contract, and on these facts, taking them as he
4 said, where people are fighting and its infecting the
5 operation of the company for the board to say, I'm picking
6 these two over that one. It's literally that simple.
7 THE COURT: Okay. Are you done?
8 MR. FERRARIO: Yes.
9 THE COURT: All right. The motion's denied, as
10 there are genuine issues of material fact and issues related
11 to interested directors participating in a process.
12 If I could go to the motion in limine related to
13 plaintiff's experts.
14 So, for the record, in September of 2013 I spoke on
15 a panel called Multijurisdiction Case Management Litigation
16 Being Pursued in Multiple Forums with Chief Justice Myron
17 Steele. I don't think it affects my ability to be fair and
18 impartial, but I make that disclosure to you just in case you
19 need it.
20 MR. SEARCY: Thank you, Your Honor. I'll try and go
21 through the four experts that were touched upon in our motion
22 in limine fairly briefly, because it's getting late.
23 THE COURT: And I've got to find them in the book.
24 So you keep going.
25 MR. SEARCY: Okay. If the Court has any questions,

1 MR. RHOW: Understood.
2 THE COURT: But I'm running out of time.
3 MR. KRUM: Your Honor, what's going to be next? I'm
4 running out of gas. I need to prepare.
5 THE COURT: I'm going to go to the Ellen Cotter
6 appointment as CEO and compensation motion.
7 MR. KRUM: Okay. Thank you.
8 (Court recessed at 4:27 p.m., until 4:40 p.m.)
9 THE COURT: So we're on the issues related to
10 appointment of Ellen Cotter, compensation of Ellen and
11 Margaret Cotter, and those issues. And I think there's two or
12 three different motions that are all interrelated on these.
13 MR. TAYBACK: These would be Motions 5 and 6, and
14 there is a number of issues that are all interrelated.
15 THE COURT: Okay.
16 MR. TAYBACK: So I'll --
17 THE COURT: I'm not big on numbers, I'm big on
18 subjects.
19 MR. TAYBACK: I understand. And I'll --
20 THE COURT: So it's hard for me on numbers.
21 MR. TAYBACK: I'll address them. There's probably
22 four or five issues.
23 THE COURT: Okay.
24 MR. TAYBACK: Our motion that we entitled Number 5
25 was the CEO search and appointment ultimately hiring of Ellen

1 I got stuck helping manage one, so I don't ever want to do it
2 again.
3 MR. FERRARIO: Because this is not --
4 THE COURT: But I do want parties to be accountable
5 and perform in a manner that appears to be consistent with
6 Nevada law. So there may be something the parties decide to
7 do between now and when I see them next.
8 MR. FERRARIO: It's the Nevada law we're waiting
9 for, though.
10 THE COURT: But the Nevada law is the Nevada Supreme
11 Court. And I keep telling you what I think the Schoen case
12 says when you have interested directors.
13 MR. FERRARIO: Well, we're going to go back and read
14 that. This isn't --
15 THE COURT: Interested directors, lots of -- you
16 lose a lot of protections.
17 MR. FERRARIO: I think we'll be back.
18 THE COURT: And interested directors is a very
19 intense factual analysis.
20 Go.
21 MR. KRUM: Thank you, Your Honor.
22 THE COURT: Are you going to ask for 56(f) relief?
23 MR. KRUM: Yes, Your Honor.
24 THE COURT: All right. It's granted on Motions 5,
25 6, and there was one other one related to --

1 MR. TAYBACK: It's 3, Your Honor. It was related to
2 the unsolicited offer I believe is the one you identified
3 previously.
4 THE COURT: No. 5 and 6 were the only two we're
5 talking about right now; correct?
6 MR. TAYBACK: Oh. Yes. Got it. Yeah. 5 and 6.
7 THE COURT: Okay. So 5 and 6. So there. It's
8 4:54.
9 So here's the question. What do you want to do with
10 the rest of them? Is everybody agreeable the motions to seal
11 that are on calendar today can be granted because they include
12 confidential and significant financial information that needs
13 to remain protected given the company's activities?
14 MR. FERRARIO: Yes, Your Honor.
15 MR. KRUM: Yes.
16 THE COURT: Okay. So all the motions to seal are
17 granted. Or redact. Seal and/or redact.
18 So what do you want to do next? Because I've got
19 through in almost four hours not much.
20 MR. RHOW: Everyone's looking at me. I would love
21 to. I hope we're last and least in terms of liability.
22 THE COURT: Well, it's 4:55.
23 MR. RHOW: Yeah. So, look, I want it to be heard
24 and I do want to argue it, but --
25 THE COURT: Okay. Well, but you're not the last

Exhibit B

Exhibit B

1

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4

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

16 VIDEOTAPED DEPOSITION OF JUDY CODDING

17 TAKEN ON MARCH 1, 2017

18

19

20

21

22

23

24 REPORTED BY:

25 PATRICIA L. HUBBARD, CSR #3400

1 **candidate?**
2 A. I mean I would have said that to anyone
3 who called me to tell me that they were going to be
4 a candidate for any position that they would be
5 considered.
6 **Q. Does that mean that you were being**
7 **polite but that you were not pleased?**
8 A. I thought Ellen, up to that point I had
9 observed her doing -- you know, I wasn't on the
10 board for a long period of time, so I didn't have
11 the kind of first-hand information that -- others
12 who had worked with her.
13 So I felt like having someone who knew
14 Reading well would be a good step of consideration.
15 I did not know Ellen Cotter well at that
16 time.
17 **Q. Did you say or intimate to her that you**
18 **would support her candidacy?**
19 A. No.
20 **Q. Did it occur to you that it was -- it**
21 **would be difficult not to support the candidacy of**
22 **someone who might be a controlling shareholder?**
23 A. No.
24 **Q. That didn't occur to you?**
25 A. No. Does not. I think anyone has a

1 fiduciary responsibility to all shareholders, and
2 that's our obligation to select the best person for
3 the job.
4 **Q. Did you ever say to Ellen Cotter or**
5 **anyone else in words or substance that you thought**
6 **someone from the Cotter family should be the C.E.O.?**
7 A. No.
8 **Q. Were there any other internal**
9 **candidates?**
10 A. I don't think they -- I think someone
11 had thought about it, but I don't think there were
12 any other internal candidates, at least to the best
13 of my knowledge.
14 **Q. You recall that there was a meeting in**
15 **early January of 2016 at which the board accepted**
16 **the recommendation from the C.E.O. selection**
17 **committee and made Ellen Cotter the permanent**
18 **C.E.O., right?**
19 A. Yes.
20 **Q. At any time prior to that RDI board of**
21 **directors meeting in early January 2016, did you**
22 **have any communications with anyone about any other**
23 **person or persons employed at RDI as a candidate or**
24 **potential candidate?**
25 A. I don't -- I don't -- I don't recall

1 of Reading without some of the things that we're
2 focused on in terms of strategy.
3 **Q. To what analyst are you referring?**
4 A. I don't recall their names. But --
5 **Q. But you believe that was prior to June**
6 **of 2016?**
7 A. I'm not sure. I'm not sure the timing
8 of it really.
9 **Q. So --**
10 A. But from my point of view, I think
11 Reading has enormous possibilities to bring
12 shareholder value, and we need to stick with it.
13 **Q. If the -- if the price had been**
14 **$30 instead of $17, would that have impacted your**
15 **decision-making or analysis?**
16 MR. SEARCY: Objection. Lacks
17 foundation.
18 THE WITNESS: I don't think so. It
19 could have, but I don't -- I'd have to know much
20 more, and I don't think so.
21 I think that the direction we're heading
22 is going to bring more value to the shareholders
23 than that.
24 BY MR. KRUM:
25 **Q. More than $30 a share --**

1 A. Uh-huh.
2 **Q. -- in 2016 dollars?**
3 A. Yeah.
4 **Q. When do you think that's going to**
5 **happen?**
6 A. I don't know. But, you know, I don't --
7 I don't -- I'm not focused on selling the company.
8 I'm focused on executing on the strategy and making
9 sure that that is executed on.
10 **Q. Well, what's the -- what is your**
11 **anticipated time horizon for -- for bringing more**
12 **value to the shareholders than $30 a share?**
13 A. As I said to you, I'm not sure. That
14 depends on how Theaters 1, 2 and 3 -- how they
15 develop.
16 It could be over the next five years.
17 It could be over the next ten years. But I think
18 that there will be a lot more value to this company,
19 because it's not going to stand still where it is.
20 You know, they've been out looking at other theater
21 complexes and evaluating them. And this is a
22 growing company.
23 **Q. At the -- at the board meeting in June**
24 **of 2016, at which the decision was made to follow**
25 **the strategy and, in effect, reject the third-party**

1 **offer or expression of interest, whatever you care**
2 **to call it, who said what, if anything, regarding**
3 **what any controlling shareholder wished to do or did**
4 **not wish to do?**
5 A. Well, I think that there's the -- I mean
6 the controlling shareholders were each asked their
7 opinion about it. And, you know, again from my
8 point of view, that's their opinion.
9 What my job is as an independent
10 director is to bring -- do the best I can to bring
11 the most shareholder value to all shareholders. I'm
12 very clear about what my obligation is.
13 And so, you know, not that Ellen and
14 Margaret and Jim wouldn't be able to determine one
15 way or the other, but we have to make an independent
16 judgment, and I have to make an independent
17 judgment. And that's what I've done. I mean
18 clearly --
19 **Q. When the -- go ahead. I'm sorry.**
20 A. Never mind. Go ahead.
21 **Q. When you made that judgment, was it at**
22 **the board meeting in June 2016 or prior to the board**
23 **meeting?**
24 A. No. It was -- it was -- again you're
25 looking at the direction of the company and a growth

Exhibit C

FILED UNDER SEAL

Exhibit C

Exhibit D

Exhibit D

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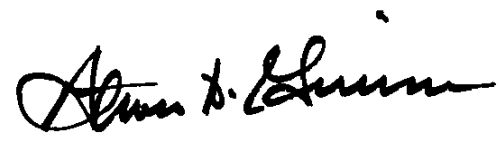
12/21/2016 03:54:05 PM



CLERK OF THE COURT

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Attorneys for Plaintiff
James J. Cotter, Jr.

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, TIMOTHY STOREY, WILLIAM GOULD, and DOES 1 through 100, inclusive, Defendants. and READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	CASE NO.: A-15-719860-B DEPT. NO. XI Coordinated with: Case No. P-14-082942-E Dept. No. XI Case No. A-16-735305-B Dept. No. XI Jointly Administered **Business Court** **[PROPOSED] ORDER REGARDING DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT NOS. 1–6 AND MOTION *IN LIMINE* TO EXCLUDE EXPERT TESTIMONY** Date of Hearing: October 27, 2016 Time of Hearing: 8:30 a.m.
T2 PARTNERS MANAGEMENT, LP, a Delaware limited partnership, doing business as KASE CAPITAL MANAGEMENT, et al., Plaintiffs, vs. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, CRAIG TOMPKINS, and DOES 1 through 100, inclusive, Defendants.	

100040057_2

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

and

READING INTERNATIONAL, INC., a Nevada corporation,

Nominal Defendant.

THESE MATTERS HAVING COME BEFORE the Court on October 27, 2016, Mark G. Krum appearing for plaintiff James J. Cotter, Jr. ("Plaintiff"); H. Stanley Johnson, Christopher Tayback, and Marshall M. Searcy appearing for defendants Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding and Michael Wrotniak; Mark E. Ferrario and Kara Hendricks appearing for Reading International, Inc.; and Ekwan Rhow, Shoshana E. Bannett appearing for William Gould, on the following motions:

- Individual Defendants' Motion for Summary Judgment (No. 1) Re: Plaintiff's Termination and Reinstatement Claims;
- Individual Defendants' Motion for Partial Summary Judgment (No. 2) Re: The Issue of Director Independence;
- Individual Defendants' Motion for Partial Summary Judgment (No. 3) On Plaintiff's Claims Related to the Purported Unsolicited Offer;
- Individual Defendants' Motion for Partial Summary Judgment (No. 4) On Plaintiff's Claims Related to the Executive Committee;
- Individual Defendants' Motion for Partial Summary Judgment (No. 5) On Plaintiff's Claims Related to the Appointment of Ellen Cotter as CEO;
- Individual Defendants' Motion for Partial Summary Judgment (No. 6) Re: Plaintiff's Claims Related to the Estate's Option Exercise, the Appointment of Margaret Cotter, the Compensation Packages of Ellen Cotter and Margaret Cotter, and the Additional Compensation to Margaret Cotter and Guy Adams; and
- Defendants' Motion *In Limine* to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty;

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

IT IS HEREBY ORDERED THAT the Motion for Partial Summary Judgment No. 1 is DENIED. There are genuine issues of material fact as to the issues related to interested directors participating in the process.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is GRANTED with respect to Motion for Partial Summary Judgment No. 2, and supplemental briefing will be discussed once the relevant discovery is complete. The independence issue needs to be evaluated on a transaction or action-by-action basis, because the independence related to each needs to be separately evaluated; even though facts overlap, the Court cannot evaluate this in a vacuum. Motion for Partial Summary Judgment No. 2 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is GRANTED with respect to Motion for Partial Summary Judgment No. 3, because depositions have not been completed and the relevant documents have not been produced. Motion for Partial Summary Judgment No. 3 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT Motion for Partial Summary Judgment No. 4 is GRANTED IN PART. As to the formation and revitalization (activation) of the Executive Committee, the motion is GRANTED; as to utilization of the committee, the motion is DENIED. Formation and revitalization includes a decision by the company to make use of their previously dormant Executive Committee and put people on that Executive Committee.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is granted with respect to Motion for Partial Summary Judgment No. 5. Motion for Partial Summary Judgment No. 5 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT Rule 56(f) relief is granted with respect to Motion for Partial Summary Judgment No. 6. Motion for Partial Summary Judgment No. 6 is CONTINUED pending Plaintiff's submission of a supplemental opposition.

IT IS FURTHER ORDERED THAT the Motion *in Limine* to Exclude Expert Testimony of Myron Steele, Tiago Duarte-Silva, Richard Spitz, Albert Nagy, and John Finnerty is GRANTED IN PART. With respect to Chief Justice Steele, he may testify only for the limited purpose of

Lewis Roca ROTHGERBER CHRISTIE
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Las Vegas, NV 89169-5996

identifying what appropriate corporate governance activities would have been, including activities where directors are interested, including how to evaluate if directors are interested. As to Dr. Finnerty, the Motion *In Limine* was WITHDRAWN. As to the other experts, the motion is DENIED.

DATED this 20 day of December, 2016.

DISTRICT COURT JUDGE

Submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Mark G. Krum*
MARK G. KRUM (SBN 10913)
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11/21/2017 8:41 AM
Steven D. Grierson
CLERK OF THE COURT

JOIN
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Counsel for Reading International, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR., individually and derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, et al, Defendants.	**Case No. A-15-719860-B** Dept. No. XI **Coordinated with:** Case No. P 14-082942-E Dept. XI Case No. A-16-735305-B Dept. XI **READING INTERNATIONAL, INC.'S JOINDER TO MARGARET COTTER, ELLEN COTTER, DOUGLAS MCEACHERN, GUY ADAMS, EDWARD KANE, JUDY CODDING AND MICHAEL WROTNIAK'S SUPPLEMENT TO MOTIONS FOR PARTIAL SUMMARY JUDGMENT NOS. 1, 2, 3, 5 AND 6.** **Date of Hearing: December 11, 2017** **Time: 8:30 a.m.**
In the Matter of the Estate of JAMES J. COTTER, Deceased.	

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JAMES J. COTTER, JR.,

Plaintiff,

v.

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

Defendants.

READING INTERNATIONAL, INC., by and through its counsel Greenberg Traurig, LLP, hereby submits its joinder to Margaret Cotter, Ellen Cotter, Douglas McEachern, Guy Adams, Edward Kane, Judy Codding and Michael Wrotniak's Supplement to Motions for partial Summary Judgments Nos. 1, 2, 3, 5 and 6.

DATED: this 21st day of November, 2017.

GREENBERG TRAURIG, LLP

/s/ Mark E. Ferrario
MARK E. FERRARIO, ESQ.
(NV Bar No. 1625)
KARA B. HENDRICKS, ESQ.
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CERTIFICATE OF SERVICE

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

DATED this 21st day of November, 2017.

/s/ Megan L. Sheffield
An employee of GREENBERG TRAURIG, LLP

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11/27/2017 9:46 AM
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

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

MONDAY, NOVEMBER 20, 2017

COURT RECORDER:

JILL HAWKINS
District Court

TRANSCRIPTION BY:

FLORENCE HOYT
Las Vegas, Nevada 89146

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

APPEARANCES:

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

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

(Court was called to order)

THE COURT: Mr. Ferrario, you cannot leave.

MR. FERRARIO: I'm not.

THE COURT: You're at the defense table.

If I can go to Cotter.

MR. MORRIS: Good morning, Your Honor.

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

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

THE COURT: Good morning, Mr. Krum.

MR. KRUM: Good morning, Your Honor.

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

Mr. Morris, you're up.

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

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

MR. MORRIS: Several weeks ago.

THE COURT: It was a very nice sign.

1 All right, guys.
2 MR. MORRIS: You won't hold that against me, will
3 you?
4 THE COURT: No. I thought it was a nice sign.
5 MR. MORRIS: All right.
6 MR. TAYBACK: Good morning, Your Honor. Christopher
7 Tayback on behalf of the individual director defendants,
8 except Mr. Gould, who's separately represented.
9 MR. SEARCY: Good morning, Your Honor. Marshall
10 Searcy, also here with Mr. Tayback on behalf of certain
11 individual defendants.
12 MR. FERRARIO: Mark Ferrario for Reading.
13 MS. HENDRICKS: Kara Hendricks for Reading.
14 MS. BANNETT: Shoshana Bannett for William Gould.
15 MR. JOHNSON: Stan Johnson on behalf of the
16 individual defendants.
17 THE COURT: Mr. Krum, could you hear everyone who
18 identified themselves? Mr. Krum, can you hear me?
19 MR. KRUM: No.
20 THE COURT: Mr. Krum, it's your motion.
21 MR. TAYBACK: It's actually our motion.
22 MR. FERRARIO: It's actually our motion -- or his
23 motion.
24 THE COURT: Okay. Well, I've got to make sure he
25 can hear.

1 MR. KRUM: Okay. Now I can hear you. Thank you.
2 THE COURT: All right. Now I'm going to have Mr.
3 Tayback argue the motion.
4 MR. TAYBACK: Good morning, Your Honor. I'll
5 reserve whatever time I have left for whatever questions you
6 have.
7 I'm going to start by saying that I think the basic
8 principle here is the Nevada Supreme Court has said to their
9 satisfaction, at least, Your Honor has not decided the
10 adequacy of Mr. Cotter, Jr., the plaintiff in this case, to be
11 a class representative on behalf of the other stockholders in
12 Reading. That's obviously a concern, because there is a
13 threshold issue, because Your Honor well knows --
14 Should we stop? The phone's on the ground. Can I
15 approach?
16 MR. FERRARIO: That's pretty good, Jill.
17 THE MARSHAL: Is Mr. Krum still there?
18 MR. KRUM: Yes, I am. Thanks.
19 THE COURT: I guess you missed the Three Stooges act
20 from being by telephone. But now we're going to go back to
21 the argument.
22 MR. TAYBACK: I usually don't get the phone kind of
23 reacting back to my argument, but --
24 In this case it's a threshold issue to know that the
25 -- and, as Your Honor well knows, the Court has obligations to

1 the class which include making sure that the plaintiff,
2 whoever's sitting there, is not just pursuing a personal
3 vendetta, a personal issue. What we now know and what we have
4 suspected but we certainly know has been confirmed by the
5 filings in the trust case in California is that this
6 plaintiff, Mr. Cotter, Jr., is using this derivative case to
7 pursue solely personal remedies. One of those --
8 THE COURT: And you're surprised by the fact that he
9 and his sisters have been fighting this whole time?
10 MR. TAYBACK: I am not surprised they've been
11 fighting.
12 THE COURT: Okay. Because we've known that and I've
13 known that when I did not dismiss the derivative portion of
14 the case. It wasn't like this is new.
15 MR. TAYBACK: That is not new. But what is new is
16 his efforts to seek the sale of a certain subset of stock in
17 the trust case, which --
18 THE COURT: I'm aware of that. That's new. But how
19 does that impact this decision? I know that you've got
20 something that's not in the briefing that's this nugget that's
21 going to make a light come on for me, and I've been waiting
22 for it all weekend.
23 MR. TAYBACK: Okay. Well, I'm going to try and find
24 that nugget that I think we tried to communicate and obviously
25 didn't do it clearly enough in the papers. But the nugget

1 here is this, which is to say there are two different classes
2 of stock, one of which --
3 THE COURT: Uh-huh. I knew that.
4 MR. TAYBACK: -- one of which is stock that is
5 called Class B stock, that if it's sold the plaintiff has
6 asked for there to be a control premium. That control premium
7 is something that he's advocating in the trust case be used by
8 the guardian ad litem, by the trustee ad litem in that case,
9 to negotiate for the sale of just that stock, that is to say,
10 just the stock that will inure to the benefit of Mr. Cotter,
11 Jr., and his children. That is a problem when you are a class
12 representative. That is to say, he's advocating in that
13 action that that trustee negotiate the sale of a stock, of a
14 portion of stock, not of all the stock, not of the stock held
15 by all the stockholders that he purports to represent, and
16 that he do so at a premium that would inure to the benefit of
17 his children.
18 What does that mean for this case? What it means is
19 he is now taking positions that would benefit just himself and
20 that this case is an obvious leverage, obvious issue,
21 proceeding that can be manipulated by a plaintiff who's got
22 private litigation to negotiate something that if he's looking
23 to negotiate a control premium through that trustee, then in
24 fact the status of this derivative case, which is in his
25 control, is something that would be the subject of that

1 negotiation. Will it be dismissed, will it be proceeded, what
2 remedies will be sought? All of this really just underscores
3 what, yes, Your Honor, we all suspected right away. These
4 siblings fight, and --
5 THE COURT: Well, and the judge in California is
6 unhappy with this.
7 MR. TAYBACK: And the plaintiff. I believe that
8 there's language in there that he in fact exercised undue
9 influence. And that's a large part of what the court's
10 decision was.
11 THE COURT: Yeah. But there were no forgeries.
12 MR. TAYBACK: I'm sorry, Your Honor?
13 THE COURT: No forgeries.
14 MR. TAYBACK: No forgeries. The question is whether
15 or not the case that's here he's an adequate representative,
16 Mr. Cotter, Jr., the plaintiff.
17 THE COURT: I understand that's the issue. I'm
18 trying to find out where the new information is other than
19 that you guys have all pissed off the judge in California.
20 MR. TAYBACK: Well, it's true that the judge is
21 unhappy with all the litigants there. But the new information
22 is this. The remedy he's seeking --
23 THE COURT: The trustee ad litem is your new
24 information.
25 MR. TAYBACK: No. The imploring by this plaintiff

1 that the trustee ad litem be empowered to sell a certain
2 subset of stock that inures only to the benefit of this
3 plaintiff and that this proceeding is leverage in that
4 negotiation. And from that one I think has to conclude that
5 he's not situated like all the other shareholders. All the
6 other shareholders he purports to represent who aren't here,
7 none of whom have joined his action, stand to benefit from
8 that.
9 THE COURT: Well, there were some who joined, but
10 they settled with you.
11 MR. TAYBACK: They walked away. And that's the way
12 that that settlement played out. But they are not here now.
13 They certainly could join if they felt that the sale of stock
14 that would benefit solely this plaintiff was advantageous to
15 them. They have not.
16 THE COURT: Well, but that's not the whole
17 allegations that he's made as part of his derivative claim.
18 You understand that.
19 MR. TAYBACK: I certainly understand that. But it's
20 not -- but it is reflective of his status as it relates to the
21 other stockholders.
22 THE COURT: I understand. Anything else you want to
23 tell me to try and shine that light so I'm going to realize
24 that something new has occurred that I don't know?
25 MR. TAYBACK: No, Your Honor. But I will reserve

1 the rest of my time to respond.
2 THE COURT: Thank you. Mr. Krum.
3 MR. KRUM: Thank you, Your Honor. I don't really
4 have anything to add to what we've said in our papers. And
5 you saw from those papers what actually transpired, and it
6 transpiring in a California trust action is far different than
7 the moving papers and Mr. Tayback's argument depicts it. But
8 I don't need to repeat what we wrote and what you read, so I
9 will wait, volunteer to answer any questions you have.
10 THE COURT: I don't have any questions for you.
11 Anything else?
12 MR. TAYBACK: Any questions for me, Your Honor?
13 THE COURT: No.
14 The motion's denied.
15 Mr. Ferrario, what happened with the settlement in
16 California? It didn't happen, did it? I told you we would be
17 surprised if it occurred.
18 MR. FERRARIO: Well, I -- well, can we -- let me
19 just put it to you this way. It isn't dead yet, I don't
20 think.
21 THE COURT: Well, we've got a trial in January,
22 first and second week of January.
23 MR. FERRARIO: Your Honor, when we caucused with --
24 no, we want the trial. When we caucused with all the lawyers
25 and called the Court and we had asked if we could go starting

1 I think mid January --
2 THE COURT: And I said no.
3 MR. FERRARIO: No, you didn't say no.
4 THE COURT: I said probably not.
5 MR. FERRARIO: No, you didn't say that, either.
6 THE COURT: What'd I say?
7 MR. FERRARIO: You said that would work, that
8 probably will work. And then we ended up on the January 2nd
9 stack.
10 THE COURT: Well, that is the stack.
11 MR. FERRARIO: I know. It would help everybody for
12 a variety of reasons, not the least of which since I just had
13 a Supreme Court argument set on -- what's the first day we're
14 back?
15 THE COURT: January 2.
16 MR. FERRARIO: Yeah. They set an argument in Carson
17 on the 2nd.
18 THE COURT: Cool.
19 MR. MORRIS: On January the 3rd.
20 MR. FERRARIO: January the 3rd?
21 MR. MORRIS: Yes.
22 MR. FERRARIO: The 3rd?
23 THE COURT: It'll be snowy then.
24 MR. FERRARIO: I know. I'm not --
25 THE COURT: And really cold.

1 MR. FERRARIO: -- really happy about this. But
2 there's nothing I can do.
3 So now what I would ask, and I think Shoshana is --
4 You've got problems early January; right?
5 THE COURT: Well, they had problems forever. They
6 had problems the whole spring.
7 MR. FERRARIO: I called the Court -- this isn't a
8 heavy stack. It would help us all if we could --
9 THE COURT: So that would be number one.
10 MR. FERRARIO: -- like go on the 15th or whatever
11 the --
12 THE COURT: But here's the problem with that. And I
13 think I've told you guys this a little bit. I have no
14 courtroom.
15 MR. FERRARIO: I know that.
16 THE COURT: I've got to beg for a courtroom to try
17 and get space. This is a jury trial, so I need a jury-
18 suitable courtroom. And that means sometimes my days aren't
19 as long as I would hope they are. I have Mental Health Court
20 on Tuesday afternoons where my staff supports Mental Health
21 Court unless I can get coverage, and I have to go down and do
22 any terminations that have to occur.
23 MR. FERRARIO: So we don't go Tuesday afternoons?
24 THE COURT: Well, unless we can get coverage and
25 unless there's no orders to show cause, which I haven't had an

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

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

MR. FERRARIO: I understand.

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

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

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

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

MR. TAYBACK: It is on the 3rd.

MR. FERRARIO: That is the one.

MR. TAYBACK: Yeah.

1 MR. FERRARIO: And I've got another one, too.
2 THE COURT: It's been a long morning, Mr. Ferrario.
3 MR. FERRARIO: It has. It's been a long couple
4 weeks. But actually I had some fun in there, too. If we
5 could start the first -- what's the next week? What's the
6 next Monday?
7 MR. TAYBACK: The 9th.
8 THE COURT: That's the 8th, January 8th.
9 MR. FERRARIO: I think that would help everybody if
10 we could know that was it. Then we could go to Carson City,
11 we could come back, we could do our trial prep, and show up on
12 the 8th, and that'll help everybody.
13 THE COURT: I need you all as a group to give me an
14 estimate on the number of hours you need for the presentation
15 of your case and cross-examination of the other side.
16 MR. FERRARIO: Okay.
17 THE COURT: I'm then going to do math to try and
18 figure out how long that is so that I can do an analysis as to
19 how long this is going to take so I can see how late I can
20 start and still get you done.
21 MR. FERRARIO: Okay. We'll --
22 THE COURT: How's that?
23 MR. FERRARIO: That's great.
24 Mark?
25 MR. KRUM: Yes.

1 MR. FERRARIO: Can you be available to do that
2 today?
3 MR. KRUM: Probably not. But let's try. Let's get
4 it started.
5 MR. FERRARIO: Well, we another -- we have that
6 other call today, so this dovetails into that nicely.
7 MR. KRUM: Right. That's what I meant.
8 MR. FERRARIO: Okay. Then I misunderstood. Okay.
9 So I guess we are going to do it today. Good. Thank you.
10 THE COURT: He said he's not going to know the
11 answer today, but he's going to start the process with you.
12 That's what he said.
13 MR. FERRARIO: We have another call that relates to
14 your pretrial order, and it will all -- this will all fit
15 nicely within that.
16 THE COURT: So I'm going to ask you the same
17 question I'm going to ask Wynn in a couple of weeks. Are you
18 going to do electronic of exhibits?
19 MR. FERRARIO: Yes.
20 THE COURT: I'll do the draft protocol and send it
21 over to you guys.
22 MR. FERRARIO: Okay.
23 THE COURT: Anything else?
24 Mr. Morris, it's a pleasure seeing you.
25 MR. MORRIS: Thank you, Your Honor. It's a pleasure

1 to be here.
2 THE COURT: Mr. Krum, sorry the phone flew off.
3 MR. MORRIS: There is another matter --
4 MR. KRUM: Well, no apologies necessary. Thank you,
5 Your Honor.
6 THE COURT: Mr. Morris has something else. What?
7 MR. MORRIS: There are actually two. But the one --
8 the first one I'm want to address is the motion practice that
9 has yet to resolve that is scheduled for mid December, the
10 motions for summary judgment or the renewed partial motions
11 for summary judgment and motions in limine. Those have -- the
12 outcome on those motions will have a -- I believe a
13 substantial impact on the evidence that is going to be
14 presented at trial. And that's of special concern to me,
15 because we're the plaintiff.
16 So what I'm prefacing is this request. With respect
17 to the identification of exhibits, a topic we briefly
18 discussed at our last joint counsel conference under Rule 2.67
19 or trying to reach accommodation of Rule 2.67 could we have an
20 extension of the time to identify exhibits until the motions
21 that are pending are decided?
22 THE COURT: When are they scheduled for decision?
23 MR. MORRIS: I believe they're scheduled for
24 argument on --
25 MS. BANNETT: December 11.

1 MR. MORRIS: Yes.
2 THE COURT: Are you guys going to need a special
3 setting for that?
4 MR. FERRARIO: You mean so we have a little more
5 time?
6 THE COURT: That's what I asked, yes.
7 MR. FERRARIO: I think that might be prudent so
8 nobody has to sit through that.
9 THE COURT: Okay. So how about we move it to a
10 couple days after that hearing, the 13th. Would that be
11 enough time?
12 MR. FERRARIO: That would be good for us.
13 MR. MORRIS: I assume you're going to make a
14 decision on the 11th.
15 THE COURT: Oh, absolutely.
16 MR. MORRIS: All right. So --
17 THE COURT: You know me. I make a decision. Right
18 or wrong, I make it, and then you guys go to Carson if you
19 want.
20 MR. MORRIS: We're going to be going to Carson in
21 any event on the 3rd.
22 THE COURT: On a different issue.
23 So let me see what time I can put it there. The
24 issue's going to be whether Randall Jones finishes his bench
25 trial the week before. I do not know if he's going to finish.

1 But even if he doesn't finish, since it's a bench trial, I can
2 carve out about an hour for you guys.
3 MR. FERRARIO: That'd be great.
4 MR. MORRIS: That would be good.
5 THE COURT: Okay. I've got to see if I have a
6 settlement conference that morning. So let me look on the
7 11th and see what time I have that day for you.
8 MR. MORRIS: So we can have until the --
9 MR. KRUM: We're scheduled to be back on the 18th
10 for the calendar call.
11 THE COURT: Yes. I may be done with you for the
12 calendar call at the 11th, but we'll know that then and we may
13 be able to cancel that.
14 Anything else?
15 MR. MORRIS: There's one other item, but it's not
16 contested, and that is our motion to seal our first motion in
17 limine. We have some documents that should be sealed or
18 partially sealed. We presented a motion to that effect.
19 There's been no opposition. I have an order I'd like you to
20 sign unless they --
21 THE COURT: Be happy to. Be happy to sign it.
22 MR. TAYBACK: No objection.
23 MR. MORRIS: Okay.
24 THE COURT: So I have two homework assignments for
25 me. One, I'm going to get the electronic exhibit protocol

1 tuned up for you, get it distributed to see if you have any
2 comments before we enter it, and then find a special time for
3 you on December 11th for the argument of your motions.
4 Anything else?
5 MR. TAYBACK: Nothing, Your Honor.
6 THE COURT: Have a lovely Thanksgiving.
7 MR. FERRARIO: Thank you, Your Honor.
8 MR. KRUM: You likewise.
9 THE COURT: Mr. Morris.
10 MR. MORRIS: Thank you, Your Honor.
11 THE PROCEEDINGS CONCLUDED AT 9:04 A.M.
12 * * * * *
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CERTIFICATION

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

AFFIRMATION

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

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt

FLORENCE M. HOYT, TRANSCRIBER

11/20/17

DATE

Electronically Filed
11/28/2017 12:10 PM
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES J. COTTER, JR. individually and derivatively on behalf of Reading International, Inc., Plaintiff, v. MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK, and DOES 1 through 100, inclusive, Defendants. AND READING INTERNATIONAL, INC., a Nevada corporation, Nominal Defendant.	Case No.: A-15-719860-B Dept. No.: XI Case No.: P-14-082942-E Dept. No.: XI Related and Coordinated Cases **BUSINESS COURT** **DEFENDANTS MARGARET COTTER, ELLEN COTTER, GUY ADAMS, EDWARD KANE, DOUGLAS McEACHERN, WILLIAM GOULD, JUDY CODDING, MICHAEL WROTNIAK'S ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

DEFENDANTS' ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

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

RESPONSE TO "NATURE OF THE CASE"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RESPONSE TO "PARTIES"

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

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

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

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

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

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

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

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

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

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

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

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

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

RESPONSE TO "ALLEGATIONS COMMON TO ALL CLAIMS"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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