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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

PORTLAND VANCOUVER JUNCTION RAILROAD, LLC,

Petitioner-Defendant,

v.

CLARK COUNTY,

Respondent-Plaintiff.

AMENDED BRIEF OF RESPONDENT CLARK COUNTY

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I. INTRODUCTION

Last year, Appellant Portland Vancouver Junction Railroad, LLC (“PVJR”) announced its intention to sue Respondent Clark County (the “County”) in Clark County Superior Court over a railroad lease dispute. Both PVJR and the County then filed lawsuits governing that dispute in Clark County Superior Court. PVJR pleaded in its original and amended complaints that venue was proper in Clark County. PVJR nonetheless moved the trial court to change venue for the consolidated case to Skamania County. Its sole argument for changing venue was that PVJR was not subject to suit in Clark County, even though it operates a railroad there, and the lease dispute here pertains to that railroad.

The trial court properly denied the motion to change venue, for three independent reasons. First, corporate entities may be sued in a county where they do business, consistent with multiple venue statutes and the policies underlying venue. PVJR does not seriously dispute this, but claims the rule should not apply because it is a limited liability company (“LLC”), rather than a standard corporation. For purposes of venue, however, this is not a meaningful or relevant distinction, and should be rejected. Second, PVJR waived any challenge it might have had to original venue in Clark County, by announcing its intent to sue the County there, actually bringing suit there, and pleading proper venue. Third, there is not

and never has been an articulable basis to transfer venue to Skamania County. Even if PVJR were correct that it could only be sued at its principal place of business, and has not waived that right, venue would then be in King County, not Skamania. The fact that PVJR continues to seek venue in Skamania County is part of a larger pattern of forum shopping and litigation delay tactics, as recently confirmed by the United States District Court in one of two additional actions PVJR has filed against the County since this appeal began. On any or all of these grounds, the trial court should be affirmed.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error.

The County assigns no error.

B. Counterstatement of Issue.

PVJR announced its intent to sue Clark County in Clark County Superior Court. The County filed a lawsuit against PVJR in Clark County Superior Court, which was authorized by RCW 36.01.050(1) and RCW 4.12.025(3), because PVJR undisputedly transacts business and entered into a lease agreement with the County there. As authorized under RCW 36.01.050(1) and RCW 4.12.025(1), PVJR filed both a complaint and an amended complaint against Clark County in Clark County Superior Court, addressing the same subject matter as the County's complaint and

pleading that venue was proper in Clark County. The cases were consolidated. Did the trial court properly conclude that venue for the consolidated action both parties filed in Clark County is proper in Clark County?

III. COUNTERSTATEMENT OF THE CASE

A. The County and PVJR Dispute the Validity of a Lease for County Property.

The County owns the Chelatchie Prairie Railroad (“Railroad”), an approximately 33-mile short line that runs diagonally across the County. *See* CP 55-56. This dispute primarily concerns the validity and construction of a Railroad Lease Agreement (“Lease”) between the County and PVJR under which PVJR presently provides common carrier freight service on a portion of the Railroad. *See* CP 19-52. The Lease was negotiated and executed in 2004 by (1) PVJR’s owner, Eric Temple, on behalf of PVJR’s predecessor entity, Columbia Basin Railroad Company, Inc. (“CBRC”), and (2) a County staff member, but was never approved by the County’s elected Board, as the County Code requires. CP 52, 56-57, 190, 395, 398; *see also* Clark County Code § 2.33A.150. In 2012, CBRC assigned its rights under the Lease to PVJR. CP 190.

In 2018, the County reviewed the Lease and identified several significant legal concerns that led it to conclude the Lease was likely invalid, unenforceable, or expired. CP 64, 234. These included the lack of

Board approval, an ambiguous Lease term that purports to substantially exceed limitations and requirements imposed under the Clark County Code,¹ and the lack of any compensation to the County under the Lease. CP 56-57, 64, 188, 193-94, 395, 398; *see also* Clark County Code §§ 2.33A.150, .160.

B. Clark County and PVJR Initiate and Pursue Separate Lawsuits in Clark County Superior Court Regarding the Lease.

On October 30, 2018, the County informed PVJR of the County's concerns regarding the Lease. CP 64. PVJR denied that the Lease was invalid, claimed entitlement to a 90-year Lease, alleged that the County had breached certain Lease provisions, and claimed the County lacked authority to enter the leased premises to perform repairs. CP 65. The parties unsuccessfully attempted to mediate their dispute.

On March 15, 2019, PVJR's owner, Eric Temple, announced to the press that PVJR had filed a lawsuit against the County in Clark County Superior Court concerning the parties' Lease dispute. *See* CP 329-33. A *Clark County Today* article published on March 15 described PVJR's and

¹ The Lease purports to have "an initial term of thirty (30) years commencing on the Transfer Date, which initial term shall be renewed for two additional renewal terms of thirty (30) years each, at the sole and exclusive option of Lessee, for a total of ninety (90) years, or the maximum allowed under Clark County Code Section 2.33A, but not, under any circumstances, to be less than a total of 50 years, unless and until otherwise terminated as provided below[.]" CP 24.

the County's lawsuits and provided a link to a copy of PVJR's complaint, which was captioned for Clark County Superior Court. CP 329-30, 331.²

Later that same day, the County filed in Clark County Superior Court a complaint for declaratory judgment, breach of contract, and injunctive relief against PVJR. *See* CP 1-52. The County pleaded, "Venue is proper pursuant to RCW 36.01.050 and RCW 4.12.025 because PVJR transacts business in Clark County." CP 2. According to the *Clark County Today* article referenced above, when Mr. Temple was asked to react to the County's lawsuit on March 15, he "said he wasn't even aware it had been filed." CP 330.

Contrary to Mr. Temple's representation to the press, PVJR's complaint was not actually filed on March 15. Rather, PVJR filed its complaint in Clark County Superior Court on March 19, 2019. CP 173-183. PVJR requested declaratory relief, raising essentially the same issues raised in the County's complaint. *See id.* PVJR pleaded as to venue: **"Venue is appropriate pursuant to RCW 4.12.025 because the subject**

² The article at CP 329-33 (including the link to the complaint PVJR provided to the media on March 15, 2019) is also available on the *Clark County Today* website at <https://www.clarkcountytoday.com/news/dueling-lawsuits-filed-over-operation-of-chelatchie-prairie-rail-line/> (last visited June 8, 2020). The cover page of PVJR's complaint, captioned for Clark County Superior Court, is visible in the website article and, when clicked, links to the full complaint. For ease of reference, a copy of the article and the linked PVJR complaint is attached hereto as Attachment A.

of this action originated in Clark County and the defendant is located in Clark County.” CP 174 (emphasis added).

The County and PVJR filed amended complaints on April 4 and 5, respectively. *See* CP 53-107, 184-225. Both parties’ amended complaints stated the same basis for venue as the original complaints, with PVJR reaffirming its earlier assertion that venue is proper in Clark County Superior Court. *See* CP 54, 185. On May 14, 2019, the parties executed a stipulation to consolidate the matters. *See* CP 123-27.

Meanwhile, despite pleading that venue is proper in Clark County, PVJR filed a pleading entitled “Motions Against Plaintiff’s Complaint” requesting (among other things) that the court “exercise its discretion to permit a change of venue from Clark County to Skamania County[.]” CP 114 (“Venue Challenge”). As the basis for its Venue Challenge, PVJR cited RCW 4.12.030(2) (allowing change of venue where there is “reason to believe that an impartial trial cannot be had therein”). CP 115.³ But PVJR also asserted that the County’s “choice of venue [was] improper because PVJR resides in King County, not Clark County,” CP 116—a claim governed by a different statute, RCW 4.12.030(1) (allowing venue

³ PVJR has abandoned its effort to change venue under RCW 4.12.030(2). Accordingly, that issue is not before this Court. *See* RAP 10.3(a)(4), (6); RAP 12.1(a); *Saunders v. Lloyd’s of London*, 113 Wn.2d 330, 345, 779 P.2d 249 (1989).

change where it appears “the county designated in the complaint is not the proper county”).

The County opposed PVJR’s Venue Challenge on the grounds that (1) PVJR brought its own lawsuit in Clark County and alleged in both its original and amended complaints that venue was proper there, (2) multiple statutes independently authorized venue in Clark County for both the County’s and PVJR’s lawsuits, (3) the statutes authorizing the County’s lawsuit (RCW 36.01.050(1) and RCW 4.12.025(3)) were equally specific authorizing the County to file in Clark County under either, and (4) PVJR offered no evidence indicating that an impartial trial could not be had in Clark County. CP 128-40.

The Clark County Superior Court heard the Venue Challenge on August 16, 2019 along with two other motions: (1) the County’s motion to compel filed due to PVJR’s continued refusal to respond to discovery or produce relevant documents and communications and (2) PVJR’s motion seeking an order regarding the County’s assertion of privilege with respect to an inadvertently-produced document. *See* CP 334-48, 400-22, 424-27. The court ruled in the County’s favor on all three motions. *See* CP 162-63, 424-27. The court denied PVJR’s Venue Challenge, concluding that the statutes authorizing the County’s action were “both specific” and neither statute “trumps over the other.” VRP (Aug. 16, 2019) at 27:15-18. The

court also “[took] into consideration the complaint and the amended complaint [that were] filed by [PVJR] indicating that this is the appropriate venue for their action.” *Id.* at 27:20-23.

The court granted the County’s motion to compel, ordering PVJR to answer outstanding discovery. CP 426-27; VRP (Aug. 16, 2019) at 51:12-21. And the court denied PVJR’s privilege motion, reserving the question of sanctions against PVJR as to that motion. CP 424-25; VRP (Aug. 16, 2019) at 72:5-9, 82:25-83:9.

Following these adverse rulings in the trial court, and facing an order requiring it to comply with outstanding discovery obligations, PVJR filed a Notice of Discretionary Review to this Court. CP 164-65. In November 2019, a Commissioner of this Court granted review.

C. Following Acceptance of Review, PVJR Files Two Additional Lawsuits Against the County, One of Which is Stayed on Abstention Grounds for Asserting Claims Inextricably Related to the Pending Lease Dispute.

Rather than wait for this Court to resolve the issue of venue, in January 2020 PVJR filed two additional duplicative lawsuits against the County—one in federal district court and one in Skamania County Superior Court. *See Temple et al. v. Clark County et al.*, No. 3:20-cv-05034-RJB-JRC, 2020 WL 2708830, at *1, *5, *8 (W.D. Wash. Apr. 22, 2020). The federal complaint sought to compel arbitration of the same

claims PVJR asserted in the present case (and is pursuing through this appeal), and also asserted constitutional claims against the County pertaining to the Lease dispute. *Id.* at *2-3, *5-7. The Skamania County complaint seeks declaratory relief as to the County’s alleged Lease obligations under Washington legislation concerning railroad dependent uses and related rezoning efforts. *Id.* at *1, *8, *10.

In March 2020, the County moved to dismiss PVJR’s federal complaint on grounds of abstention, lack of subject matter jurisdiction, lack of contractual right to arbitrate, and waiver, as well as failure to state cognizable constitutional claims. *See id.* at *3, *5-7, *12-13. On April 22, 2020, the federal court granted the County’s motion to abstain. *Id.* at *1, *12-13. In concluding abstention was warranted, the court explained that PVJR “seek[s] arbitration to resolve the Lease dispute, which appears related—if not central—to the proceedings” in Clark County, Skamania County, and the federal action and, thus, there was a “serious risk of duplicating efforts” and “piecemeal litigation” between the three actions. *Id.* at *5, *6-8, *12-13. The court noted the federal claims’ “tangled and apparently inextricable relationship” with the issues in the Clark County and Skamania County lawsuits, particularly given PVJR’s attempt to “compel arbitration of the Lease dispute”—resolution of which would require “a determination of the validity of the Lease and, specifically, its

arbitration terms, which appear to be at issue in the Clark County Lawsuit.” *Id.* at *2, *5, *9, *12. The court also noted “significant progress made in the Clark County Lawsuit” as opposed to the federal and Skamania lawsuits. *Id.* at *8. Finally, the court noted PVJR’s apparent “forum shopping,” and expressed concern with both its litigation tactics and lack of disclosure to the court:

It is concerning to the Court that, after nearly a year of litigation in the Clark County lawsuit, where there was substantial discussion about arbitration and the Lease dispute, Plaintiffs filed complaints with this Court and Skamania County Superior Court for related claims. Moreover, the complaints here and in the Skamania County Lawsuit were filed following adverse discovery rulings and an order denying Plaintiffs’ motion to change venue.

The Court is also troubled that Plaintiffs were not forthcoming in disclosing the related state court lawsuits. Plaintiffs did not include the related cases on their civil cover sheet and waited almost two months after filing the complaint to apprise the Court of those cases—and only after [the County] filed a Notice of Pendency of Other Actions.

Id. at 20; 2020 WL 2708830, at *11 (citations omitted). Overall, the federal court found PVJR’s sequential filings constituted “exceptional circumstances” warranting abstention. *Id.* at *11, *12.

IV. ARGUMENT

Even though it chose to file suit there, PVJR is now determined to avoid Clark County Superior Court. Since initiating this appeal, it has filed two other lawsuits governing the same issues, and (unsuccessfully)

attempted to compel arbitration. These efforts notwithstanding, Clark County remains the proper venue to resolve the parties' Lease dispute, filed there over a year ago by both parties. Corporate entities, including LLCs, are logically subject to suit where they do business. PVJR undisputedly does business in Clark County and, thus, multiple statutes authorized the County to sue PVJR there. Venue in Clark County is also undisputedly authorized for PVJR's competing lawsuit against the County, and PVJR's decision to file in Clark County waived any challenge to venue for the County's first-filed suit. Finally, there is no basis to transfer venue to Skamania County in any event. The trial court ruled correctly, and this Court should affirm.

A. Standard of Review.

The question presented by RCW 4.12.030(1)—whether venue is proper in the county designated in the complaint—is a legal question reviewed de novo. *Moore v. Flateau*, 154 Wn. App. 210, 214, 225 P.3d 361 (2010). Review of statutory construction issues is likewise de novo. *Keystone Masonry, Inc. v. Garco Constr., Inc.*, 135 Wn. App. 927, 932, 147 P.3d 610 (2006). As discussed below, the trial court correctly interpreted the applicable venue statutes and determined venue was proper in Clark County. This Court should affirm.

B. Venue is Proper for the County’s Lawsuit.

Venue rules are meant to assure “that the lawsuit’s locality has some logical relationship to the litigants or to the dispute’s subject matter.” *Eubanks v. Brown*, 170 Wn. App. 768, 771, 285 P.3d 901 (2012), *aff’d*, 180 Wn.2d 590, 327 P.3d 635 (2014). In many cases, there may be several options for venue, and then “the choice lies with the plaintiff in the first instance.” *Id.* at 771-72 (internal quotations omitted).

Here, the County was the initial plaintiff, and multiple statutes supported its choice of venue. The trial court properly determined that PVJR—an LLC that is successor to a corporation and undisputedly transacts business in Clark County—is subject to suit in Clark County. PVJR’s arguments to the contrary attempt to elevate form over substance.

1. Under the County Venue Statute, PVJR is Subject to Suit in Clark County Because It Transacts Business There.

The county venue statute, RCW 36.01.050(1) provides that where (as in the first-filed action here) the County is a **plaintiff**, “[a]ll actions by any county shall be commenced **in the superior court of the county in which the defendant resides**, or in either of the two judicial districts nearest to the county bringing the action.” (Emphasis added); *see also Frank Coluccio Constr. Co. v. King Cty.*, 3 Wn. App. 2d 504, 506-07, 416 P.3d 756 (2018). Under this statute, PVJR (the defendant) is subject to

venue where it resides, which includes Clark County, because it transacts business there.

a.) Corporation defendants are subject to suit where they transact business under the county venue statute.

The county venue statute does not define the term “resides.” But where “the defendant” sued under this statute is a corporate entity, the definitions in chapter 4.12 RCW (governing venue and jurisdiction) are instructive. Under the general venue statute, RCW 4.12.025(1), a corporation is deemed to “reside,” and thus may be sued, where it “[t]ransacts business,” “has an office for the transaction of business,” or “transacted business at the time the cause of action arose,” among other places. RCW 4.12.025(1); *Hickey v. City of Bellingham*, 90 Wn. App. 711, 716, 953 P.2d 822 (1998). When the Legislature “use[s] a word in a statute in one sense and with one meaning, and subsequently uses the same word in legislating on the same subject-matter, it will be understood as using it in the same sense” unless the context indicates otherwise. *State ex rel. Am. Piano Co. v. Superior Court*, 105 Wash. 676, 679, 178 P. 827 (1919) (internal quotation omitted). Here, the county venue statute and RCW 4.12.025(1)’s definition of corporate residence address the same subject (venue) and use the same term (“resides”). Accordingly, to the extent a county is suing a corporation under RCW 36.01.050(1), the corporation

should be deemed to “reside” where it transacts business by analogy to RCW 4.12.025(1)’s definition. *See, e.g., Garrison v. Wash. State Nursing Bd.*, 87 Wn.2d 195, 197, 550 P.2d 7 (1976) (looking to other statutes for definition of “distribute” where all statutes at issue involved the same topic); *Am. Piano Co.*, 105 Wash. at 678-80 (similar with respect to the word “debt”).

Contrary to PVJR’s claim, interpreting the county venue statute to permit suits against corporations where they transact business does not “insert” the corporation venue language from RCW 4.12.025(1) into the county venue statute. Opening Br. at 11. RCW 4.12.025(1) provides a definition, for purposes of venue, that should be used to construe RCW 36.01.050(1)’s language as to the residence of corporate defendants. Division I of this Court has cited RCW 4.12.025(1)’s definition of corporate residence in just that manner when addressing venue under RCW 36.01.050 and RCW 4.12.025. *See Frank Coluccio*, 3 Wn. App. 2d at 510 n.3. And for similar reasons, this interpretation does not render RCW 36.01.050(1) “superfluous” to RCW 4.12.025(1)’s definition of corporate residence. Opening Br. at 12. RCW 36.01.050(1) gives counties additional venue options aside from the defendant’s residence, also permitting counties to sue in the two nearest judicial districts. Interpreting corporate “residence” by reference to the definition in RCW 4.12.025(1)

provides meaning to one potential venue option under RCW 36.01.050(1).⁴

This interpretation is also consistent with the purpose behind the “transacting business” venue rule. This rule is both practical and fair, because suing a corporate entity where it does business, especially when the suit is about that specific business, has a “logical relationship” to the litigants and to the dispute’s subject matter. *Eubanks*, 170 Wn. App. at 771. As one court observed, a corporation transacting business in a particular county can reasonably foresee being sued there, particularly where the case relates to the business being transacted. *See Crepy v. Reckitt Benckiser, LLC*, 448 N.J. Super. 419, 429, 153 A.3d 968 (2016) (noting policy behind the transacting business rule is that a business “can reasonably foresee being sued in forums where it conducts business operations”). Because corporations may transact business in more than one county, they can and often do have more than one “residence” for venue purposes. *See* RCW 4.12.025(1) (corporate residence deemed to be in “**any county**” where the corporation transacts business).

Finally, contrary to PVJR’s implication, the county venue statute does not require that a case where a county is a party be heard in a

⁴ Indeed, PVJR’s argument to the contrary begs the question where a corporation would “reside” for purposes of the county venue statute if not where it transacts business. There is no reason to apply a different corporate residence rule where a corporation is being sued under the county venue statute.

different county. First, the statute specifically authorizes venue for an action **against** a county in the superior court of that county. RCW 36.01.050(1). And the statute authorizes a county to **bring suit** where the defendant resides, even if that venue is the superior court of the county itself. *Id.*; *see also Frank Coluccio*, 3 Wn. App. 2d at 517-18 (county venue statute authorized King County to bring suit against resident contractor in King County Superior Court).

b.) As an LLC transacting business in Clark County, PVJR is subject to venue there under the county venue statute.

PVJR objects to venue in Clark County under the county venue statute solely because it is an LLC, not a “corporation,” for venue purposes. This argument makes no practical sense. When the issue is venue, LLCs function the same as corporations, and should be subject to suit where they conduct business. There is no reason to distinguish between corporations and LLCs for venue purposes generally, nor to preclude suit against LLCs where they undisputedly transact business.

As to the first point, federal cases are informative given that, similar to Washington law, the federal corporate venue statute does not specifically refer to LLCs. Federal courts “long ago equated the residence of corporations and of unincorporated associations for venue purposes.”⁵ 14D ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3812 (4th

⁵ As noted below, this includes LLCs.

ed. Apr. 2020 update). The United States Supreme Court established that, where the statutes are silent as to the “residence” of an unincorporated business entity for general federal venue purposes, the entity is treated as a corporation. *Denver & Rio Grande W. R.R. Co. v. Bhd. of R.R. Trainmen*, 387 U.S. 556, 559-62, 87 S. Ct. 1746, 18 L. Ed. 2d 954 (1967). The *Denver* Court addressed former 28 U.S.C. § 1391(c), which provided corporations could be sued where they were incorporated or where they were licensed to do business or did business. *Id.* at 558-59. The Court noted there was nothing to indicate that Congress considered an unincorporated entity’s residence to be in only one place, nor that it “ever intended a limited view of residence with respect to unincorporated associations.” *Id.* at 561.

Despite changes to the federal venue statutes since *Denver*,⁶ the basic rule remains that “corporations are treated as residents of all districts in which they do business and as a result of the [*Denver*] case the same

⁶ The federal corporate venue statute applicable to multidistrict states now provides that “in a State which has more than one judicial district and in which a defendant that is a corporation is subject to personal jurisdiction at the time an action is commenced, such corporation shall be deemed to reside in any district in that State within which its contacts would be sufficient to subject it to personal jurisdiction if that district were a separate State, and, if there is no such district, the corporation shall be deemed to reside in the district within which it has the most significant contacts.” 28 U.S.C. § 1391(d). Following the decisions discussed herein, the federal venue statutes were also amended to provide that for single-district states, any “entity with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated, shall be deemed to reside, if a defendant, in any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question[.]” 28 U.S.C. § 1391(c)(2).

rule is applied to unincorporated associations”—including LLCs. 7C MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 1861 (3d ed. Apr. 2020 update); *see also Nat’l Prods., Inc. v. Arkon Res., Inc.*, No. C15-1984JLR (consol.), 2018 WL 1457254, at *6 n.5 (W.D. Wash. Mar. 23, 2018) (“Nevertheless, the court notes that [u]nincorporated associations, such as limited liability companies, are generally treated like corporations for purposes of venue” (internal quotations omitted)).⁷ To treat an LLC like PVJR differently than a corporation “would create an anomalous result: Suits against corporations would be permitted wherever they could be found, while suits against analogous and potentially larger economic entities doing business as partnerships would be proscribed everywhere except at their respective principal places of business.” *Injection Research Specialists v. Polaris Indus., L.P.*, 759 F. Supp. 1511, 1515 (D. Colo. 1991); *see also Penrod Drilling Co. v. Johnson*, 414 F.2d 1217, 1221-1222, 1224 (5th Cir. 1969) (noting that a rule allowing unincorporated associations to be sued only at the location of their

⁷ *See also Reid-Ashman Mfg., Inc. v. Swanson Semiconductor Serv., L.L.C.*, No. 06-4693 (JCS), 2006 WL 3290416, at *6 (N.D. Cal. Nov. 13, 2006) (“[T]he reference to ‘corporate defendants’ in § 1391(c) is construed liberally to include unincorporated associations, including limited liability companies.”); *Pippett v. Waterford Dev., LLC*, 166 F. Supp. 2d 233, 238 (E.D. Pa. 2001) (“An unincorporated association has no citizenship independent of its members for determining jurisdiction, but for determining venue it is treated as a corporation”; court treated limited liability company as corporation for venue purposes); *Crochet v. Wal-Mart Stores, Inc.*, No. 6:11-01404, 2012 WL 489204, at *1 (W.D. La. Feb. 13, 2012) (“it is generally accepted[] that unincorporated business associations such as partnerships and limited liability companies are analogous to corporations for venue purposes”).

principal place of business would “be illogical,” would “subject litigants bringing suit against such associations to unfair, discriminatory burdens,” and would “run counter to the general trend to allow suits to be brought at the place liabilities are being created”; further noting the “strong trend—judicial and legislative—toward making modern business entities amenable to suit in places where their business activities give rise to liabilities and obligations”), *cert. denied*, 396 U.S. 1003, 90 S. Ct. 552, 24 L. Ed. 2d 495 (1970).

As to the second point, LLCs doing business in a particular county can foresee being sued there just as a corporation would, and thus should be subject to suit to the same extent. This principle was explained in *Crepy*, where the court addressed the applicability to an LLC of a court rule providing that, for venue purposes, a **corporation** was deemed to reside in the county in which its registered office was located or in any county in which it was “actually doing business.” 448 N.J. Super. at 427. The court held that “**an LLC may be sued, like the analogous corporate entity, wherever it actually does business[.]**” *Id.* at 429 (emphasis added). The court emphasized that “[t]here is therefore no reason why a business entity that benefits from extensive and systemic business conduct

in [a particular county] may not be sued in [that county] merely because it is unincorporated.” *Id.*⁸

In sum, there is no reason to immunize LLCs from venue rules applicable to corporations. LLCs can be sued where they do business just as corporations can. That is particularly true here, where the record confirms that PVJR is **successor to a corporation** under the same Lease and currently operates the Railroad in Clark County under the same rights and obligations as its predecessor. CP 19, 22, 52, 187-90. PVJR undisputedly transacts business in Clark County and had every reason to believe it could be sued there, particularly where (as here) the County’s suit pertains to PVJR’s specific business in Clark County. In fact, PVJR **itself** sued in Clark County, and the record shows that it intended to sue there all along (discussed further *infra*). PVJR is subject to suit in Clark County under the county venue statute, and this Court should affirm on this ground alone.

c.) PVJR’s attempt to limit venue to “principal place of business” lacks support in the law.

Apparently relying on its “principal office” address in Bellevue, Washington, PVJR now claims it resides only in King County for venue purposes. Opening Br. at 9. This assertion ignores the plain language of

⁸ See also *Payne v. Civil Serv. Emp. Ass’n, Inc.*, 218 N.Y.S.2d 871, 872-73 (1961) (“The law seems settled that an unincorporated association should be treated like a corporation for the purpose of determining venue.”).

the county venue statute, which in no way limits a defendant's "residence" to the location of a principal office. *See supra*. For multiple additional reasons, PVJR's "principal office" argument fails.

First, the Legislature has indicated that "principal place of business" means something different than "residence" for purposes of venue. *Compare* Laws of 1965, ch. 53, § 168 *with* Laws of 1983, ch. 31, § 1 (Legislature changed "principal place of business" to "residence" in corporate venue statute). The Legislature used "resides" in the county venue statute, and there is no indication from the plain text of the statute that it meant only "principal place of business."

Second, the Washington Limited Liability Company Act ("LLC Act") provisions PVJR cites for this argument do not support it. RCW 25.15.006(13) simply defines "principal office." References to "principal office" and requirements for what must be kept there (i.e., RCW 25.15.136) appear intended to ensure that LLCs maintain certain records and that members and managers of an LLC can inspect those records. Nor do RCW 25.15.071(1)(c) and RCW 25.15.516 help PVJR. Those statutes govern certificates of formation and the specific procedure for addressing payment demands by LLC members dissenting from mergers, respectively. None of the above statutes have anything to do with the venue of actions brought against LLCs, nor does PVJR cite any other

Washington authority holding that an LLC's principal place of business exclusively governs venue. To the extent the LLC Act distinguishes LLCs from corporations, the differences between the entities (e.g., management and control structure, liability, etc.) do not support treating these entities differently for purposes of venue. Those distinguishing characteristics are unrelated to an LLC's business activities that create liability and subject it to suit where the business is transacted. *See Injection Research Specialists*, 759 F. Supp. at 1515 (concluding similarly as to partnerships).

Third, PVJR's attempt to invoke partnership principles in aid of avoiding venue where it transacts business fails. *See* Opening Br. at 10-11. As an initial matter, a partnership transacting business in a particular county should be subject to suit there to the same extent as a corporation for the reasons discussed *supra*. *See Injection Research Specialists*, 759 F. Supp. at 1515. PVJR also cites no relevant authority establishing that, under Washington law, (1) LLCs are comparable to partnerships and (2) venue for actions against partnerships is limited to the county of the partnership's principal office. To the contrary, Washington courts have more appropriately compared limited liability companies to **corporations** in that they are "entirely creatures of statute" and not creations of contract. *Chadwick Farms Owners Ass'n v. FHC LLC*, 166 Wn.2d 178, 187, 207 P.3d 1251 (2009); *see also Dragt v. Dragt/DeTray, LLC*, 139 Wn. App.

560, 574, 161 P.3d 473 (2007) (“[A limited liability company] is a creation of statute and not a creation of contract like a general partnership” (quoting 1 NICHOLAS G. KARAMBELAS, LIMITED LIABILITY COMPANIES, LAW, PRACTICE AND FORMS § 10:3, at 10-3 to-4 (2d ed. 2004))); *Landstar Inway, Inc. v. Samrow*, 181 Wn. App. 109, 122-23, 325 P.3d 327 (2014) (“An LLC is a statutory business structure that is like a corporation in that members of the company are generally not personally liable for the debts or obligations of the company.” (internal quotations omitted)).

Moreover, as discussed further *infra*, the Legislature has included LLCs (but not partnerships) within the types of entities generally associated with corporations for applicability of general laws. *See* RCW 1.16.080(1), (2). And the Legislature has also treated limited liability companies like corporations in other areas. *See* RCW 25.15.026 (service of process rules); RCW 25.15.061 (authorizing veil-piercing to same extent a corporation would be liable); RCW 25.15.071(3) (“A limited liability company formed under this chapter is a separate legal entity and has a perpetual existence”); RCW 25.15.126 (limited liability company members not personally liable for debts and obligations).

Contrary to PVJR’s claim, *Koh v. Inno-Pac. Holdings, Ltd.*, 114 Wn. App. 268, 54 P.3d 1270 (2002), did not hold that limited liability

companies closely resemble partnerships, much less subject limited liability companies to partnership venue rules. While *Koh* noted that Washington's LLC Act was modeled on the Uniform LLC Act, which in turn was based on the Uniform/Revised Partnership Acts, it did not address the comparability of limited liability companies to corporations or partnerships. *Id.* at 271-72.

Regardless, even if LLCs were comparable to partnerships, no authority supports PVJR's claim that venue for partnerships is limited to principal place of business or where a partner resides. PVJR cites only two Washington cases for this argument, neither of which involved or addressed business partnerships or venue for actions against them. *See DeLaGarza v. Rennebohm*, 24 Wn. App. 575, 577-78, 602 P.2d 372 (1979) (addressing venue for action to dissolve common law marriage); *Schroeder v. Schroeder*, 74 Wn.2d 853, 854-56, 447 P.2d 604 (1968) (similar for divorce action). No Washington court has held venue for partnerships is limited to principal place of business, nor should this Court so hold.⁹

⁹ PVJR's remaining out-of-state cases on this point, *see* Opening Br. at 10-11, are similarly unhelpful. None of those cases even involved an LLC, much less held that LLCs are comparable to partnerships for venue purposes.

In sum, the trial court properly ruled that the county venue statute authorizes venue for the County's lawsuit against PVJR in Clark County. This alone is grounds to affirm, although it is not the only ground.

2. The Corporate Venue Statute Provides an Additional, Independent Basis for Venue in Clark County.

The corporate venue statute, RCW 4.12.025(3), separately authorizes suits against corporations where (among other places) they enter into agreements and where they reside:

The venue of any action brought against a **corporation**, at the option of the plaintiff, **shall be: . . . (c) in the county where the agreement entered into with the corporation was made; or (d) in the county where the corporation has its residence.**

(Emphasis added). As noted above, "residence" for this purpose is defined as (among other things) any county where the corporation transacts business. RCW 4.12.025(1). Because PVJR entered into the Lease in Clark County and undisputedly transacts business there, it is independently subject to venue in Clark County if it falls under the corporate venue statute, which it does.

a.) The corporate venue statute is equally specific and mandatory as the county venue statute, meaning the County was authorized to sue PVJR under either.

As an initial matter, PVJR contends the county venue statute (discussed above) controls over RCW 4.12.025's venue provisions, including (presumably) the corporate venue statute, RCW 4.12.025(3).¹⁰

Washington courts have distinguished between general and specific venue statutes when determining which of multiple venue statutes applies in a particular case. The general default venue statute is RCW 4.12.025(1), which provides for venue where the defendant resides. *Ralph v. Weyerhaeuser Co.*, 187 Wn.2d 326, 342, 386 P.3d 721 (2016). Under this statute, "the legislature has decreed that the defendant has a right to have an action against him commenced in the county of his residence, except under specific circumstances governed by other statutes." *Eubanks*, 170 Wn. App. at 772.

Certain venue statutes provide a more specific directive as to venue for certain types of actions or parties. *See, e.g.*, RCW 36.01.050(1) (venue for actions by or against counties); RCW 4.12.025(3) (venue for actions against corporations); RCW 4.12.020(2) (venue for actions against public

¹⁰ PVJR does not meaningfully address the corporate venue statute, RCW 4.12.025(3), as a provision separate from the general venue statute, RCW 4.12.025(1). Note that this argument only matters if the Court concludes the county venue statute does not authorize venue. If the county venue statute applies, then whether the corporate venue statute also applies is moot.

officers). These specific venue statutes, where applicable, control over the general default statute. *Eubanks*, 170 Wn. App. at 772. However, “when confronted with two equally applicable venue statutes, [the Supreme Court has] held that they may be interpreted as ‘complementary,’ giving plaintiffs the option of which statute to proceed under.” *Ralph*, 187 Wn.2d at 338.

Here, the trial court properly concluded that the county venue statute and corporate venue statute are equally specific, giving the County the option to file under either. As applied to the County’s lawsuit, the county venue statute is mandatory and specific with respect to a certain type of plaintiff—a county. *See* RCW 36.01.050(1); *Eubanks*, 170 Wn. App. at 772; *see also, e.g., Johanson v. City of Centralia*, 60 Wn. App. 748, 750, 807 P.2d 376 (1991) (where plaintiff is suing a county, the county venue statute is mandatory and specific as to a certain type of defendant). And the Supreme Court in *Ralph* determined that the corporate venue statute, RCW 4.12.025(3), is mandatory and specific as to one particular aspect of the case: “the corporate identity of the defendant.” 187 Wn.2d at 341-42. There is no indication that one statute should apply to the exclusion of the other—such as, for example, a provision in either statute stating that venue shall lie in no other court. *See id.* at 340 n.5 (noting such language “would be possible if that were the legislature’s

intent”), 342 (holding statutes equally applicable where language was “equally mandatory and specific, without any indication that one should apply to the exclusion of the others.”).

PVJR cherry-picks language from *Eubanks* in claiming that the county venue statute always controls over RCW 4.12.025. Opening Br. at 8. But PVJR fails to distinguish between the subsections of RCW 4.12.025—relevant here, the general default venue statute, RCW 4.12.025(1), and the corporate venue statute, RCW 4.12.025(3). *Eubanks* involved the former, not the latter. *See* 170 Wn. App. at 772 (noting three venue statutes were at issue in the case, including the “default provision found in RCW 4.12.025(1)”). *Eubanks* simply held that the county venue statute and another venue statute applicable to actions against public officers were “more specific venue statutes [that] control over the **general default statute**, RCW 4.12.025.” *Id.* at 776 (emphasis added). That is not the question presented in this case.

PVJR also ignores entirely the Supreme Court’s **subsequent** decision in *Ralph*, discussed above, which is directly on point and specifically rejected the argument that the corporate venue statute applies only where some other, more specific statute does not apply: “**That may be true of RCW 4.12.025(1), but the same cannot be said for RCW 4.12.025(3).**” 187 Wn.2d at 342 (emphasis added). Under the analysis in

Ralph, the county venue statute and corporate venue statute are equally specific and mandatory and, thus, equally applicable here. The County was, therefore, authorized to file in Clark County under either statute. *See Ralph*, 187 Wn.2d at 342.

b.) PVJR is a “corporation” for purposes of the corporate venue statute.

As noted above, the corporate venue statute sets venue rules specific to suits against **corporations**. PVJR acknowledges that “RCW 4.12.025 alters the general rule of corporate residency for venue purposes,” Opening Br. at 10, but again claims that, as an LLC, it is not a “corporation” for venue purposes. This argument fails under Washington’s statutory scheme, which treats LLCs the same as other business entities for purposes of application of general laws.

The Legislature recognized from the outset that corporations and LLCs should generally be treated the same. Washington enacted the LLC Act in 1994. *See* Laws of 1994, ch. 211. In 1996, the Legislature recognized that “[t]here are innumerable sections of the [RCWs] that are made applicable to **business entities in general**” and that the passage of the LLC Act without amending those sections to include limited liability companies created “ambiguity as to whether the Legislature intended to exclude LLCs from those sections.” Subst. H. B. Rep., ESSB 6168, 54th

Leg., Reg. Sess. (Wash. 1996) (emphasis added). To resolve that ambiguity, the Legislature amended the general definitional section of the Revised Code of Washington as follows:

Unless the context clearly indicates otherwise, the terms **“association,” “unincorporated association,” and “person, firm, or corporation” or substantially identical terms shall**, without limiting the application of any term to any other type of legal entity, **be construed to include a limited liability company.**

RCW 1.16.080(2) (emphasis added); *see also* Laws of 1996, ch. 231, § 1.

PVJR ignores RCW 1.16.080(2)’s plain text in claiming that limited liability companies are synonymous with corporations for purposes of RCW 1.16.080(2) only where the statute in question references a “plurality of entities such as ‘person, firm, or corporation.’” Opening Br. at 12. To the contrary, RCW 1.16.080(2) encompasses statutes containing “substantially identical terms” to those listed. Particularly in the context of this case, the general term “corporation” as used in the corporate venue statute is substantially similar to the other terms used in RCW 1.16.080(2) and encompasses limited liability companies like PVJR. PVJR should therefore be treated as a corporation for venue purposes. Because PVJR undisputedly entered into a Lease and transacts business in Clark County, it can be sued there.

Even if RCW 1.16.080(2) could be deemed ambiguous as to whether it applies to the term “corporation” as used in the corporate venue statute, the legislative history supports its application to statutes applicable to “business entities in general” as noted above. *See* Subst. H. B. Rep., ESSB 6168, 54th Leg., Reg. Sess. Moreover, the Legislature can be presumed to know of existing law on a particular subject, including that federal courts had long treated unincorporated entities, including LLCs, the same as corporations for venue purposes. *See supra; see also State v. P.M.P.*, 7 Wn. App. 2d 633, 642 n.5, 434 P.3d 1083 (2019) (“We presume the legislature to know the existing case law in the areas in which it is legislating.”). The legislative history of RCW 1.16.080, as well as the surrounding circumstances, lend support to the County’s interpretation that the corporate venue statute is intended to apply to business entities in general, including LLCs. *See State v. Heutink*, 12 Wn. App. 2d 336, 349, 458 P.3d 796 (2020) (if a statute “remains susceptible to more than one reasonable interpretation, it is ambiguous, and we look to the legislative history of the statute and the circumstances surrounding its enactment to determine legislative intent”).

The County’s interpretation also avoids the absurd result that would occur if the corporate venue statute were deemed not to apply to LLCs. Under PVJR’s read, the County could have sued PVJR’s

predecessor corporation, CBRC, in Clark County to resolve a Lease dispute, but lacks the ability to sue PVJR over the same Lease simply because PVJR has chosen a different business form. That cannot be what the Legislature intended. *See State v. Hancock*, 190 Wn. App. 847, 851, 360 P.3d 992 (2015) (“We presume that the legislature does not intend absurd results, so we avoid interpreting ambiguous language to produce such results.”).

Contrary to PVJR’s claim, Division III’s unpublished decision in *Holman v. Brady*, 195 Wn. App. 1063, 2016 WL 4921457 (2016), does not hold otherwise. PVJR substantially mischaracterizes *Holman*, which addressed whether Civil Rule 23.1 (governing derivative actions by shareholders or members to enforce “a right of a corporation or of an unincorporated association”) applied to an LLC. The court declined to apply RCW 1.16.080 in the context of interpreting the Civil Rules, explaining that “**RCW 1.16.080 provides general definitions for purposes of the entire code, but does not purport to define terms for purposes of court rules.**” *Holman*, 2016 WL 4921457 at *5 (emphasis added). This distinction is significant because the Supreme Court, rather than the Legislature, establishes the court rules, so the statute by its plain language did not apply. *Id.* PVJR fails to acknowledge this distinction in claiming *Holman* stands for the principle that if the Legislature intended to

equate corporations with LLCs, it “had over 20 years to make revisions as it saw fit.” Opening Br. at 14. Contrary to PVJR’s claim, the court’s “20 years” language refers not to the Legislature’s intent to include LLCs within statutes applicable to corporations, but rather to the Supreme Court’s intent to include LLCs within the scope of CR 23.1. *Id.* (“In the 20 years since the legislature saw fit to include LLCs in general definitions under RCW 1.16.080, our Supreme Court has not seen fit to amend CR 23.1 to apply to derivative LLC member actions.”). Unlike *Holman*, the present case involves RCW 1.16.080 in the context of the RCWs, not the Civil Rules.

In sum, RCW 1.16.080(2) renders PVJR the equivalent of a “corporation” for purposes of the corporate venue statute. Accordingly, venue is proper as to the County’s suit against PVJR in Clark County because PVJR undisputedly transacts business, and therefore “resides,” therein. *See* RCW 4.12.025(1), (3)(d). And venue is also proper on the ground that PVJR undisputedly entered into the Lease in Clark County—a separate and independent ground for venue under the corporate venue statute. *See* RCW 4.12.025(3)(c) (authorizing venue “in the county where the agreement entered into with the corporation was made”).

C. PVJR Waived its Venue Challenge by Filing a Separate Action in Clark County for Which Venue is Undisputedly Proper.

Even if there were some question whether an LLC can be sued where it transacts business on issues relating to that same business, or where it entered into an agreement on claims related to that agreement, the trial court properly retained venue because PVJR waived any venue challenge by filing its own action in Clark County and pleading proper venue there. Moreover, the record shows that this representation had nothing to do with the County's ultimately filing first, as PVJR had already stated its intent to file in Clark County and prepared its complaint invoking venue there.

PVJR admits, as it must, that (1) it filed two complaints in Clark County Superior Court seeking substantive relief from the court and stating venue was proper therein; and (2) venue is in fact proper in Clark County for PVJR's action. *See* Opening Br. at 5 ("PVJR filed a competing lawsuit, seeking a declaratory judgment that the Lease was valid . . . PVJR alleged that venue was proper"), 16 ("PVJR's choice of venue is correct for PVJR's complaint"); *see also* CP 174, 182-83, 185, 193-94. Indeed, two statutes expressly and independently authorize venue in Clark County as to PVJR's lawsuit: the county venue statute permits actions against a county "in the superior court of such county," and the general venue

statute authorizes venue where the defendant (with respect to PVJR's lawsuit, the County) resides. RCW 36.01.050(1); RCW 4.12.025(1). PVJR thus properly filed its action in Clark County and correctly alleged in its initial and amended complaints that venue was proper there.

In doing so, PVJR waived any challenge to resolution of this dispute in Clark County. Objection to improper venue may be waived by consent or other litigation conduct inconsistent with asserting such a challenge. *See Youker v. Douglas Cty.*, 162 Wn. App. 448, 459-60, 258 P.3d 60 (2011); *Matter of Polson*, 21 Wn. App. 489, 492, 585 P.2d 840 (1978). Affirmatively petitioning a court for relief indicates consent to venue there and waives any venue objection. For example, in *Matter of Polson*, two trustees of a trust petitioned the King County Superior Court for appointment of a third trustee. *Id.* at 491. A beneficiary and former trustee of the same trust then filed a cross-petition requesting an accounting pursuant to former RCW 30.30.040, which required such accounting petitions to be filed in the county where the trustee resides. *Id.* The trustees/petitioners claimed the court lacked jurisdiction to order an accounting because they were residents of another state. *Id.* at 491-92. Division I of this Court characterized former RCW 30.30.040 as a venue provision and concluded the trustees had waived venue by filing their own petition: “[The trustees] having petitioned the King County Superior Court

to appoint a successor trustee . . . have waived any objection to venue.” *Id.* at 492.

Similarly, the weight of authority indicates that filing a lawsuit in a particular court waives any objection to venue in that court. *See Olberding v. Ill. Cent. R. Co.*, 346 U.S. 338, 340, 74 S. Ct. 83, 98 L. Ed. 39 (1953) (plaintiff who sues in particular district relinquishes right to object to venue); *Gordon v. Virtumundo*, 575 F.3d 1040, 1066 (9th Cir. 2009) (same, citing *Olberding*); *Manley v. Engram*, 755 F.2d 1463, 1468 (11th Cir. 1985) (same; noting limited exception where facts relevant to venue are not known or available at the outset); *Red Carpet Studios v. Midwest Trading Grp., Inc.*, No. 1:12cv501, 2018 WL 4300544, at *3 (S.D. Ohio Sept. 10, 2018) (finding defendant “forfeited its venue objection based on consent” where it filed its own complaint and amended complaint stating venue was proper in that district, and insisted the two actions be consolidated).¹¹ Representations to the court that venue is proper also

¹¹ *See also Utterback v. Trustmark Nat’l Bank*, 716 F. App’x 241, 244 (5th Cir. 2017) (a plaintiff who files his lawsuit in a venue that is not authorized by statute “relinquishes his right to object to the venue” (internal quotation and citation omitted)); *Ark. Game & Fish Comm’n v. Harkey*, 345 Ark. 279, 284, 45 S.W.3d 829 (2001) (“If a party objecting to venue invokes the jurisdiction of the court by an act such as filing a third-party complaint, the objection to venue is thereby waived.”); *Corby v. Matthews*, 541 S.W.2d 789, 791 (Tenn. 1976) (“A plaintiff, by filing suit, waives any right to dispute venue.”); *Bel-Ray Co., Inc. v. Chemrite (Pty) Ltd.*, 181 F.3d 435, 443 (3d Cir. 1999) (“[W]here a party seeks affirmative relief from a court, it normally submits itself to the jurisdiction of the court with respect to the adjudication of claims arising from the same subject matter.”); *Stipp v. St. Charles*, 291 S.W.3d 720, 723 (Ky. Ct. App. 2009) (“by choosing the court in Jefferson County, [petitioner] waived her right to object to venue there”).

serve to waive venue objections. See *Tri-State Emp. Servs., Inc. v. Mountbatten Sur. Co., Inc.*, 295 F.3d 256, 260 n.2 (2d Cir. 2002) (venue waiver supported by “defendant’s representations to the district court that the court constituted the proper forum”).¹² Indeed, “allowing a party to admit proper venue while reserving the right to contest venue later would run contrary to the purposes of . . . efficiency and finality.” *Orthosie Sys., LLC v. Synovia Sol., LLC*, No. 4:16-CV-00995, 2017 WL 3244244, at *2 (E.D. Tex. Jul. 31, 2017).

Here, in filing its action in Clark County and affirmatively representing to the court (subject to CR 11) that venue was proper there, PVJR consented to and waived any objection to resolution of the County’s action seeking resolution of the same dispute.¹³

PVJR’s arguments to the contrary lack support in the record and the law. Recognizing that its hands are tied with respect to its **own** lawsuit, PVJR attempts to avoid waiver by claiming that the **County’s** action,

¹² See also *Orb Factory Ltd. v. Design Science Toys Ltd.*, 6 F. Supp. 2d 203, 206-07 (S.D.N.Y. 1998) (venue objection waived where, among other things, party alleged venue was proper in its answer and amended answer and counterclaim); *Chamberlain Grp., Inc. v. Techtronic Indus. Co., Ltd.*, No. 16 C 6097, 2017 WL 3205772, at *1 (N.D. Ill. June 28, 2017) (in finding waiver, court noted that, among other things, defendants failed to contest venue in their answer or amended answer and in fact twice pleaded that venue was proper in the court at issue); *Beams v. Norton*, 256 F. Supp. 2d 1203, 1212 (D. Kan. 2003) (defendant waived any venue objection when the answer not only failed to challenge venue but conceded that “venue in this district is proper”), *judgment aff’d*, 93 F. App’x. 211 (10th Cir. 2004).

¹³ The County has not argued, nor did the trial court conclude, that the mere act of **consolidation** waived PVJR’s right to challenge venue. Rather, PVJR’s expressed intent to file in Clark County and its actually doing so—followed by its repeated statements that venue was proper therein—resulted in the waiver before consolidation occurred.

consolidated with its own, somehow “stripped PVJR of its venue options.” Opening Br. at 7, 16-17. As an initial matter, PVJR’s claim that it filed in Clark County solely because the County did is demonstrably false. The record shows—and PVJR has never denied—that PVJR intended to file in Clark County all along, stated that fact to the media, and provided a copy of its complaint (captioned for Clark County Superior Court) before it even knew of the County’s competing action. CP 329-31 (announcing lawsuit to media and disclaiming knowledge of County’s lawsuit). Consistent with that representation, PVJR proceeded to file initial and amended complaints in Clark County. PVJR’s stated intent to seek relief from the Clark County court belies any claim that it was forced to do so. Indeed, PVJR’s lack of candor to this Court about this issue mirrors its lack of candor that “troubled” the federal court regarding the existence of already pending proceedings. *Temple et al.*, 2020 WL 2708830, at *11.

Regardless, PVJR is simply wrong in claiming the priority of action doctrine left it with no option but to file in Clark County once the County had filed its complaint. Contrary to PVJR’s claim, “the priority of action rule does not necessarily determine the venue in which an action should proceed.” *Seattle Seahawks, Inc. v. King Cty.*, 128 Wn.2d 915, 917, 913 P.2d 375 (1996). Courts have not rigidly applied the “first in time” rule where, **at the outset of a dispute**, “near identical cases are brought in

different counties.” *Am. Mobile Homes of Wash., Inc. v. Seattle-First Nat’l Bank*, 115 Wn.2d 307, 323, 796 P.2d 1276 (1990). In *Am. Mobile Homes*, the Supreme Court addressed dueling actions brought in two different courts several hours apart. *Id.* at 310-11. In favor of one court was “a priority of several hours in filing,” but in favor of the other court was “venue agreements between some, but not all, of the parties to the dispute.” *Id.* at 319. The Court rejected a blindly applied “first-filed, first prevails” rule:

When determining whether to grant a motion to transfer or enjoin parties from further prosecution of a case pending elsewhere, **we do not adopt a bright line rule favoring the case first filed.** Instead, **in addition to the priority of action rule, the trial court should consider various equitable factors** such as the convenience of witnesses and the interests of justice, the parties’ possible motivations for their filing decisions as determined from the surrounding circumstances, and the presence of venue agreements between some but not all of the various parties.

Id. at 321, 323 (emphasis added).

PVJR thus asserts a false choice between “remaining silent” and commencing suit in Clark County. Opening Br. at 4-5. PVJR ignores the obvious option it had short of filing its own competing complaint alleging proper venue in Clark County: a timely, initial filing in another county. Instead, it filed in Clark County (because it fully intended to do so all along, and knew venue was proper there).

In sum, the trial court did not err in applying the plain terms of multiple statutes authorizing venue in Clark County for PVJR's action **as alleged by PVJR itself**. The court further did not err in taking into account PVJR's own Clark County lawsuit in denying PVJR's Venue Challenge. VRP (Aug. 16, 2019) at 27:20-23. PVJR deliberately, affirmatively, and properly sought relief from the Clark County court, waiving any objection to resolution of this dispute there.

D. This Court Should Not Reward PVJR's Misconduct with Transfer to Skamania County.

Even if this Court accepts PVJR's venue arguments (which it should not), it should not transfer the case to Skamania County. If PVJR is correct in arguing that it has a right to be sued where its principal office is located, it should be claiming entitlement to venue in King County. *See* CP 184 (alleging that principal office is in Bellevue, King County, Washington); *see also* VRP (Aug. 16, 2019) at 6:11-15. Instead, it argues for transfer to Skamania County despite filing its own action in Clark County and having never articulated **any connection** to Skamania County justifying a change of venue.

The trial court did not err in denying transfer to Skamania County when there was no basis articulated for such a transfer. *See Frank Coluccio*, 3 Wn. App. 2d at 513-17 (defendant objecting to venue does not

have right to transfer to adjoining county simply because defendant could have filed there). And given PVJR's federal action seeking to compel arbitration of the same issues raised in this case, and its separate action raising closely related issues in Skamania County, PVJR's request that this Court transfer venue to Skamania County should be seen as further evidence of PVJR's improper forum-shopping that the federal court determined was occurring. *See Temple et al.*, 2020 WL 2708830, at *10-12.

If the Court concludes that venue is not proper in Clark County (which it is) based on PVJR's representation that it could only be sued in King County, then the remedy should be a transfer to King County.

V. CONCLUSION

Based on PVJR's undisputed execution of a Lease and transaction of business in Clark County and PVJR's own request that the Clark County court resolve the parties' Lease dispute, the trial court correctly concluded venue lies in Clark County for these consolidated cases. This Court should affirm.

RESPECTFULLY SUBMITTED this 8th day of June, 2020.

PACIFICA LAW GROUP LLP

By s/ Matthew J. Segal

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*Attorneys for Respondent-Plaintiff
Clark County*

ATTACHMENT A

June 08, 2020



LOCAL NEWS

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Steambo



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News

Dueling lawsuits filed over operation of Chelatchie Prairie Rail Line

Posted by Chris Brown | Date: Friday, March 15, 2019 | in: News

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Portland-Vancouver Junction Railroad and Clark County each filed suits regarding a 2004 lease agreement to operate the county-owned shortline

CLARK COUNTY — While Eric Temple can't say exactly what happened during a mediation meeting with the county last Monday, he can sum it up this way.



The Chelatchie Prairie Rail Line near Brush Prairie. Photo by Chris Brown

“As they say, ‘a picture is worth a thousand words.’ I would say a lawsuit is worth at least a thousand as well,” Temple said Friday.

That lawsuit, filed this morning in Clark County Superior Court, accuses the county of trying to leverage Temple and Portland-Vancouver Junction Railroad (PVJR) out of their lease to operate the 33-mile Chelatchie Prairie shortline railroad, which is owned by the county.

But Temple isn’t alone in his lawsuit. The county filed their own countersuit today, alleging that the lease agreement with PVJR, formerly Columbia Basin Railroad Company (CBRR), is either no longer valid, or has never been valid.

When asked to react to the county’s countersuit, Temple said he wasn’t even aware it had been filed.

For more on the history of the Chelatchie Prairie line, the county’s ownership of it, and the agreement to lease out operations, see our earlier story here:

Chelatchie Prairie rail operator says county trying to force him out

Posted by ClarkCountyToday.com | Tuesday, February 26, 2019 | in : News



The head of Portland Vancouver Junction Railroad is accusing the county of trying to force him out of operating the Chelatchie Prairie line ahead of new development along...

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The legal trouble, it seems, goes back to August of last year when the county began a review of the 2004 lease agreement with PVJR. That review was reportedly prompted by inquiries from an attorney representing the environmental advocacy group Friends of Clark County. Last December, attorneys for the county notified Temple and PVJR that they believed the lease was, in fact, invalid.

“We have, for months, asked them to retract those statements and admit the obvious that, in fact, the lease is legal,” Temple told ClarkCountyToday.com. “Their failure to do so puts us in a bind.”

Temple showed us a letter he received from a business interested in developing along the part of the line the county is considering for a Freight Rail Dependent Use zoning overlay. That letter, he says, is proof that the county dragging their feet on that process, and now casting his lease to operate the line into question, is costing both sides a lot of money.

“Over the life of the contract, the county would’ve probably made about a billion



A copy of the lawsuit filed today by

and a half dollars,” says Temple. “And now I’m going to sue them for well over a hundred million dollars. And that’s a swing of right under two billion dollars in the course of nine months. That’s gotta be some sort of record for incompetence.”

Portland-Vancouver Junction Railroad, seeking to force Clark County to abide by the terms of a 2004 lease agreement.

The lawsuit filed by Temple on Friday does not, in fact, ask for monetary compensation. It simply requests that the court determine the lease is valid, and force Clark County to abide by it.

Things took a more public turn last December, after Temple was notified the county considered his lease invalid. He responded by suspending the popular Christmas Tree trains, run by Battle Ground, Yacolt, and Chelatchie Prairie Railroad (BYCX) which subleases the northern part of the track from PVJR.

Temple blamed the county, saying their legal opinion cast doubt on whether liability insurance purchased by BYCX was valid. Then-County Chair Marc Boldt blasted Temple and PVJR in a resolution passed by the county council, saying they were retaliating.

Ultimately, the county and PVJR reached an agreement to abide by the existing lease for at least 90 days while they tried to work things out. That mediation meeting happened last Monday.

Asked if there were any further meetings planned between the two sides, Temple simply chuckled and said, “I’ll be seeing them at (the) deposition.”

In a brief statement, along with a copy of their own lawsuit, Clark County Manager Shawn Hennessee said, in part, “The Chelatchie Prairie Railroad is an



A copy of a countersuit complaint filed in Clark County Superior Court by the county, seeking to

important public asset that should benefit all county residents and taxpayers. The County has attempted to resolve its dispute with Portland Vancouver Junction Railroad regarding the railroad lease, but believes it is in the public's best interest to seek court rulings regarding the future of the agreement.”

prove a 2004 lease agreement with PVJR to operate the Chelatchie Prairie rail line is invalid.

In their court filing, the county makes numerous arguments about why PVJR's lease to run the line should be either considered invalid or else be invalidated by the courts.

The first argument is that the then-Board of County Commissioners apparently never signed the actual lease agreement. It was signed by Pete Capell, who was then the county's director of public works, and County Prosecuting Attorney Curt Wyrick.

In his lawsuit, Temple says that assertion is untrue, and he has proof the Board of Commissioners signed the agreement.

But who signed the lease is only part of the county's argument for why they should be able to walk away from the deal.

Another argument includes the fact that the county has never received rent from PVJR as part of their deal. The county's lawsuit alleges this would run afoul of state laws prohibiting the gifting of government property. Under the terms of the deal, PVJR would only have to pay the county after the number of rail cars used on the line exceeds 1,000 per year or 25,000 annual passengers. PVJR says the highest number of cars the line has seen per year is 853, though the county further alleges PVJR has violated the lease terms by refusing to allow them access to their records.

Temple has argued that, while he doesn't pay rent to operate the Chelatchie Prairie line, he has poured millions of dollars into upgrading the shortline and bringing in new businesses. He maintains that, when CBRR signed their lease agreement, the line had one of the worst safety

ratings in the industry.

“Not a single other railroad was going to touch this, that’s how bad it was.”

Temple says in the 15 years PVJR has operated the line they’ve increased customer counts by 1,500 percent and helped bring in state grant money to repair and replace failing rail and railroad ties along the track. If funding is approved in this year’s legislature, Temple says improvements to the track will bring it up to the same level as the main line through the Port of Vancouver run by BNSF Railroad.

But in their countersuit, the county alleges that PVJR has failed to provide documentation of the improvements they’ve made with grant funding, or show proof of personal money spent to improve the system.

Temple has also alleged that the county has failed in its duty to maintain several bridges along the system, even going so far as to close one down in December, claiming it was near failing. The county’s lawsuit alleges that PVJR has denied county inspectors the right to look at the bridge or enact repairs, and has not responded to a request for proof of the bridge’s poor condition.

The upshot of Temple’s view of the situation is that the county sees a chance to force PVJR out before freight rail dependent development is allowed. He says that’s tantamount to the county stealing 15 years of his life, just as he is about to cash in on the gamble he took with the Chelatchie Prairie line.

Temple equates today’s legal move as “sort of the final chance that (the county will) have” to pull the ripcord on the parachute. Failing to do so, he says, would trigger a lawsuit seeking massive monetary damages.

Asked if he’s had any conversations with the current council about the state of things, Temple says they’ve been advised to not speak with him due to his threat of a lawsuit.

“Part of the reason the lawsuit has been filed is because there’s no communication between me and the council,” says Temple. “It’s sort of a

self-fulfilling prophecy. The council can't come to me and say 'oh here, let's work this out.'"

Temple, who doesn't live in Clark County, says the charter has put the bureaucrats in charge, making it more difficult for elected officials to get things done.

For his part, Hennessee says he can't comment about the lawsuit, or where things are at when it comes to PVJR and the lease agreement.

"The County appreciates PVJR's participation in mediation this week and hopes the parties can work together to efficiently and effectively address the legal questions that must be resolved," he said in a statement.

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About The Author



Chris Brown

Chris Brown comes to Clark County Today with 15 years of local news experience as a reporter, editor, and anchor at KXL News Radio and KOIN-6 TV in Portland. In 2016, he won an Oregon Association of Broadcaster's award for Best Investigative Reporting for a series on America's Violent Youth. He has also been awarded by the Associated Press for Best Breaking News coverage as editor of Portland's Morning News following the 2015 school shooting at Umpqua Community College in Roseburg, Oregon. The second

oldest of eight home-schooled children, Brown graduated from high school two years early. After several odd jobs, he earned an internship at KXL Radio, eventually working his way into a full-time job. Brown has lived in Clark County his entire life, and is very excited at the opportunity to now focus full-time on the significant stories happening in his own back yard, rather than across “the river.” After a few years in Vancouver, he recently moved back to Battle Ground with his wife and two young daughters. When he's not working to report what's happening in Clark County, Brown enjoys spending time with his family, playing music, taking pictures, or working in the yard. He also actually does enjoy long walks on the beach, and sunsets.

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SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

PORTLAND VANCOUVER JUNCTION RAILROAD, LLC, a Washington limited liability company,

Plaintiff,

v.

CLARK COUNTY, a political subdivision of the State of Washington,

Defendant.

Case No.

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff Portland Vancouver Junction Railroad, LLC ("PVJR") alleges as follows:

I. PARTIES

1. PVJR is a limited liability company under the laws of the State of Washington and registered under UBI # 602 885 398. PVJR's principal office is located at 1203 114th Ave. SE, in Bellevue, Washington. PVJR is authorized by the U.S. Department of Transportation, Surface Transportation Board, to acquire by lease and operate 33.1 miles of rail line between milepost 0.0 at or near North Vancouver/Vancouver Junction, Washington and milepost 33.1 at or near Chelatchie, Washington (the "Shortline").

2. Clark County (the "County") is a political subdivision of the State of Washington. Clark County owns the Shortline.

1 limited investment for several decades.

2 **B. The County's historic evaluations of the Shortline.**

3 14. In 1996-97, the County hired Main Line Management Services, Inc. to
4 evaluate the viability of the Shortline.

5 15. On January 28, 1997, Main Line Management Services, Inc. made the
6 following points and recommendations:

7 a. "[Main Line Management Services] believes that while other operators
8 might be interested in the line, the prospect of those operators devoting
significant resources to the line is minimal."

9 b. "While some of these companies (other shortline railroads) have
10 significant marketing and industrial development resources, these
resources will only be brought to bear where the potential return is
11 significant."

12 c. Main Line Management Services, Inc. recommended an arrangement
13 where the County pays a railroad operator a guaranteed profit, with the
railroad receiving a smaller portion of the upside.

14 16. The County rejected Main Line Management Services, Inc.'s
15 recommendation to pay a rail operator; instead, the County commissions a second evaluation five
16 years later.

17 17. In 2002, the County hired MainLine Management, Inc. ("MLM") to
18 evaluate the long-term viability of the Shortline and how to attract other operators should the
19 County allow the then-current lease with the rail operator to expire in January 2004.

20 18. The County tasked MLM with determining the long-term viability of
21 freight operations on the Shortline. In addition, the County asked MLM to assess the
22 attractiveness of the line to other shortline freight operators should the County elect not to renew
23 the maintenance and operating agreement with LINC, another rail operator, in January 2004.

24 19. The County had three priorities in relation to its ownership of the
25 Shortline: (1) keep the rail corridor intact for rail and/or other uses; (2) keep down the cost of the
26 County's ownership of the line; and (3) maintain an operating railroad to assist with industrial

1 development along the corridor.

2 20. On September 6, 2002, MLM published its points and recommendations.
3 According to MLM, the County was rapidly approaching a point of decision on whether the rail
4 line should be retained for rail-served freight operations. According to MLM, every stakeholder
5 in the Shortline stated that the rail line was not marketable due to the considerable question of its
6 long-term viability and a perceived lack of commitment by the County at that time.

7 21. MLM stated the County would not be able to attract any serious interest
8 from a reputable shortline operator under the then status quo. According to MLM, in order to
9 attract a viable shortline operator the County must demonstrate a commitment to the long-term
10 viability of the line as a rail entity through investment and economic development.

11 22. With regard to the Shortline's condition, MLM reported that significant
12 maintenance and capital upgrades would be needed to ensure the Shortline's long-term operating
13 viability upgrades including approximately 500 ties per mile (or approximately 7,000 total ties)
14 and 10 to 12 cars of ballast per mile (or approximately 140 cars of ballast), with associated
15 tamping and rail alignment as well as a long-term rail replacement program.

16 23. A September 30, 2002 "Work Session" memorandum summarized MLM's
17 assessment of the Shortline as follows, "The assessment indicates that it is highly unlikely that
18 we [the County] could attract a qualified and promotional operator due to the poor condition of
19 the line, the small number of freight shippers and carloadings, and the perceived lack of
20 commitment to the line by the County. This situation will limit the options available to the
21 County with respect to the railroad."

22 24. Against this backdrop, the County solicited over 400 short line railroad
23 operators to submit proposals to operate the Shortline. Columbia Basin Railroad Company, Inc.
24 ("CBRC" aka "CBRR"), the predecessor to PVJR, was the only shortline operator interested in
25 the Shortline.
26

1 **C. The County leases the Shortline.**

2 25. On January 31, 2004, the prior operator's lease expired. The County
3 entered into an interim lease arrangement with CBRC while the parties negotiated a long term
4 lease with CBRC to operate the Shortline.

5 26. On February 13, 2004, the County informed the U.S. Department of
6 Transportation, Surface Transportation Board (the "STB"), that the County was in the process of
7 changing common carrier for the Shortline and expected to complete negotiations with CBRC to
8 operate the line.

9 27. On February 24, 2014, the County informed the STB that the County
10 notified all active shippers using the Shortline that CBRC will be the new rail operator.

11 28. According to a November 22, 2004, Staff Report, the County's Board of
12 Commissioners authorized Peter Capell, P.E., Director of Public Works/County Engineer to
13 negotiate and execute the Lease.

14 29. On December 20, 2004 the County signed a long term lease with CBRC to
15 operate the Shortline (the "Lease"). The Lease is signed by Mr. Capell. The Lease is "approved
16 as to form" by the Prosecuting Attorney's office. A true and correct copy of the Lease is attached
17 as **Exhibit 1**.

18 30. The Lease's term is 30 years with two 30-year extensions, for a total of
19 90 years.

20 31. The Lease's long term is consistent with MLM's recommendations as well
21 as Clark County Code 2.33A.180 (8) relating to "Limited-Use Parcels" with "Restrictive
22 Characteristics" such as the Shortline.

23 32. In the event the 90 year Lease term is determined to be invalid, the Lease
24 contains a fallback term of no less than 50 years.

1 33. The County warrantied the Lease as follows:

2 "Lessor represents and warrants as of the date of execution of this Agreement, as
3 of the Transfer Date and thereafter during the Term (except to the extent
4 expressly provided otherwise below) the following:

5 "1. It shall have the full power and authority to enter this Agreement;

6 "2. All approvals and other proceedings required to be taken by or on the
7 part of Lessor to authorize Lessor to enter into this Agreement and its
8 Exhibits have been or will be duly taken by the Transfer Date;

9 "3. This Agreement has been executed and delivered by Lessor in
10 accordance with its terms and conditions, and constitutes a valid and
11 legally binding obligation of Lessor, enforceable against Lessor in
12 accordance with its terms; * * * and

13 "4. No provision of this Agreement [the Lease] * * * conflicts with,
14 violates or contravenes any statute, law, rule, regulation, order, writ,
15 injunction or decree or other determination of any court, authority or
16 governmental body as of the date hereof, * * * nor is any provision
17 hereof * * * voidable or unenforceable (nor will it be such) by reason
18 of any provision of, or lack of consent under, any indenture or
19 agreement or instrument to which the Lessor is a party or by which it
20 is bound or affected."

21 34. After executing the Lease, the County made certain oral promises to
22 CBRR. These two promises were (1) a joint effort to secure grant funds to improve the Shortline,
23 and (2) rezoning parcels adjacent to the Shortline. These oral promises are subsequently reduced
24 to writings in subsequent agreements.

25 **D. The County signs subsequent agreements relating to the Lease.**

26 35. On September 27, 2005, the County approved the memorandum of
 understanding regarding a leaseback arrangement with a nonprofit rail operator on the north
 section of the Shortline, BYCX. Under this agreement, the County and CBRR would work
 together to receive grants from state and federal sources to improve the Shortline.

 36. On November 8, 2005, the County approved a second MOU regarding the
 Railroad Industrial Rezone initiative, reaffirming the lease and memorializing the promise made

1 to CBRR to rezone property for potential customers. This promise was consistent with the
2 recommendations made by MLM.

3 37. On June 6, 2006, the County approved the Northline Leaseback
4 Agreement between CBRC and the County for a portion of the rail line, reaffirming the Lease.
5 The 2006 Northline Leaseback Agreement contained warranties enshrining the County's earlier
6 rezone promise.

7 38. On June 7, 2011, the County approved the Northline Leaseback Extension
8 Agreement, reaffirming the Lease.

9 39. On September 14, 2011, the County discussed the Lease and its typicality
10 in relation to other railroad agreements. Mr. Jon Holladay, Clark County Railroad Coordinator
11 attended the meeting. Mr. Halladay's notes state Bill Barron, Clark County Administrator, and
12 Mark McCauley, Public Works Finance and Administration Services Manager, the agency
13 overseeing the Shortline "recounted the manner in which" the Lease and its related agreement
14 "came to be." According to Mr. Holladay's notes, Mr. Barron and Mr. McCauley stated, "[t]he
15 County sought to shift much of the risk of having a railroad to another party and the county
16 sought to entice prospective operators with favorable terms because the railroad required heavy
17 public subsidy at the time due to inadequate business."

18 40. On February 1, 2012, the County approved CBRC's "assignment and
19 transfer of all of CBRR's, rights, title, interest, and obligations in and under the Clark County
20 Lease * * * to [PVJR] and agree[d] that CBRR is hereby released from performing any
21 obligations and from all liabilities under the Clark County Lease," thereby reaffirming the
22 Lease's terms and facilitating the purchase and sale of PVJR by Mr. Eric Temple – PVJR's
23 current owner.

24 41. On November 8, 2016, the County approved an amended Northline
25 Sublease Agreement Extension between the County and BYCX, acknowledging the Lease and
26 the 2012 assignment of the Lease to PVJR.

1 42. On September 12, 2018, the County approved the Northline Leaseback
2 Agreement, Ratification, Amendment and Extension, reaffirming the underlying Lease.

3 43. Despite 14 years of performance under the Lease, and its subsequent
4 ratifications through numerous other agreements, on November 19, 2018, County Council Chair
5 Marc Bolt publicly states that the Lease is invalid primarily because Council Chair Bolt thinks
6 the monetary terms are unfair to the County.

7 44. In numerous public statements, the County doubts the Lease's validity.

8 45. Despite demand, the County refuses to retract these public statements.

9 **E. CBRR's and PVJR's maintenance and improvements to the Shortline in**
10 **reliance on the Lease.**

11 46. In 2004, the Shortline's track is the worst track category under the Federal
12 Railroad Administration classification. MLM's 2002 report noted the Shortline needed physical
13 and economical improvements in order to be viable. In the intervening 14 years, PVJR (and its
14 predecessor CBRR) improved the line.

15 47. A January 7, 2008 memo from the Clark County Railroad Advisory Board
16 to Senator Craig Pridemore stated that "PVJR has expended [by that time] nearly \$1 million of
17 its own private monies to increase maintenance, boost marketing, and improve infrastructure of
18 the line." This same memo notes PVJR "helped significantly increase (by over 1000%) freight
19 shipment growth" on the Shortline.

20
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1 48. A January 2011 "Market Study" prepared by the Clark County Budget
2 Office for the Clark County Department of General Services summarized \$3,456,855 in
3 Shortline rail improvements between 2006 and 2010 as follows:

Year	Funds	Investment
2006	\$329,221	Track upgrades caused by CBRR
2007	\$119,636	Ties, ballast, surfacing
2008	\$885,046	Track upgrades caused by CBRR
2009	\$292,492	Ties, ballast, crossing upgrades, engineering, drainage repair & maintenance
2010	\$1,830,460	Ties, rail drainage repair

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9 49. Since this January 2011 report, the following table shows an additional
10 \$2,839,184 in track upgrades:

Year	Amount
2010 Track Upgrades	\$637,810.11
2012 Track Upgrades	\$1,137,500.00
2015 Track Upgrades	\$595,793.50
2019 Track Upgrades	\$468,081.22

11
12
13
14
15 50. The 2019 track upgrade projects are about to commence. PVJR
16 anticipates a \$1.5 million total budget for 2019.

17 51. Further, on March 6, 2019, Sen. Steve Hobbs, Chair of the Senate
18 Transportation Committee, recommended \$14 million to improve the Shortline. This
19 grant money allows PVJR to install brand-new rail on the 14 miles currently in use,
20 extending the line's lifespan by well over 100 years, far longer than the Lease term. Once
21 installed, the lower portion of the line will be brand-new and nearly as good as BNSF's
22 main line.
23

24 52. In summary, in 2004 the Shortline had the worst-track category
25 and now, because of PVJR's and its predecessor's efforts, the Shortline will soon have the
26 best track category. This is a direct result of having a long-term lease in place.

1 **IV. CAUSE OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **(Declaratory Relief)**

4 53. PVJR realleges paragraphs 1-52 above as though fully set forth in this
5 section.

6 54. Through its public statements, the County has raised doubt as to the
7 Lease's validity.

8 55. Despite demand, and being shown the extensive history of the Lease and
9 its associated documents, the County refuses to retract its public statements that the Lease is
10 invalid.

11 56. PVJR cannot operate the Shortline under a cloud of uncertainty with
12 regard to the Lease's validity as asserted by the County, the lessor; no user of rail services will
13 commit to using the Shortline operated by PVJR where the County, as lessor, states the Lease is
14 invalid.

15 57. PVJR requests the Court grant declaratory judgment against the County,
16 declaring the Lease is valid and enforceable for its entire term, 30 years with two 30-year
17 extensions, for a total of 90 years.

18 58. Alternatively, PVJR requests the Court grant declaratory judgment against
19 the County, declaring the Lease is valid and enforceable for no less than 50 years.

20 59. Additionally, PVJR requests the Court grant declaratory judgment against
21 the County, declaring the Lease is valid and any attempt to invalidate the Lease violates the
22 Interstate Commerce Act and the sole authority granted to the STB over the Shortline's
23 operations.

24 60. The Lease contains a prevailing party fee provision. As such, PVJR is
25 entitled to its reasonable attorneys' fees and costs for bringing this declaratory relief action.
26

1 **V. RELIEF REQUESTED**

2 THEREFORE, plaintiff asks that the Court award it the following relief:

- 3 1. A judgment declaring the Lease is valid for its entire term, 30 years with
4 two 30-year extensions, for a total of 90 years;
- 5 2. Alternatively, a judgment declaring the Lease is valid for no less than
6 50 years;
- 7 3. Additionally, a judgment declaring the Lease is valid and any attempt to
8 invalidate Lease violates Interstate Commerce Act and the sole authority granted to the STB over
9 rail operations.
- 10 4. An award of PVJR's reasonable attorneys' fees and costs incurred bringing
11 this action; and
- 12 5. For all such other and further relief, whether legal or equitable, as this
13 Court finds warranted under the facts and the law.

14 DATED this _____ day of March, 2019.

15 MILLER NASH GRAHAM & DUNN LLP

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AMENDED BRIEF OF RESPONDENT CLARK COUNTY

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