1	HONORABLE RONALD B. LEIGHTON	
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6	UNITED STATES D	
7	WESTERN DISTRICT OF WASHINGTON AT TACOMA	
8	UNITED TRANSPORTATION UNION,	CASE NO. C10-5808 RBL
10	AND THOMAS KITE, Plaintiffs,	ORDER DENYING MOTION FOR SUMMARY JUDGMENT
11	v.	[Dkt. #s 81, 89, 91]
12	BNSF RAILWAY COMPANY,	
	BNSF RAILWAY COMPANY, Defendant.	
13 14	Defendant.	intiff Kite's Motion for Summary Judgment
13 14 15	Defendant.	
13 14 15 16	Defendant. THIS MATTER is before the Court on Pla	's 2009 Order of Dismissal without prejudice,
13 14 15 16	Defendant. THIS MATTER is before the Court on Pla [Dkt. #81] on two issues: vacation of Zimmerman	's 2009 Order of Dismissal without prejudice, Kite claims that there are no material issues
113 114 115 116 117 118 118	Defendant. THIS MATTER is before the Court on Pla [Dkt. #81] on two issues: vacation of Zimmerman and vacation of Peterson's 2010 arbitration award.	's 2009 Order of Dismissal without prejudice, Kite claims that there are no material issues ter of law on each claim.
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113 114 115 116 117 118 119 120 121 121 121 131	Defendant. THIS MATTER is before the Court on Pla [Dkt. #81] on two issues: vacation of Zimmerman and vacation of Peterson's 2010 arbitration award of fact and that he is entitled to judgment as a mate BNSF argues that the Motion relies on arg from those made previously over the more than 5 y claimed that the arbitration result was the result of	's 2009 Order of Dismissal without prejudice, Kite claims that there are no material issues ter of law on each claim. uments and legal theories that are a far cry year history of this case. Kite originally extortion, but that, in the absence of evidence gment on four different theories: (1) Arbitrator

(Peterson's) Public Law Board; (3) Peterson relied on improper evidence; and (4) the arbitrators 2 failed to address procedural objections. It argues that none of these claims amount to the sort of fraud required to overturn an arbitration decision under the RLA, and certainly not on Summary 3 Judgment. 5 Kite also asks the Court to Strike [Dkt. #89] the Declaration of Roger Boldra as inconsistent with his deposition and his emails in evidence, and BNSF asks [Dkt. #91] the Court 6 7 to strike what it claims is a new argument about the timeliness of the underlying arbitration award, raised for the first time in Kite's Reply Brief [Dkt. #87]. 8 9 The Motion for Summary Judgment depends on factual determinations that cannot be made on summary judgment. It is DENIED. The Motion to Strike [Dkt. #89] is similarly 10 DENIED, as it is a factual dispute best resolved at trial, on cross examination. BNSF's Motion 11 12 to Strike [Dkt. #91] is DENIED as moot. 13 IT IS SO ORDERED. Dated this 22nd day of July, 2015. 14 15 16 Ronald B. Leighton United States District Judge 17 18 19 20 21 22 23

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