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SUPREME COURT  
STATE OF WASHINGTON  
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CLERK

No. 102224-7

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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*MARCUS DUELL, an individual,  
Plaintiff-Respondent,*

v.

*PENINSULA AVIATION SERVICES, INC., doing business as PenAir, a  
Delaware corporation, Defendant-Petitioner,*

and

*ALASKA AIRLINES, INC., a Delaware corporation; and DOES 1-20,  
Defendants.*

*ERIN OLTMAN, individually and as Personal Representative of the Estate  
of David Oltman, and on behalf of REECE OLTMAN and EVAN  
OLTMAN, minors, Plaintiffs-Respondents,*

v.

*PENINSULA AVIATION SERVICES, INC., doing business as PenAir, a  
Delaware corporation, Defendant-Petitioner,*

and

*ALASKA AIRLINES GROUP, INC. and ALASKA AIRLINES, INC.  
Defendants.*

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ALASKA AIRLINES, INC., AND ALASKA AIR GROUP, INC.'S  
REPLY IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO  
FILE JOINDER TO PETITION FOR REVIEW

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## I. INTRODUCTION

Respondent Oltman argues that the Court should deny Alaska Airlines, Inc.’s and Alaska Air Group, Inc.’s (“Alaska Airlines”) Motion for Extension of Time to File Joinder to Petition for Review because Alaska Airlines apparently “did not appear as a party in the appeal, nor did they participate in the oral argument [before the Court of Appeals].” Oltman Corrected Ans. at 3. Respondent Oltman further argues that Alaska Airlines has attempted to “disguise its petition as an ‘Answer in Joinder’” and that this Court should reject “Alaska’s ploy.” *Id.* at 5.

It is notable that Respondent Oltman makes these arguments in a “Corrected Answer.” The original Answer that Respondent Oltman filed was replete with misstatements. Respondent Oltman’s “Corrected Answer,” however, continues to operate from a flawed understanding of the procedural history of appeal before Division I.

Simply put, Alaska Airlines participated in a “Joinder” capacity to PenAir’s Appeal to Division I, using a similar process as Alaska Airlines has undertaken here. Respondent Oltman never objected or argued Alaska Airlines’ participation in the appeal below was procedurally improper, and Respondent Oltman filed briefing before Division I that substantively addressed the merits of Alaska Airlines’ arguments.

## **II. PROCEDURAL HISTORY BEFORE DIVISION I**

On December 15, 2021, PenAir filed its Motion for Discretionary Review to the Washington Court of Appeals, Division I, No. 834240-I.

On December 27, 2021, after PenAir filed its Motion for Discretionary Review, Alaska Airlines filed a Joinder to PenAir's Motion for Discretionary Review.

That same day, on December 27, 2021, Respondents filed their Answer to Motion for Discretionary Review.

On December 30, 2021, PenAir filed its Reply in Support of Motion for Discretionary Review.

On April 8, 2022, Commissioner Kanazawa entered an Order granting discretionary review. In the Order, Commissioner Hasagawa expressly referenced Alaska's Airlines Joinder as part of the basis for granting discretionary review: "Alaska Airlines, which joined in PenAir's motion for discretionary review, argues the trial court's decision would render the entire proceedings useless because PenAir is a necessary and indispensable party. Review is appropriate at this time." Commissioner's Ruling Granting Discretionary Review, No. 83424-0-I, at 10.

On May 6, 2022, Respondents filed a Motion to Modify Commissioner's Ruling. In that brief, Respondents expressly addressed an argument that Alaska Airlines made in its Joinder, which the

Commissioner cited as part of the basis for accepting discretionary review. Respondents argued: “As Alaska Airlines conceded when it joined PenAir’s request for discretionary review, the trial court has yet to enter an order on Alaska Airlines’ Motion to Dismiss for failure to Join a Necessary and Indispensable Party.” Respondents’ Mot. Mod. Comm. Ruling, at 42 (citing Alaska Airline’s Joinder, at 2). Notably, Respondents did not object to the timeliness of Alaska Airlines’ Joinder, nor did they lodge any other procedural objection to Alaska Airlines’ Joinder.

On May 13, 2022, PenAir filed its Answer to Respondents’ Motion to Modify.

On May 16, 2022, Alaska Airlines filed its response to Respondents’ Motion to Modify Commissioner’s Ruling.

On May 18, 2022, Respondents filed a brief titled, “Reply to Both PenAir and Alaska Airlines Re Motion to Modify Commissioner’s Ruling.” With this brief, Respondents, again, substantively responded to arguments that Alaska Airlines made in its Joinder to PenAir’s Motion for Discretionary Review. Respondents’ Reply, at 7.

On July 15, 2022, Division I entered an Order Denying Motion to Modify. In that Order, Division I expressly cited Alaska Airlines’ brief as part of the briefing that the Division I considered in denying the Motion to Modify. Order Denying Motion to Modify, at 2.

On August 2, 2022, PenAir filed its Opening Brief.

On September 1, 2022, after PenAir filed its Opening Brief, Alaska Airlines filed its Joinder to PenAir's Opening Brief.

On September 29, 2022, attorney Ken Masters filed a Notice of Association as appellate counsel for Respondent Erin Oltman. The attorneys who had represented Respondent Oltman before Mr. Masters filed his Notice of Association remained in the case as co-counsel for Respondent Oltman.

On October 17, 2022, after requesting and receiving two extensions, Respondent Oltman filed her Respondent's Brief.

On December 30, 2022, PenAir filed Petitioner's Reply Brief.

On March 9, 2023, Division I heard oral argument. The Court allowed the parties only 10 minutes per side, so Alaska Airlines agreed with PenAir in advance to cede all 10 minutes of oral argument to PenAir. Nevertheless, counsel for Alaska Airlines attended the hearing.

On June 12, 2023, Division I entered its Published Opinion, and on July 10, 2023, Division I denied PenAir's timely motion for reconsideration.

On July 27, 2023, PenAir filed and served its Petition for Review with the Court of Appeals, Division I, of the State of Washington, No. 83424-0-I. PenAir's Petition seeks review of the Court of Appeals'

decisions terminating review of its published opinion on June 12, 2023, and denying PenAir’s timely motion for reconsideration on July 10, 2023.

### **III. PROCEDURAL HISTORY BEFORE WASHINGTON SUPREME COURT**

On July 28, 2023, the Supreme Court Deputy Clerk served a letter on all parties, indicating receipt of PenAir’s Petition for Review and directing all parties to RAP 13.4(d) regarding the timeline for the filing of any answer to the petition and the filing of any reply to an answer.

Consistent with the unobjected to process that Alaska Airlines followed before Division I, on August 25, 2023, Alaska Airlines filed and served an Answer in Joinder to PenAir’s Petition for Review.

On August 28, 2023, the Respondent Oltman filed and served a Motion for Extension of Time to File Answer to Petition for Review.

On August 29, 2023, the Supreme Court Clerk issued a letter to all parties granting the Oltman Respondents’ Motion for an Extension of Time to File Answer to Petition for Review. The letter also states that Alaska Airlines’ Joinder does not appear to be an Answer and was, therefore, rejected as untimely. The letter states, “If Alaska Airlines, Inc. and Alaska Air Group, Inc. wish for their joinder to be considered, they must file a motion for extension of time.”

On August 31, 2023, Alaska Airlines filed a Motion for Extension of Time to File Joinder to Petition for Review.

On September 27, 2023, Respondent Oltman filed an Answer to Alaska Airlines' Motion for Extension of Time to File Joinder to Petition for Review. With this filing, Respondent Oltman made a litany of false statements, including the following:

- “Only the Oltmans and Petitioner Peninsula Aviation Services, Inc. (“PenAir”) participated in the appeal.”  
Respondent Oltman Answer to Alaska Airlines' Motion for Extension of Time, at 3.
- “Movants Alaska Airlines, Inc. and Alaska Air Group, Inc. (collectively “Alaska”) did not appear in the appeal, they did not file any briefing, and they did not make any arguments to the court.” *Id.*
- “Perhaps most importantly, Alaska did not participate in any way in the Court of Appeals.” *Id.* at 5.
- “Alaska did not join in PenAir’s Notice of Appeal;” *Id.* at 6.
- “Alaska did not file any briefs in the Court of Appeals;” *Id.*
- “Alaska did not otherwise make any argument to the Court of Appeals.” *Id.*



- “Anything Alaska argues at this point will be a new argument raised for the first time in this Court, which is disfavored – to put it mildly.” *Id.*
- “Alaska chose not to participate in the Court of Appeals proceedings. It would be extraordinary to allow it to intervene now – and a gross miscarriage of justice.” *Id.*

After setting out this extensive list of false statements, Respondent Oltman went on to characterize Alaska Airlines as employing “dubious tactics.” *Id.* at 7.

On September 27, 2023, counsel for Alaska Airlines e-mailed Mr. Masters, pointing out that Respondent Oltman’s brief was replete with misstatements.

On September 28, Mr. Masters responded, acknowledging the factual errors and stating that Respondent Oltman would file a corrected brief. Mr. Masters claimed that he was “unaware of those filings[,]” stating, “I’m sure you recognized that they were never served on this firm.”

Alaska’s counsel responded by pointing out that Mr. Masters did not file his Notice of Association in the matter before Division I until September 29, 2022, and that all three of the Alaska Airlines’ briefs before Division I were filed and served before his appearance. Regardless, Mr.

Masters’ numerous co-counsel had been served with all briefs, including the ones filed before Mr. Masters appeared.

On September 28, 2023, Respondent Oltman filed a “Corrected Answer to Alaska Airlines, Inc.’ and Alaska Air Group, Inc.’ Motion for Extension of Time to file ‘Joinder’ in Petition for Review.”

#### **IV. ARGUMENT**

Alaska Airlines respectfully requests that the Court accept its Answer in Joinder to PenAir’s Petition for Review. RAP 13.4 states:

Answer and Reply. A party may file an answer to a petition for review. A party filing an answer to a petition for review must serve the answer on all other parties. If the party wants to seek review of any issue that is not raised in the petition for review, including any issues that were raised but not decided in the Court of Appeals, the party must raise those new issues in an answer. Any answer should be filed within 30 days after the service on the party of the petition. A party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review. A reply to an answer should be limited to addressing only the new issues raised in the answer. A party filing any reply to an answer must serve the reply to the answer on all other parties. A reply to an answer should be filed within 15 days after the service on the party of the answer. An answer or reply should be filed in the Supreme Court. The Supreme Court may call for an answer or a reply to an answer.

RAP 13.4(d). Nothing in RAP 13.4(d) prohibits an Answer that “joins” in the grounds stated by a party seeking discretionary review.

To the extent joinders are not allowed under RAP 13.4(d), the Court may enlarge the time within which an act must be done in a particular case to serve the ends of justice. RAP 18.8(a). Here, allowing Alaska Airlines to join in PenAir's Petition for Review serves the ends of justice and assists the Court. Alaska Airlines was served with PenAir's Petition on July 27, 2023. Thereafter, Alaska Airlines filed and served its Joinder believing the 30-day timeline set forth in RAP 13.4(d) to be the applicable timeline.

Respondent Oltman did not object, due to alleged untimeliness or otherwise, to Alaska Airlines' participation in the appeal before Division I. And Respondent Oltman has wholly failed to articulate why she is prejudiced by Alaska Airlines' continued participation in this appeal when such prejudice was absent in the proceedings before Division I. Rather, Respondent Oltman's entire argument, despite the filing of "Corrected Answer," appears to be based on Respondent Oltman's continued misunderstanding of the procedural history of this case.

#### **Word-Count Certification**

This document contains 1,822 words, excluding parts of the document exempted from the word count, in compliance with RAP 18.17.

Dated this 12th day of October 2023.

By: /s/John T. Fetters

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PROOF OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on the 12th day of October 2023, I caused a true and correct copy of the foregoing document to be served via appellate court web portal/e-service program, or via email to counsel:

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Dated this 12th day of October 2023, at Seattle, Washington.

/s/John T. Fetters

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**STOKES LAWRENCE, P.S.**

**October 12, 2023 - 12:48 PM**

**Transmittal Information**

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**Appellate Court Case Number:** 102,224-7  
**Appellate Court Case Title:** Peninsula Aviation Services, Inc. v. Erin Oltman

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