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SUPREME COURT
OF THE STATE OF WASHINGTON

MICHEAL DURLAND, KATHLEEN FENNEL, and DEER HARBOR BOATWORKS, Petitioners, vs. SAN JUAN COUNTY, WESLEY HEINMILLER, and ALAN STAMEISEN, and SUNSET COVE LLC, Respondents.	NO. 93963-2 CERTIFICATE OF SERVICE

I, Deborah Davies, certify that on February 21, 2017, I caused copies of the following documents to be served on the parties listed below by the method(s) indicated for each:

1. *Heinmiller, Stameisen and Sunset Cove LLC's Reply on Motion to Strike Reply on Petition for Review; and*

2. *Certificate of Service.*

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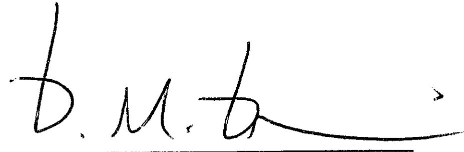
I certify under penalty of perjury of the laws of the State of Washington that the foregoing statements are true and correct.

Dated 21 February 2017. Edmonds, Washington.



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No. 93963-2

SUPREME COURT OF THE STATE OF WASHINGTON

MICHAEL DURLAND, KATHLEEN FENNELL, and DEER HARBOR BOATWORKS,

Appellants,

v.

SAN JUAN COUNTY, WES HEINMILLER, ALAN STAMEISEN, and SUNSET COVE LLC

Respondents.

HEINMILLER, STAMEISEN, AND SUNSET COVE LLC'S REPLY ON MOTION TO STRIKE REPLY ON PETITION FOR REVIEW

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RAP 13.4(d) states "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." (emphasis added).

The Answers of Heinmiller and San Juan County did not seek review of any new issues; the Answers merely responded to the issues raised in the Petition.

RAP 13.4(d) could not be any clearer. Yet Durland has filed a response to Heinmiller's motion, in which Durland fails to cite *any* supporting authority, and which simply further regurgitates the same arguments, issues, and personal attacks which were contained in Durland's petition and have by now become the hallmark of all of Durand's briefing – regardless of what issues are actually before the Court.

The one case Durland cites to, *Blaney v. Intl. Ass'n. of Machinists*, 151 Wn.2d 203, 87 P.3d 757 (2004), does not even speak to the issue before the court on this motion, and in fact supports Heinmiller. In *Blaney,* the plaintiff sued her union for gender discrimination. She prevailed at trial, and the union then appealed, contending that a jury instruction on awarding front pay was error. The court of appeals affirmed, holding that the instruction was erroneous, but that the error was harmless. *Blaney*, 151 Wn.2d at 209. The union then sought review by the Supreme Court of whether the front pay jury

instruction constituted harmless error. *Id.* Blaney did not cross-petition for review of any issues.

The Court stated the issue as "The District maintains that the jury instruction on front pay constituted prejudicial error,[3] while Ms. Blaney asserts that there was no error or the error was harmless." *Id.* at 210 (footnote in original). Footnote 3, on which Durland relies, states:

> The District also asserts that Ms. Blaney may not argue that the jury instruction was proper because she "did not file a cross-petition for review or otherwise affirmatively seek review before this Court on that issue." Suppl. Br. of Pet'r at 1 n.1. RAP 13.4(d) and 13.7(b) do not require Ms. Blaney to "file a cross-petition ... or... affirmatively seek review." The rules merely require that the issue be raised. The issue was raised in a lengthy footnote to Ms. Blaney's answer, as well as in repeated references to the erroneous nature of the jury instruction in the District's petition for review.

This is, in fact, exactly the situation with respect to Heinmiller's Answer to Durland's Petition for Review: Durland raised the various issues that he raised, and Heinmiller responded to those in his Answer, as he was entitled to do. Heinmiller did not need to file his own petition for review merely to respond to the issues raised by Durland, nor did Heinmiller's Answer seek review of any new issues.

Nowhere does *Blaney* address a petitioner filing a reply to his own petition, when the answer of the responding party does not seek review of new issues – but that is exactly what Durland attempts to do here, in direct violation of the clear and specific language of RAP 13.4.

The Court should impose sanctions on Durland, in addition to awarding attorney fees to Heinmiller, for Durland's flagrant and unapologetic disregard of the Rules of Appellate procedure.

DATED 21 February 2017.

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