SUPREME COURT
OF THE STATE OF WASHINGTON

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| JON MORRONE,<br><br>Petitioner,<br><br>v.<br><br>NORTHWEST MOTORSPORT, INC., a Washington nonprofit corporation; NORTHWEST MOTORSPORT, LLC, a Washington limited liability company,<br><br>Respondents. | No. 101086-9<br><br>RESPONSE TO PETITIONER'S STATEMENT OF ADDITIONAL AUTHORITY |

Jon Morrone's additional "authority,"[1] *Rivas v. Russell*, 2022 WL 4078523 (2022), does not affect the petition before the Court. Morrone deliberately glosses over its unpublished status and its key facts, showing that the law on default is well-settled and courts do not need further guidance from this Court.

[1] Morrone's statement reads more like an illicit supplemental brief than a RAP 10.8 statement of additional authority, even under the new version of the rule.



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First, like Division II's decision in this case, *Rivas* is unpublished, a fact Morrone never mentions in his statement. Thus, it cannot (nor does not) create any conflict under RAP 13.4(b)(1) or (2) justifying review.

Second, this "authority" is wildly distinguishable on the facts. In *Rivas*, a defendant was served via certified mail after the court found he "evade[d] personal service." *Id.* at *2 ("Twice, the process server saw lights on inside [defendant's] home and once he noted movement [inside]"). The defendant signed a certified mail receipt as "addressee" but refused to appear, and the court entered default. *Id.* His attorney appeared nearly two months later, and then waited another four months before moving to set aside the default. *Id.* Thus, vacating default was unwarranted because the defendant's reason for not appearing – his decision to evade service – was inexcusable and he did not diligently move to set aside default. *Id.*



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In contrast, NW Motorsport never evaded anything. It tried to defend the lawsuit, tendering it to its outside counsel who made a unilateral calendaring mistake. And it moved with extreme diligence to set aside default, moving within *48 hours* after appearing the *same day* default was entered. If anything, *Rivas* shows that appellate courts are well-versed at applying the settled rules for default judgments. Each court must "evaluate the trial court's decision by considering the unique facts and circumstances of the case," and defaults should be liberally set aside for purposes of justice unless there exists a "willful intent to ignore the lawsuit." *Showalter v. Wild Oats*, 124 Wn. App. 506, 514, 101 P.3d 867 (2004).

The Court should deny review of Division II's unpublished decision.

This document contains 349 words, excluding the parts of the document exempted from the word count by RAP 18.17.



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DATED this 19th day of October, 2022.

Respectfully submitted,

/s/ Aaron P. Orheim

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DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of a ***Response to Petitioner's Statement of Additional Authorities*** in Supreme Court Cause No. 101086-9 to the following parties:

Stephanie Bloomfield, WSBA #24251
Gordon Thomas Honeywell LLP
1201 Pacific Avenue, Suite 2100
Tacoma, WA 98402

Original E-filed via appellate portal:
Supreme Court
Clerk's Office

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

DATED: October 19, 2022 at Seattle, Washington.

/s/ Brad Roberts
Brad Roberts, Legal Assistant
Talmadge/Fitzpatrick

**TALMADGE/FITZPATRICK**

**October 19, 2022 - 11:37 AM**

**Transmittal Information**

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|---|---|
| **Filed with Court:** | Supreme Court |
| **Appellate Court Case Number:** | 101,086-9 |
| **Appellate Court Case Title:** | Jon Morrone v. Northwest Motorsport, Inc. |
| **Superior Court Case Number:** | 21-2-04572-5 |

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