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The Presiding Court  
Motion Hearing: Tuesday, July 30, 2024 at 10:00 a.m.  
SMC Room 1103  
With Oral Argument

IN THE MUNICIPAL COURT OF THE CITY OF SEATTLE  
KING COUNTY, WASHINGTON

THE CITY OF SEATTLE, a municipal corporation,	)	
	)	Civil Case No.: 1240000005
	)	
Plaintiff,	)	
	)	CITY'S RESPONSE TO DEFENDANT'S
vs.	)	MOTION TO SET ASIDE ORDER OF
	)	DEFAULT AND VACATE JUDGMENT
MILES OLIVER HUDSON, a single person,	)	
	)	
Defendant.	)	

**I. RELIEF REQUESTED**

Plaintiff, The City of Seattle (City), asks the Court to deny the Defendant's Motion to vacate the Court's Order of Default and Order of Default Judgment against Defendant, Miles Oliver Hudson (Defendant) pursuant to CRLJ 60. The Defendant has not provided competent evidence to support his motion and has not provided evidence to support elements required for the Court to vacate its Orders. Therefore, the Orders should stand.

**II. STATEMENT OF FACTS**

This case involves a code enforcement action for a nuisance noise violation caused by a vehicle which has been modified to be excessively loud. On May 7, 2024, the City filed a Complaint for Civil Penalties alleging violations of Seattle's Noise Control Ordinance, Seattle Municipal Code Chapter 25.08. On May 10, 2024, The Defendant was personally served by Licensed Process Server, Frank

CITY'S RESPONSE TO DEFENDANT'S MOTION TO SET ASIDE  
ORDER OF DEFAULT AND VACATE JUDGMENT - 1  
(SMC Civil Case No. 1240000005 | City v. Hudson)

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1 Marshall (Marshall), of Seattle Legal Messengers.<sup>1</sup> The Declaration of Service provided the date, time,  
2 and location of service, and described the person who was served as a Black male, 5’9” tall, and  
3 weighing 230 pounds. Marshall served the Defendant at his residence, after the Defendant verbally  
4 identified himself two times, at which point Marshall handed the Defendant his Summons and  
5 Complaint through the narrowly opened door.<sup>2</sup> Marshall did not see the Defendant’s whole body due  
6 to the way the Defendant reached around his open door for the papers.<sup>3</sup>

7 On May 14, 2024, Rebecca Hudson, Defendant’s mother, emailed the Seattle Municipal Court  
8 and the City Attorney’s Office regarding the case. Her email included the statement that the Defendant  
9 had received the Summons and Complaint.<sup>4</sup> On May 31, 2024, when Defendant failed to answer the  
10 Complaint or appear on the case, the City filed a Motion for Default and Motion for Order of Default  
11 Judgment. The City mailed courtesy copies to the Defendant’s two addresses of record, including his  
12 residence where he was personally served. The Defendant appeared *pro se* for the June 18, 2024  
13 hearing where the Court granted both motions. The Defendant now asks this Court to set aside the  
14 default and vacate the judgment pursuant to CRLJ 60, because the weight listed by the process server  
15 on the Declaration of Service is incorrect.

### 16 III. ISSUE

17 Has the Defendant met his burden to show good cause for setting aside the Default and  
18 presented definitive evidence that he is entitled to relief from the judgment, as required by CRLJ 60(b),  
19 by simply claiming he “was never served” and pointing out that his weight is inaccurate on the sworn  
20 Declaration of Service? No. The Defendant has not presented evidence of any defense to the City’s  
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22 <sup>1</sup> See Declaration of Cindi Williams in Support of Plaintiff’s Motion for Default, Exhibit A (Declaration of Service); and  
23 Declaration of Frank Marshall.

<sup>2</sup> Marshall Decl. 1-2.

<sup>3</sup> Marshall Decl. 2.

<sup>4</sup> Williams Decl. Ex. C, Email from Rebecca Hudson dated May 14, 2024.

claims, and his allegation that he was not served is not supported by credible evidence.

#### IV. EVIDENCE RELIED UPON

This motion is based on the pleadings and records already on file with this Court, the Declaration of Frank Marshall, and the Declaration of Cindi Williams in Support of the City's Response to the Defendant's Motion to Set Aside Order of Default and Vacate Judgment.

#### V. LEGAL AUTHORITY AND ARGUMENT

The Defendant makes his motion pursuant to Civil Rule for Courts of Limited Jurisdiction (CRLJ) 60. Initially, the City's Motion for Default was granted pursuant to CRLJ 55. The rule on setting aside a judgment provides, "For good cause shown and upon such terms as the court deems just, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with rule 60(b)."<sup>5</sup> A decision to set aside an Order of Default is within the sound discretion of the trial court.<sup>6</sup> A court abuses its discretion when it makes a decision that is manifestly unreasonable, based on untenable grounds, or made for untenable reasons:

A court's decision is "manifestly unreasonable" if it is outside the range of acceptable choices given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; and it is based on untenable reasons if it is based on an incorrect standard are the facts do not meet the requirements of the correct standard.<sup>7</sup>

CRLJ 60(b)(1), (4), and (11)<sup>8</sup> provide that a court may relieve a party from a final judgment or order for reasons of mistake, inadvertence, surprise, excusable neglect, or irregularity; fraud, misrepresentations, or misconduct; or any other reason justifying relief from the operation of the judgment. To vacate a judgment, the defendant must file a motion, "stating the grounds upon which

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<sup>5</sup> CRLJ 55(c)(1).

<sup>6</sup> *Fowler v. Johnson*, 167 Wash.App. 596, 604, 273 P.3d 1042 (2012).

<sup>7</sup> *Id.*, citing *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

<sup>8</sup> Defendant argues in one location of his Motion (page 3-4) that his Motion is based on CRLJ 60(b)(1)(4) and (11) and in another location (page 5) he argues it is based on CRLJ 60(b)(3)(4) and (11).

1 relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise  
2 statement of the facts or errors upon which the motion is based, and if the moving party be a defendant,  
3 the facts constituting a defense to the action or proceeding.” CRLJ 60(e).

4 The Defendant claims that his denials satisfy one or more of the CRLJ 60(b) grounds for relief,  
5 however he needs to show more than that to justify setting aside a default under CRLJ 60(b).<sup>9</sup> A court  
6 should consider four factors before setting aside an order of default: the two primary factors are  
7 whether the moving party has shown substantial evidence that he has a defense to the claim, and  
8 whether he has an excuse for his failure to respond.<sup>10</sup> The two secondary factors are whether the  
9 moving party was diligent in asking for relief after the default, and whether the nonmoving party is  
10 prejudiced if the court sets aside the default.<sup>11</sup> Here, an analysis of the primary factors is dispositive  
11 and the secondary factors need not be considered.

12 A Defendant who asks a court to set aside a default must show that there is substantial evidence  
13 supporting his defense to the Plaintiff’s claims.<sup>12</sup> Where the evidence supporting his defense is weak,  
14 the evidence supporting other factors should be evaluated with heightened scrutiny.<sup>13</sup> This rule  
15 supports an equitable application of the court rules, because setting aside a default for a Defendant  
16 whose case is weak and who has a poor excuse for non-appearance does not produce a just result.<sup>14</sup>

17 In the case at bar, the Defendant has made absolutely no factual allegations in his Declaration  
18 that support any defense to the City’s claim. The Defendant’s attorney argues that the Defendant can  
19 “present relevant evidence and factors that may change the city's position regarding the violation  
20 amount”<sup>15</sup> and “Mr. Hudson has made repairs to the vehicle that the city attorney was not aware of

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<sup>9</sup> The case law cited herein discusses CR 60(b), which is identical to CRLJ 60(b).

22 <sup>10</sup> *Gutz v. Johnson*, 128 Wash.App. 901, 916-917, 117 P.3d 390 (2005).

23 <sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *White v. Holm*, 73 Wash.2d 348, 352-353, 438 P.2d 581 (1968).

<sup>14</sup> *TMT Bear Creek Shopping Center v. Petco Animal Supplies, Inc.*, 140 Wash. App. 191, 203-204, 165 P.3d 1271 (2007).

<sup>15</sup> Motion for Order to Show Cause, p. 5, lines 17-18.

1 and should affect the total amount of the code violation fine.”<sup>16</sup> The Defendant’s declaration contains  
2 no facts constituting a defense to the action as required by caselaw and CRLJ 60(e).

3 The Defendant has not satisfied the first element required to set aside a default because he has  
4 not presented a scintilla of evidence that he has any defense to the City’s claims. Even if the Court  
5 finds that he *has* presented some evidence of a defense, it is so thin that the Court’s level of scrutiny  
6 of his excuse for non-appearance should be high.<sup>17</sup>

7 Whatever the level of scrutiny, the Defendant’s evidence is so profoundly weak that he gives  
8 the Court no reason to find that he meets his burden of proof. The Defendant has the burden to  
9 overcome the City’s showing of valid service. An Affidavit of Service<sup>18</sup> creates the presumption that  
10 service has been completed correctly.<sup>19</sup> A party challenging service has a burden of showing improper  
11 service by clear and convincing evidence.<sup>20</sup> The Court may consider any evidence in the record to  
12 determine the veracity of a party’s claim that he was not served.<sup>21</sup>

13 The Defendant claims misconduct by the process server because the process server used the  
14 weight provided to him by the City (based on his driver’s license), and this somehow proves  
15 misconduct because he has lost weight since that 2021-issued license.<sup>22</sup> The truth is, the process server  
16 used that weight because the Defendant was hiding behind his front door and reached around to grab  
17 the Summons and Complaint from the process server. The Defendant’s Declaration does not establish  
18 misconduct at all. Instead, it is so grossly internally inconsistent that it proves, within its four corners,  
19 that the Defendant has committed perjury upon signing and filing his Declaration.

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20 <sup>16</sup> *Id.*, lines 19-20.

21 <sup>17</sup> The Defendant may argue that if service is improper, the judgment is void and he does not have to establish a meritorious  
22 defense. Even if he does not have to show evidence of a defense, the poor quality of his evidence regarding service supports  
denial of his motion. *See Leon v. Demopolis*, 62 Wash.App. 473, 478-479, 815 P.2d 269 (1991).

<sup>18</sup> A Declaration serves the same purpose. RCW 5.50.030.

<sup>19</sup> *Woodruff v. Spence*, 76 Wash.App. 207, 210, 883 P.2d 936 (1994).

23 <sup>20</sup> *Id.*, and *Leon v. Demopolis*, at 478.

<sup>21</sup> *Leon v. Demopolis*, at 479.

<sup>22</sup> Hudson Decl. 2.

1 According to the Defendant, in 2021 when his license was issued, he weighed 230 pounds and  
2 now weighs 175 pounds. The Defendant claims that he has lost 100 pounds since the issuance of his  
3 driver's license, therefore the process server could not possibly have thought that the man who he  
4 served was the same person.<sup>23</sup> His exhibits do not support this claim, as no exhibit shows that he ever  
5 weighed 275 pounds or 130 pounds at any time. His driver's license from 2021 says he weighs 230  
6 pounds.<sup>24</sup> He declares that the December 2023 medical after-visit notes (Exhibit C to his Declaration)  
7 show that he was "almost 100 lbs. lighter than the description given by the process server in his  
8 affidavit."<sup>25</sup> The weight in the medical record, however, is only 55 pounds less than the weight on the  
9 Defendant's driver's license. His recitation of what his own exhibits say is false and perjurious and  
10 should be disregarded by this Court.

11 The Defendant does not challenge any of the other physical characteristics in the Declaration  
12 of Service, such as gender, skin color, age, or height. He does not challenge that his hair was covered.  
13 The Defendant does not claim that anyone else was served who matched all those other characteristics  
14 such that the process server was mistaken about who was served.

15 The Defendant does not dispute that he lives at the apartment where he was served. When the  
16 process server went to the apartment building, management allowed him to enter and go to the  
17 Defendant's apartment. The landlord's Complaint for Ejectment states that he lives in the same unit  
18 number as the Declaration of Service.<sup>26</sup> It is significant that the Defendant also does not make any  
19 claim that he was elsewhere at the time of service or that another person was in his apartment to receive  
20 the Summons and Complaint. Such allegations are a common feature in cases where Defendants  
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22 <sup>23</sup> Hudson Decl. 2.

23 <sup>24</sup> Hudson Decl. Ex. B.

<sup>25</sup> Hudson Decl. 2.

<sup>26</sup> Declaration of Cindi Williams in Support of the City's Response to the Defendant's Motion to Set Aside Default and Vacate Judgment, Ex. A.

1 challenge their service.<sup>27</sup> When a Defendant claims that he was not served but does not specify where  
2 he was on the date of service, a court can reasonably discount his claim that he was not served.<sup>28</sup>  
3 Where a party challenging service fails to produce evidence that would refute the valid service, the  
4 trial court may draw the inference that the missing evidence would be unfavorable to the moving  
5 party.<sup>29</sup>

6 Mr. Marshall's Declaration provides additional detail about his interactions with the Defendant  
7 and the circumstances of service. First, he knocked on the Defendant's door and said he had a delivery  
8 for the Defendant.<sup>30</sup> A male voice said, "I didn't order anything" and "I don't want it."<sup>31</sup> The process  
9 server surmised that the voice was Hudson's, due to the "I" statements.<sup>32</sup> When he went back to the  
10 unit the next day, on May 10, 2024, he was addressed by the same male voice behind the door.<sup>33</sup> It  
11 was a distinctive voice, and the process server was certain it was the same person.<sup>34</sup> A man matching  
12 the Defendant's description opened the door slightly and reached around the door to accept the  
13 papers.<sup>35</sup> The process server did not see most of his body, but entered the weight provided to Seattle  
14 Legal Messengers by the City.<sup>36</sup> These facts establish that Defendant was properly served.

15 Additionally, the Defendant claims that "I was only made aware of complaints held against me  
16 through news articles I found online after the motion for default judgment was filed."<sup>37</sup> A media report  
17 after the Motion for Default was filed would have occurred after May 31, 2024, which was when the  
18 Motion for Order of Default and Motion for Default Judgment were filed. This is inconsistent with his  
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20 <sup>27</sup> See *Woodruff v. Spence* at 210, and *Leon v. Demopolis* at 480.

21 <sup>28</sup> *Leon v. Demopolis* at 480.

22 <sup>29</sup> See *Northwick v. Long*, 192 Wash.App. 256, 264, 364 P.3d 1067 (2015).

23 <sup>30</sup> Marshall Decl. 2.

<sup>31</sup> Marshall Decl. 2.

<sup>32</sup> Marshall Decl. 2.

<sup>33</sup> Marshall Decl. 2.

<sup>34</sup> Marshall Decl. 2.

<sup>35</sup> Marshall Decl. 2.

<sup>36</sup> Marshall Decl. 2.

<sup>37</sup> Hudson Decl. 1.

1 mother's May 14, 2024 email that said "[h]e has received the summons and complaint for civil  
2 penalties due to him not complying for the noise control."<sup>38</sup> This was four days after her son was  
3 served with the Summons and Complaint. While such a statement may not, by itself, support a finding  
4 that a family member was personally served, it is directly inconsistent with this Defendant's claim.  
5 Nothing in the Defendant's Declaration is credible enough to support a finding that he was not served.

6 Procedurally, if the Court finds that the Declarations raise an issue of fact that should be  
7 resolved with an evidentiary hearing, it is within the Court's discretion to hold that at a future date.<sup>39</sup>  
8 Such a hearing, however, is not necessary because the Defendant's evidence is so grossly suspect that  
9 it cannot possibly overcome the Defendant's multiple burdens of proof.

## 10 VI. CONCLUSION

11 Defendant has not shown good cause for setting aside the default in this case pursuant to CRLJ  
12 55(c)(1). The City has established that the Defendant was personally served with the Summons and  
13 Complaint at his residence by having the pleadings handed to him at his front door. To rebut those  
14 facts, he has to offer credible evidence of one of the factors in CRLJ 60(b). Here, he argues that there  
15 was misconduct because the process server described him inaccurately, except that he used the weight  
16 provided by the City because he did not see most of the Defendants body as he hid behind his front  
17 door. Furthermore, caselaw and the court rules require that the Defendant provide sworn evidence of  
18 the facts constituting a defense to the City's action. The Defendant offers no such facts. His closest  
19 offer is his claim that repairs have been made to the vehicle. This is not enough to dispute proper  
20 service, and not enough to meet his burden to defend against the City's claims. The City respectfully  
21 requests that the Defendant's Motion be denied.

22 [SIGNATURE BLOCK ON NEXT PAGE]

23 <sup>38</sup> Declaration of Cindi Williams in Support of Plaintiff's Motion for Default, Ex. C.

<sup>39</sup> *Woodruff v. Spence*, at 210.



DATED this 26<sup>th</sup> day of July, 2024.

ANN DAVISON  
Seattle City Attorney

By: /s/ Cindi Williams  
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*Attorneys for Plaintiff, The City of Seattle*

1 **CERTIFICATE OF SERVICE**

2 I certify under penalty of perjury under the laws of the State of Washington that, on this date,  
3 I caused to be served true and correct copies of the following documents:

- 4 1. City's Response to Defendant's Motion to Set Aside Order of Default and Vacate Judgment;  
5 2. Declaration of Cindi Williams;  
6 3. Declaration of Fred Marshall; and  
7 4. [Proposed] Order Denying Defendant's Motion to Vacate Order Granting Default.

8 on the party listed below and, in the manner indicated:

9 **Joshua Brumley**

10 Brumley Law Firm, PLLC  
11 1303 Central Avenue South, Suite 201  
12 Kent, Washington 98032  
13 *Attorney for Defendant,*  
14 *Miles Oliver Hudson*

Per E-Service Agreement:

(x) Email: [Joshua@Brumleylawfirm.com](mailto:Joshua@Brumleylawfirm.com)  
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15 the foregoing being the last address and email address of the above-named party representative.

16 DATED this 26<sup>th</sup> day of July 2024, at Seattle, Washington.

17 /s/ Natasha Iquina  
18 NATASHA IQUINA  
19 Legal Assistant