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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION**

KYLE HADLEY,)
)
Plaintiff,)
)
v.)
BRANDON MCGIVERN,)
)
Defendant.)
)

Case No. **2025-CH-05527**

Judge Eve M. Reilly
Courtroom 2405

**DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE IN OPPOSITION TO
MOTION TO STRIKE EXHIBIT B AS FABRICATED EVIDENCE**

NOW COMES the Defendant, BRANDON MCGIVERN, pro se, and respectfully files this Reply to Plaintiff's Response in Opposition to Defendant's Motion to Strike Exhibit B as Fabricated Evidence, and in support thereof states:

I. INTRODUCTION

1. Plaintiff's Response confirms this Court's worst fears about the integrity of the proceedings. Rather than address the undisputed timeline proving Exhibit B's fabrication, Plaintiff doubles down on his misconduct while Attorney Cole compounds the ethical violations by defending demonstrably false evidence. The Google Docs version history remains uncontradicted—Exhibit B contains entries dated months after Defendant ceased tracking and after Plaintiff's access was revoked. **These temporal impossibilities prove fabrication beyond any reasonable doubt.**

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II. PLAINTIFF'S RESPONSE FAILS TO ADDRESS THE CORE ISSUE

A. Complete Evasion of Timeline Evidence

2. Plaintiff's 24-paragraph response never once addresses the central proof of fabrication: the **undisputed Google Docs timeline**. This evasion is telling and confirms Plaintiff's knowledge that Exhibit B is fabricated. The undisputed timeline proves temporal impossibility:

- **August 19, 2024, 2:44 PM**: Defendant's last edit while sharing with Plaintiff
- **January 30, 2025, 12:45 PM**: Defendant revoked Plaintiff's access
- **February 14, 2025, 5:52 PM**: Defendant's first edit after revoking access
- **Zero edits between August 19, 2024 and February 14, 2025**

3. Yet Exhibit B contains entries for September 2024 through May 2025—representing data that never existed when Plaintiff had legitimate access.

B. Mischaracterization as "Authentication" Issue

4. Plaintiff attempts to reframe this as a mere authentication dispute under Rule 901. This fundamentally misunderstands the issue. Defendant is not challenging the authenticity of his own Google Doc, Defendant is proving that **Plaintiff fabricated entries** that Defendant never made.

5. Authentication cannot cure fabrication. Rule 901 requires that exhibits be "what the proponent claims them to be." Exhibit B purports to show Defendant's equity tracking through May 2025, but the undisputed timeline proves no such tracking occurred after August 2024.

6. The \$320,000 to \$300,000 purchase price manipulation alone proves intentional fabrication designed to inflate damages by \$20,000. This is particularly

damning when Plaintiff's own February 14, 2025 email references the original \$320,000 agreement.

7. Even more telling, Plaintiff's Response cites his Complaint's claim of a \$150,000 purchase price in paragraph 17, creating a three-way contradiction: \$320,000 (authentic document), \$300,000 (fabricated Exhibit B), and \$150,000 (Complaint). This mathematical impossibility exposes the systematic nature of Plaintiff's fabrication.

III. PLAINTIFF'S SUBSTANTIVE ARGUMENTS LACK MERIT

8. Plaintiff argues Illinois recognizes partial performance and reliance as overcoming the Statute of Frauds. Even if true, this is irrelevant to striking fabricated evidence. Courts must exclude false exhibits regardless of the underlying legal theories. Plaintiff's citations to partial performance doctrine cannot cure the temporal impossibility of Exhibit B's creation timeline.

9. Plaintiff's Response compounds the fabrication problem by creating additional contradictions. In paragraph 17, Plaintiff's counsel cites the Complaint's allegation of a \$150,000 purchase price, yet the fabricated Exhibit B shows \$300,000, while the authentic document shows \$320,000. This three-way price contradiction proves Plaintiff cannot keep his fabricated story straight across different filings.

10. Plaintiff characterizes the eviction case as a "calculated effort to obfuscate," ignoring that Plaintiff forced the eviction by refusing to vacate after his purchase claims were rejected. The eviction case exists because Plaintiff's equitable claims failed, not to circumvent them. The parallel litigation demonstrates Plaintiff's forum shopping and retaliation against Defendant.

IV. EVICTION CASE VALIDATES DEFENDANT'S POSITION

11. The July 21, 2025 eviction trial result confirms Defendant's position regarding Plaintiff's pattern of misconduct. When Plaintiff failed to appear at the properly noticed trial date in Case No. 2025-M1-707919, Judge Porter entered a default judgment for possession in Defendant's favor. This validates Defendant's claims about Plaintiff's unlawful holdover and undermines any legitimate basis for Plaintiff's equity assertions in this Court.

12. Rather than accept the consequences of his counsel's failure to appear, Plaintiff immediately filed a Motion to Vacate Default Judgment on July 22, 2025, making multiple false statements to the court. Attorney Cole falsely claimed that "Judge Porter explicitly struck all motions, including the July 21 trial date" and that "Plaintiff submitted two conflicting proposed orders."

13. In reality, the June 26, 2025 Agreed Order contains no language striking the trial date, and Attorney Cole himself submitted both competing orders after the hearing. These additional false statements to the municipal court demonstrate the same pattern of fabrication and misrepresentation established in this motion.

V. PLAINTIFF'S DISCOVERY MISCONDUCT COMPOUNDS THE FABRICATION

A. Fabricated Responses to Requests for Admissions

14. Plaintiff's Response omits his systematic discovery obstruction. Defendant served 30 Requests for Admissions on June 24, 2025, which Plaintiff completely failed to answer by the July 22, 2025 deadline, necessitating Defendant's July 23, 2025 Motion for Deemed Admissions.

15. Rather than respond to the actual requests, Plaintiff fabricated ten entirely different "requests" and responded to those fictional questions instead, which is a complete failure to respond under Rule 216. This mirrors the same fabrication pattern seen in Exhibit B.

B. Complete Failure to Respond to Interrogatories and Document Requests

16. Similarly, Plaintiff has completely failed to respond to Interrogatories and Document Production Requests served June 24, 2025, with responses due July 24, 2025, necessitating Defendant's July 25, 2025 Motion to Compel. This pattern of misconduct establishes Plaintiff's willingness to fabricate evidence and evade legitimate court processes.

VI. ATTORNEY COLE'S ETHICAL VIOLATIONS

A. Duty to Investigate Under Rule 137

17. Attorney Cole's defense of demonstrably fabricated evidence violates his duty under Illinois Supreme Court Rule 137 to conduct reasonable investigation. The Google Docs timeline evidence is unambiguous, no reasonable investigation could conclude Exhibit B is authentic.

B. Continuing Misconduct After Notice

18. Despite being served with clear evidence of fabrication, Attorney Cole continues to defend false evidence and has filed additional discovery evasion motions and false statements in the eviction case motion to vacate. This demonstrates either willful blindness or active participation in the misconduct.

19. The professional consequences must be severe. Attorney Cole cannot claim ignorance when presented with undisputed metadata proving temporal impossibility. His

continued defense of fabricated evidence after notice, combined with false statements in the motion to vacate, requires referral to the Illinois Attorney Registration and Disciplinary Commission.

VII. THE ADMISSIONS MOTION CREATES ADDITIONAL GROUNDS

20. Defendant's pending Motion for Entry of Order Deeming Admissions seeks to have all 30 requests for admissions deemed admitted due to Plaintiff's complete failure to respond. Many of these admissions directly relate to:

- (a) Plaintiff's rental operations and undisclosed income from the property
- (b) The water damage concealment from January through June 2025
- (c) Plaintiff's real estate licensing and professional knowledge of contract requirements
- (d) The authenticity and creation timeline of financial documents

21. If deemed admitted, these facts will provide additional evidence supporting the Motion to Strike.

VIII. CONCLUSION

22. Plaintiff's Response confirms the fabrication by completely avoiding the timeline evidence. When confronted with Google Docs version history proving temporal impossibility, Plaintiff deflects to legal theories about partial performance and the Statute of Frauds.

23. **The evidence speaks for itself:** five months with zero document edits between August 2024 and February 2025, Plaintiff's access revoked in January 2025, yet Exhibit B contains entries through May 2025 for data that never existed.

24. This is **not an authentication issue, this is proven fabrication** that strikes at the heart of judicial integrity. The systematic nature of Plaintiff's misconduct is further confirmed by:

- (a) The three-way price contradiction across different filings
- (b) Fabricated discovery responses to avoid damaging admissions
- (c) False statements in the motion to vacate the properly obtained default judgment
- (d) Continued discovery evasion

25. Combined with Plaintiff's systematic discovery evasion and Attorney Cole's ethical violations, this Court must take decisive action to preserve the integrity of these proceedings.

IX. RELIEF REQUESTED

WHEREFORE, Defendant respectfully requests this Court:

A. Grant the Motion to Strike Exhibit B by:

- Striking Exhibit B entirely from all pleadings as fabricated evidence
- Prohibiting any reference to the fabricated equity calculations in Exhibit B
- Dismissing Counts II and III or reducing claimed damages that rely solely on fabricated evidence

B. Impose Rule 137 Sanctions by:

- Imposing monetary sanctions against Plaintiff Kyle Hadley in the amount of \$5,000 for presenting fabricated evidence
- Issuing a warning to Plaintiff regarding future false filings
- Imposing monetary sanctions against Attorney Mason Cole in the amount of

\$10,000 for failure to investigate and defending fabricated evidence

- Referring Attorney Mason Cole to the Illinois Attorney Registration and Disciplinary Commission for professional misconduct
- Requiring authentication affidavits for all future exhibits submitted by Plaintiff's counsel

C. Enter Case Management Orders including:

- Proper scheduling of the pending Motion for Deemed Admissions with appropriate briefing timelines
- Consolidation of discovery sanctions motions for efficient resolution
- Protective orders preventing further discovery abuse

D. Grant any other relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

/s/ Brandon McGivern

Brandon McGivern, Defendant

Brandon McGivern, Pro Se
5701 N Sheridan Rd #23G
Chicago, IL 60660

Phone: [REDACTED]

Email: [REDACTED]

EXHIBITS

Exhibit A: Defendant's Motion to Vacate Default Judgment and Order for Possession filed in Case No. 2025-M1-707919 (July 22, 2025) (without exhibits) - demonstrating false statements to municipal court after being put on notice of fabrication

Exhibit B: Plaintiff's Response in Opposition to Defendant's Motion to Vacate filed in Case No. 2025-M1-707919 (July 24, 2025) (without exhibits) - showing successful defense against false statements and confirmation of properly obtained default judgment

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon Plaintiff's counsel by email to mcole@colesadkin.com on July 25, 2025.

/s/ Brandon McGivern

Brandon McGivern, Pro Se

EXHIBIT A

**Defendant's Motion to Vacate Default Judgment and Order for
Possession filed in Case No. 2025-M1-707919**

Date: July 22, 2025

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, MUNICIPAL DIVISION**

BRANDON MCGIVERN,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 2025-M1-707919
)	
KYLE HADLEY,)	Judge Brian Porter
)	
<i>Defendant.</i>)	Courtroom 1402

**DEFENDANT’S MOTION TO VACATE DEFAULT JUDGMENT AND ORDER FOR
POSSESSION**

NOW COMES Defendant, KYLE HADLEY, by and through his undersigned counsel, and respectfully moves this Court to vacate the default judgment and order for possession entered on July 21, 2025, pursuant to 735 ILCS 5/2-1203 and/or the Court’s inherent authority, and in support states as follows:

I. BACKGROUND AND PROCEDURAL HISTORY

1. This case is one of two intertwined actions involving the property located at 6122 N. Winthrop Ave., Unit C, Chicago, Illinois.
2. Defendant Hadley filed a separate action in the Chancery Division (Case No. 2025-CH-05527) asserting that he is the rightful purchaser of the property under a verbal agreement and seeking equitable relief, including a constructive trust and injunctive relief.
3. On June 26, 2025, this Court presided over a hearing where the conflict between this eviction case and the pending Chancery matter was addressed.

4. During that hearing, Judge Porter explicitly struck all motions, including the July 21 trial date, and stated on the record that the Chancery action would take precedence. *See* June 26, 2025 Order, attached as **Exhibit 1**.

5. However, following the hearing, Plaintiff submitted two conflicting proposed orders—one of which omitted any reference to the stricken trial date and was apparently entered by the clerk without objection from Plaintiff. *See* Submitted Proposed Orders, attached jointly as **Exhibit 2**.

6. Counsel for Defendant submitted the accurate competing order, and immediately notified both Chambers and opposing counsel that the trial date was struck. *See* Correspondence, attached as **Exhibit 3**.

7. Nevertheless, on July 21, 2025, Plaintiff appeared before the Court and secured a default eviction judgment, despite knowing that the trial date had been stricken and that the matter was stayed by order of this Court.

II. GROUNDS FOR VACATUR

8. The entry of judgment on July 21, 2025 was procedurally defective, as it was based on a misrepresentation of the case's procedural posture, and directly contradicts the oral rulings made by Judge Porter on June 26, 2025.

9. Plaintiff had actual notice that the trial date was no longer valid. Plaintiff's conduct in attending trial anyway and requesting default is tantamount to an *ex parte* misrepresentation.

10. A trial court retains the power to vacate any judgment obtained by mistake, inadvertence, fraud, or misconduct. *Paul v. Gerald Adelman & Assoc., Ltd.*, 223 Ill. 2d 85 (2006).

11. Courts have inherent authority to vacate orders that were entered contrary to the express rulings of the court or under circumstances that violate fair play. See *Smith v. Airoom, Inc.*, 114 Ill. 2d 209 (1986).

12. Defendant acted promptly upon learning of the improper judgment, and no prejudice will result to Plaintiff from restoring the matter to its proper status—particularly because Defendant continues to pursue his equitable ownership claims in Chancery.

REQUEST FOR RELIEF

WHEREFORE, Defendant Kyle Hadley respectfully requests that this Honorable Court:

- A. Vacate the default judgment and order for possession entered on July 21, 2025;
- B. Confirm that the trial setting was struck on June 26, 2025, consistent with the Court's oral ruling;
- C. Re-calendar this matter only upon resolution of the pending Chancery matter in Case No. 2025-CH-05527; and
- D. Grant such other and further relief as this Court deems just and appropriate.

Date: July 22, 2025

Respectfully submitted,
By: /s/ Mason Cole

Mason Cole
Cole Sadkin, LLC

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Chicago, IL 60657
mcole@colesadkin.com
(312) 548-8610

Counsel for Defendant

EXHIBIT B

**Plaintiff's Response in Opposition to Defendant's Motion to Vacate filed
in Case No. 2025-M1-707919**

Date: July 24, 2025

lacks a meritorious defense; and (3) Defendant's bad faith conduct warrants denial of relief.

II. DEFENDANT'S MOTION CONTAINS MULTIPLE FALSE STATEMENTS

2. **False Statement #1 - Judge's Alleged "Oral Ruling" (¶4).** Defendant's counsel falsely claims Judge Porter "stated on the record that the Chancery action would take precedence." Defendant's own Exhibit 1 (the June 26, 2025 Agreed Order) contains no such language about Chancery precedence or staying the eviction.

3. **False Statement #2 - Who Submitted Conflicting Orders (¶5).** Defendant's counsel falsely claims "Plaintiff submitted two conflicting proposed orders." In reality, Defendant's counsel Mason Cole submitted both competing orders after the June 26 hearing, creating the very confusion he now seeks to exploit. Plaintiff submitted only one proposed order, which Mr. Cole agreed to during their July 11, 2025 telephone conversation.

4. **False Statement #3 - Timeline of Communications (¶6).** Defendant's counsel falsely claims he "immediately notified both Chambers and opposing counsel that the trial date was struck." Counsel remained silent from June 26 through July 14, 2025 - nearly three weeks - and only mentioned concerns about the trial in his July 14 email response to Plaintiff's trial exhibits.

5. **Professional Misconduct.** Counsel's conduct violated Illinois Rules of Professional Conduct Rule 3.3(a)(1) by making false statements of fact to the court, including the demonstrably false claim that Plaintiff submitted "two conflicting proposed orders" when counsel himself submitted both orders. These misrepresentations warrant sanctions.

III. STATEMENT OF FACTS

6. Mr. Cole Acknowledged the Trial Date Remained Valid

(a) On June 17, 2025, this Court set "Bench Trial on July 21, 2025 beginning at 11:00 AM in Courtroom 1402."

(b) On July 11, 2025, Mr. Cole agreed to Plaintiff's proposed order from the June 26 hearing that contained no language striking the trial date.

(c) Mr. Cole's July 14 email admits he believed the trial was struck, yet he failed to seek clarification from the court despite having three weeks to do so.

7. Defendant's Pattern of Bad Faith

(a) Defendant has repeatedly violated the June 26, 2025 order by continuing to send unauthorized rent payments.

(b) Defendant filed a retaliatory Chancery case immediately after learning of this eviction action.

(c) This motion continues Defendant's strategy to delay eviction while unlawfully withholding possession.

IV. LEGAL ARGUMENT

8. Section 2-1301 Requirements Not Met

Under 735 ILCS 5/2-1301, Defendant must demonstrate: (1) excusable neglect; (2) a meritorious defense; and (3) due diligence. Defendant has failed all three requirements.

9. No Excusable Neglect

(a) Mr. Cole's July 14 email admits he believed the trial was struck, yet he failed

to seek court clarification.

(b) Professional counsel cannot claim excusable neglect when acknowledging uncertainty but failing to act diligently.

(c) As the professional attorney, Mr. Cole had superior obligations and resources compared to pro se Plaintiff, who made numerous calls to the court clerk.

(d) Mr. Cole's agreement to an order on July 11 containing no striking language demonstrates his own uncertainty about June 26.

10. **No Meritorious Defense**

Defendant's claimed ownership interest is contradicted by their own admissions:

(a) No recorded interest in the property

(b) No written purchase agreement

(c) Failed to complete purchase by extended deadlines

(d) Explicitly stated they "will vacate the property by 7/31, only after my money is returned"

11. This is a straightforward holdover eviction. The separate Chancery case does not create a meritorious defense to eviction proceedings.

12. **Bad Faith Conduct Warrants Denial**

(a) Mr. Cole's strategic silence about trial status while knowing Plaintiff was preparing for trial constitutes bad faith.

(b) Defendant's continued unsolicited rent payments after the June 26 order, despite the order clarifying Plaintiff's right to reject them, demonstrates disregard for the judicial process.

(c) Bad faith conduct is proper basis for denying a motion to vacate. *Purtill v.*

Hess, 111 Ill. 2d 229 (1986).

13. Contradictory Timeline Undermines Motion

Mr. Cole claims he "immediately notified" parties the trial was struck after June 26, yet also claims he only learned of the "improper judgment" after July 21. His July 14 email proves he knew before July 21 that he believed the trial was struck, contradicting the motion's timeline.

V. ALTERNATIVE RELIEF

14. Should this Court consider vacating the default judgment, it should impose conditions including immediate payment of use and occupancy from May 17, 2025, security deposit, expedited trial within 30 days, and Rule 137 sanctions.

VI. CONCLUSION

Defendant seeks to escape consequences of counsel's failure to appear at a properly noticed trial by claiming confusion about orders they helped create. The default judgment was properly entered when Defendant failed to appear. Defendant has not demonstrated excusable neglect, a meritorious defense, or due diligence.

WHEREFORE, Plaintiff respectfully requests this Court:

- (A) **DENY** Defendant's Motion to Vacate Default Judgment and Order for Possession;
- (B) **AFFIRM** that the default judgment remains valid and enforceable;
- (C) **IMPOSE SANCTIONS** under Illinois Supreme Court Rule 137; and
- (D) Grant such other relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

/s/ Brandon McGivern

Brandon McGivern, Defendant

Brandon McGivern, Pro Se

5701 N Sheridan Rd #23G

Chicago, IL 60660

Phone: [REDACTED]

Email: [REDACTED]

EXHIBITS

Exhibit A: Mason Cole's June 26, 2025 Email to Court Submitting "Competing Orders" (proving he submitted both orders, contrary to his false claim that Plaintiff submitted "two conflicting proposed orders")

Exhibit B: Brandon McGivern's July 11, 2025 Email to Court Submitting Final Agreed Order (proving Mason was CC'd on the agreed order that contained no trial striking language)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response was served upon Defendant's counsel by email to mcole@colesadkin.com on July 24, 2025.

/s/ Brandon McGivern

Brandon McGivern, Pro Se