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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

**PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANT’S MOTION FOR  
DEFAULT JUDGMENT ON COUNTERCLAIMS**

NOW COMES Plaintiff, KYLE HADLEY, by and through his counsel at the law firm of Cole Sadkin, LLC, and for his Response in Opposition to Defendant’s Motion for Default Judgment on Counterclaims, states as follows:

**I. INTRODUCTION**

1. Plaintiff, Kyle Hadley ("Plaintiff"), by and through his undersigned counsel, Cole Sadkin LLC, submits this Response in Opposition to Defendant Brandon McGivern’s ("Defendant") Motion for Default Judgment on the Counterclaims. The motion is procedurally baseless and factually inaccurate. Plaintiff has appeared through counsel, actively litigated this case, and filed complete responsive pleadings. Default is a severe remedy reserved for total nonparticipation—not for an opponent’s strategic dissatisfaction with timely defenses.

2. This matter arises from Defendant’s retaliatory eviction and possession action, *McGivern v. Hadley*, Case No. 2025M1707919 (Cir. Ct. Cook Cnty.), filed immediately after Plaintiff asserted his equitable and contractual rights to the property at 6122 N. Winthrop Avenue, Unit C, Chicago, Illinois. Rather than resolve all issues in a single forum, Defendant has

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engaged in relentless and overlapping motion practice—filing nearly twenty (20) motions between this Chancery case and the retaliatory eviction and possession action, ranging from discovery disputes to competing dispositive motions. The procedural chaos that now exists is of Defendant’s own making.

3. Defendant’s June 23, 2025 “Answer, Affirmative Defenses, and Counterclaims” was itself internally inconsistent, combining eight affirmative defenses and five counterclaims within one pleading and obscuring the contours of the issues presented. Plaintiff nonetheless responded in good faith—serving discovery, complying with Rule 201(k), and filing, on October 8, 2025, both a Response to Defendant’s Affirmative Defenses and an Answer to Defendant’s Counterclaims that fully joined the issues under Illinois pleading rules.

4. Having already moved for Judgment on the Pleadings, Defendant effectively conceded that the record was closed and the issues joined. His subsequent request for Default Judgment is logically incompatible with that position. This sequence—arguing first that the pleadings were sufficient for judgment, and later that they were nonexistent—reveals the opportunistic nature of the motion and underscores why it should be denied.

## **II. PROCEDURAL POSTURE**

5. Plaintiff filed this action to resolve the parties’ disputed ownership and equitable interests in the Property, after Defendant refused to complete the agreed transfer and instead initiated a retaliatory eviction proceeding. Defendant answered with a convoluted hybrid pleading on June 23, 2025, asserting both affirmative defenses and counterclaims that have since shifted repeatedly through piecemeal motions and amendments.

6. In the months that followed, Defendant filed more than twenty motions—including motions to compel, for sanctions, to strike discovery, and for judgment on the pleadings—creating a constantly moving target for responsive deadlines. Despite this fluid procedural environment, Plaintiff remained actively engaged: responding to discovery, producing documents, and filing comprehensive responses to Defendant’s affirmative defenses and counterclaims.

7. Against this backdrop, Defendant now seeks Default Judgment, claiming that Plaintiff “failed to plead or otherwise defend.” This claim is objectively false. Plaintiff’s October 8 filings closed the pleadings, and Defendant’s own motion for judgment on the pleadings presupposes that very fact. The Motion for Default is therefore untimely, inconsistent, and unsupported by the record.

### III. LEGAL STANDARD

8. Under 735 ILCS 5/2-1301(d), a default judgment may be entered only when a party “fails to plead or otherwise defend.” Illinois courts disfavor defaults and construe them narrowly, holding that a default is improper where a party has appeared, filed responsive pleadings, or otherwise participated in the litigation. See *City of Joliet v. Szayna*, 2016 IL App (3d) 150092, 408 Ill. Dec. 870, 66 N.E.3d 875 ¶47; *Buck v. Culkin*, 2025 IL App (4th) 240283-U.

9. A responsive pleading filed after a procedural delay—particularly in a case marked by overlapping motions and procedural confusion—does not warrant default. Illinois courts have repeatedly emphasized that technical delays or late-filed pleadings are excusable where the opposing party suffers no prejudice. See *Hoddenpyl v. Fiskum*, 281 Or. App. 42, 383 P.3d 432 (2016). Here, Defendant has not been prejudiced in any way. To the contrary, he has

filed and argued numerous motions, participated in discovery, and even sought judgment on the pleadings, all of which confirm active litigation on the merits.

10. Given this extraordinary procedural posture—a constantly shifting discovery landscape, multiple overlapping motions, and Plaintiff’s timely appearance and participation—default would be wholly inconsistent with Illinois’ strong policy favoring resolution on the merits. *In re Haley D.*, 2011 IL 110886, ¶69, Plaintiff’s Answer to the Counterclaim, even if deemed belated, is complete, substantive, and non-prejudicial. Under these circumstances, the Motion for Default Judgment must be denied in its entirety.

#### **IV. ARGUMENT**

##### **A. Plaintiff Has Continuously Participated and Defended**

11. Defendant’s Motion for Default misstates the record. From the outset of this litigation, Plaintiff has actively participated and defended against Defendant’s claims. Plaintiff has appeared through counsel, attended all case management conferences, responded to written discovery, and engaged in ongoing meet-and-confer efforts under Supreme Court Rule 201(k). These actions constitute an unequivocal appearance and defense within the meaning of 735 ILCS 5/2-1301(d).

12. Plaintiff also filed complete responsive pleadings. On October 8, 2025, Plaintiff submitted both a Response to Defendant’s Affirmative Defenses and a Paragraph-by-Paragraph Answer to Defendant’s Counterclaims, addressing all allegations across five separate counts. These filings joined the issues and cured any conceivable procedural gap that may have existed after Defendant’s sprawling June 23, 2025 pleading. Courts routinely deny default where, as

here, the record reflects active participation and substantive responses. See *Ayot v. Berlin*, 2020 Ill. Cir. LEXIS 6022.

13. The Motion for Default thus attempts to convert a fully engaged defense into a procedural sanction. Illinois courts reject such tactics, recognizing that the purpose of default is to address genuine neglect, not to reward aggressive motion practice. See *Bonanza Int'l, Inc. v. Mar-Fil, Inc.*, 128 Ill. App. 3d 714, 83 Ill. Dec. 922, 471 N.E.2d 221 (1984). Plaintiff's continued presence on the docket, compliance with deadlines, and substantive engagement make clear that default is neither warranted nor lawful.

#### B. Defendant's Positions Are Inconsistent and Procedurally Incoherent

14. Defendant's procedural strategy is fundamentally inconsistent. Having previously filed a Motion for Judgment on the Pleadings, Defendant necessarily represented to the Court that the pleadings were closed and the issues joined. That filing expressly invoked 735 ILCS 5/2-615, which presupposes that both sides have filed operative pleadings. Defendant cannot now reverse course and claim that Plaintiff "failed to plead or otherwise defend."

15. Illinois courts disfavor such contradictory procedural maneuvers. Once a litigant elects to test the sufficiency of the pleadings through a motion for judgment on the pleadings, the premise of default—total failure to respond—no longer exists. See *Parkway Bank & Tr. Co. v. Meseljevic*, 406 Ill. App. 3d 435, 346 (2010). Here, Defendant's inconsistent positions undermine his credibility and reinforce that his Motion for Default is a tactical attempt to gain advantage rather than a legitimate remedy.

16. The Court should view this motion in context: Defendant has filed ten (10) motions in this case, many overlapping or internally inconsistent. By filing repeated and contradictory motions, Defendant has created the very procedural confusion on which he now

relies. A party cannot create disarray through over-filing and then seek default as a cure for the confusion he caused.

C. No Prejudice Exists, and Illinois Law Strongly Favors Decisions on the Merits

17. Even assuming arguendo that Plaintiff's Answer to the Counterclaims were deemed delayed, default is improper absent demonstrable prejudice to the opposing party. See *Venema v. Venema*, 74 Ill. App. 3d 416, 418 (1979). Defendant cannot show prejudice; he has actively litigated every stage of this case, filed substantive motions, and engaged in discovery. There is no suggestion that any alleged delay impaired his ability to prosecute his Counterclaims.

18. Illinois courts consistently emphasize that technical pleading delays should not override the fundamental preference for decisions on the merits. *In re Haley D.*, 2011 IL 110886, ¶69. Here, the procedural landscape has been volatile due entirely to Defendant's serial filings, not neglect by Plaintiff. Plaintiff's participation has been diligent, transparent, and consistent, leaving no equitable basis for default.

19. In light of the record, the equities, and governing law, the Court should deny Defendant's Motion for Default Judgment. Plaintiff has "pleaded and otherwise defended" as required by 735 ILCS 5/2-1301(d), and Defendant's motion is not only unsupported but contrary to Illinois' policy favoring resolution of cases on their merits rather than through technical defaults.

**V. CONCLUSION**

20. Defendant's Motion for Default Judgment is procedurally improper, factually unsupported, and legally inconsistent with his own prior filings. Plaintiff has appeared through

counsel, participated actively in discovery, and filed full responses to Defendant’s Affirmative Defenses and Counterclaims. These actions satisfy all requirements to “plead or otherwise defend” under 735 ILCS 5/2-1301(d). The record reflects continuous litigation on the merits, not neglect or abandonment.

21. In light of the extensive procedural history, Defendant’s inconsistent positions, and the absence of any prejudice, entry of default would be contrary to both equity and Illinois law. Plaintiff respectfully requests that this Court deny Defendant’s Motion for Default Judgment in its entirety and grant such further relief as the Court deems just and proper.

Dated: October 10, 2025

Respectfully Submitted,

By: /s/Mason Cole  
*Attorney for Plaintiff*

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