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System Generated Hearing Date: 8/7/2025 2:00 PM  
Location: Court Room 1402  
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FILED  
7/24/2025 6:09 PM  
Mariyana T. Spyropoulos  
CIRCUIT CLERK  
COOK COUNTY, IL  
20251707919  
Courtroom, 1402  
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**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
FIRST DEPARTMENT, MUNICIPAL DIVISION**

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

Case No. **2025-M1-707919**

Hon. Brian R. Porter  
Courtroom 1402

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**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO  
VACATE DEFAULT JUDGMENT AND ORDER FOR POSSESSION**

NOW COMES Plaintiff, BRANDON MCGIVERN, pro se, and respectfully opposes Defendant's Motion to Vacate Default Judgment and Order for Possession, and in support thereof states as follows:

**I. INTRODUCTION**

1. **Defendant's motion fails at the threshold because it seeks to enforce an alleged "oral ruling" that contradicts the written June 26 order. Illinois law is clear that written orders control over alleged oral statements, and the written order contains no language striking the trial date.** The default judgment was validly obtained when Defendant failed to appear at a properly noticed trial date. The motion should be denied because: (1) Defendant has not demonstrated excusable neglect; (2) Defendant

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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]

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**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)

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**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

# EXHIBIT A

**Mason Cole's Email to Court Submitting "Competing Orders"**

Date: June 26, 2025

2025 M1 707919 Proposed Order

Mason Cole <mcole@colesadkin.com>  
To: courtorders1402@cookcountycourt.com  
Cc: [REDACTED]

Thu, Jun 26, 2025 at 4:43 PM

Good afternoon Chambers,

Parties dispute whether or not you struck the pending trial date. I have attached our competing orders and leave it to you to submit as preferred. Please let me know if you have any comments or questions. Looking forward to hearing from you. Have a great week.

[Quoted text hidden]

--

Sincerely,

Mason Cole  
Cole Sadkin, LLC  
[www.colesadkin.com](http://www.colesadkin.com)  
Office: (312) 548-8610  
[1652 W. Belmont Avenue, Suite 1, Chicago, IL 60657](http://1652.W.Belmont.Avenue,Suite.1,Chicago,IL.60657)  
[244 Fifth Avenue, Suite M297, New York, NY 10001](http://244.Fifth.Avenue,Suite.M297,New.York,NY.10001)

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2 attachments

-  **McGivern v. Hadley, 2025-M1-707919--June 26, 2025 Agreed Order (MSC Redline 6-26) (1).docx**  
17K
-  **McGivern v. Hadley, 2025-M1-707919--June 26, 2025 Agreed Order (MSC Redline 6-26)BM-redlined.docx**  
26K

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# EXHIBIT B

**Brandon McGivern's Email to Court Submitting Final Agreed Order**

Date: July 11, 2025

2025-M1-707919 Proposed Agreed Order - McGivern v. Hadley

Brandon McGivern [REDACTED]  
To: courtorders1402@cookcountycourt.com, Mason Cole <mcole@colesadkin.com>

Fri, Jul 11, 2025 at 3:56 PM

Chambers-


I sincerely apologize, I attached the wrong order. This is the correct one. Labeled: FINAL - AGREED ORDER - McGivern v. Hadley, 2025-M1-707919--June 26, 2025 Agreed Order

Thank you again for your time.  
Brandon McGivern  
Plaintiff, Pro Se

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Brandon McGivern  
Web Developer / Graphic Designer  
[REDACTED]

[Quoted text hidden]

 FINAL - AGREED ORDER - McGivern v. Hadley, 2025-M1-707919--June 26, 2025 Agreed Order.docx  
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