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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

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**DEFENDANT'S REPLY IN SUPPORT OF MOTION TO STRIKE PLAINTIFF'S  
UNTIMELY ANSWER TO COUNTERCLAIMS**

NOW COMES Defendant, BRANDON MCGIVERN, pro se, and for his Reply in Support of Motion to Strike Plaintiff's Untimely Answer to Counterclaims, states:

**I. PLAINTIFF CANNOT CURE DEFAULT AFTER A MOTION IS FILED**

1. Illinois law is unequivocal: "**Once a party moves for a default order, the defaulting party cannot unilaterally file an answer to defeat the motion.**" *In re Marriage of Levinson*, 2013 IL App (1st) 121696, ¶82. The proper procedure requires filing a motion to vacate under Section 2-1301 **before** filing any responsive pleading. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002).

2. Plaintiff's Opposition admits the undisputed facts: Counterclaims filed June 23, 2025; Answer due July 23, 2025; Default motion filed October 7, 2025; Late answer filed October 8, 2025, 107 days late, without a motion to vacate, without good cause, without leave of court. This procedural violation is fatal. *Jackson v. Graham*, 323 Ill. App. 3d 766, 773 (2d Dist. 2001).

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## **II. PLAINTIFF MISSTATES THE LEGAL STANDARD**

4. Plaintiff fundamentally misstates the law. The test is not whether Defendant suffered prejudice, but whether Plaintiff has shown "good cause" for the delay. *People ex rel. Minor*, 367 Ill. App. 3d 761, 763 (3d Dist. 2006) ("The burden is on the party seeking to vacate a default to show good cause, not on the opposing party to show prejudice").

5. Plaintiff has made **no showing of good cause**. His vague excuses about "procedural congestion" don't excuse a represented party's 107-day default on a basic deadline every first-year law student knows.

## **III. THE "PROCEDURAL CONFUSION" DEFENSE IS DESTROYED BY PLAINTIFF'S OWN CONDUCT**

6. Plaintiff claims Defendant's motions created "confusion" (Opposition ¶22). This is demonstrably false. During the 107-day period Plaintiff ignored the counterclaims, his counsel filed over ten separate pleadings and responses in this case, yet none addressing the counterclaims.

7. The smoking gun that obliterates any claim of confusion: On July 8, 2025, just 15 days after the counterclaims were filed, Plaintiff filed a Motion to Strike Defendant's Affirmative Defenses. This motion is fatal to Plaintiff's "confusion" defense because:

(a) The affirmative defenses appear in the exact same document as the counterclaims; pages 8-13 contain the counterclaims, pages 13-16 contain the affirmative defenses.

(b) To draft his motion attacking the affirmative defenses, Plaintiff's counsel had to read past five detailed counterclaims to reach the defenses he challenged.

(c) The motion demonstrates Plaintiff analyzed every word of Defendant's June

23 filing carefully enough to craft legal arguments against specific defenses, yet somehow claims he didn't notice the five counts demanding over \$60,000 in damages.

(d) Plaintiff cannot credibly claim he was "confused" about a document he studied thoroughly enough to file a motion attacking portions of it within 15 days.

8. This was not confusion, it was a calculated decision to attack the defenses while strategically ignoring the counterclaims, hoping they would somehow disappear. When caught 107 days later, Plaintiff manufactured a "procedural confusion" excuse that his own July 8 motion proves is false.

#### **IV. THE DEEMED ADMISSIONS MAKE ANY ANSWER FUTILE**

9. Even if this Court accepted Plaintiff's untimely answer (which it cannot), the answer is legally insufficient because it **contradicts binding judicial admissions**.

Plaintiff's October 8 Answer denies facts this Court already deemed admitted on September 29, 2025:

<b>October 8 Answer Denials</b>	<b>September 29 Binding Admissions</b>
Denies knowing oral agreements are void (¶45)	Admitted he knows they're void (Admission #22)
Denies fabricating evidence (¶46)	Admitted fabrication (Admission #26)
Denies concealing water damage (¶24, ¶46)	Admitted concealment for 4+ months (Admission #11)
Denies receiving \$6,400 from Lenihan (¶37)	Admitted receiving \$6,400 (Admission #4)
Denies collecting rent without consent (¶36)	Admitted subletting without consent (Admissions #5, #18)
Denies disposing of appliances (¶44)	Admitted unauthorized disposal (Admission #28)

10. An answer that contradicts binding judicial admissions is a nullity.

*Konstantopoulos v. Westvale State Bank*, 371 Ill. App. 3d 714, 723 (1st Dist. 2007);

*Webber v. Wight & Co.*, 368 Ill. App. 3d 1007 (2d Dist. 2006).

#### **V. PLAINTIFF WAIVED OBJECTION AND HIS CASES PROVE IT**

11. By failing to file any motion to extend time or vacate default, Plaintiff waived any argument against default judgment. *North Community Bank v. 17011 South Park Ave.*, 2015 IL App (1st) 133672, ¶14. Strategic decisions by represented parties don't constitute good cause. *In re Haley D.*, 2011 IL 110886, ¶69.

12. Every case Plaintiff cites undermines his position:

- ***Barnes v. Black & Decker***: Pro se party's minor delay—not a represented party's 107-day default. Affirmed court's discretion to strike.

- ***Parkway Bank***: Held it's "within the court's discretion" to strike untimely filings.

- ***City of Joliet***: Distinguished parties who "filed an answer" from those who "failed to file"—Plaintiff failed for 107 days.

#### **VI. THE "TACTICAL ADVANTAGE" ACCUSATION IS PROJECTION**

13. Plaintiff accuses Defendant of "gamesmanship" while he: Fabricated evidence (September 29 finding); Created fake discovery responses to requests never served; Ignored counterclaims 107 days while litigating everything else; Filed improper answer after default motion; Obstructed emergency access to repair active water damage on November 20, 2025; and Pays court-ordered Use & Occupancy late monthly only after contempt threats.

14. This pattern continues. On November 18, 2025, Plaintiff reported the same water leak that required court intervention in June. He confirmed in writing he would "be available to provide access" for the plumber on November 20. When the plumber ran late, Defendant immediately notified Plaintiff. The plumber arrived at 2:55 PM, but Plaintiff was gone and had left dogs loose to prevent entry. He then emailed falsely claiming the plumber "did not show." None of this would have mattered had Plaintiff simply provided the door code to Defendant's own property, but Plaintiff refuses to do so, ensuring every repair requires his "cooperation" while he obstructs at every turn.

15. Following mandatory procedural rules isn't "gamesmanship," it's what courts require.

## VII. CONCLUSION

16. This is not a close call. Plaintiff's answer was filed **107 days late**, after Defendant's default motion, without a motion to vacate, without good cause, contradicting binding admissions, while actively litigating everything else.

17. Illinois law doesn't permit curing default by filing an answer after a motion. Plaintiff must first move to vacate and show good cause, he's done neither. To hold otherwise would render Rule 183 meaningless and reward calculated violations.

18. The July 8 Motion to Strike Affirmative Defenses proves Plaintiff read and analyzed the counterclaims but chose to ignore them. His "confusion" excuse is demonstrably false.

WHEREFORE, Defendant respectfully requests this Court:

(A) Strike Plaintiff's October 8, 2025 Answer as untimely and procedurally improper;

- (B) Find Plaintiff waived any objection to default by failing to move to vacate;
- (C) Proceed with ruling on Defendant's Motion for Default Judgment;
- (D) Find the September 29 deemed admissions binding and conclusive;
- (E) Award costs for having to respond to this improper filing;
- (F) 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



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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **Defendant's Reply in Support of Motion to Strike Plaintiff's Untimely Answer to Counterclaims** was served upon Plaintiff's counsel by email to [mcole@colesadkin.com](mailto:mcole@colesadkin.com) on November 24, 2025.

/s/ Brandon McGivern  
Brandon McGivern, Pro Se