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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION

KYLE HADLEY,	)	
	)	
Plaintiff,	)	
	)	Case No. 2025-CH-05527
v.	)	
BRANDON MCGIVERN,	)	Judge Eve M. Reilly
	)	Courtroom 2405
Defendant.	)	
	)	

**DEFENDANT’S RESPONSE IN OPPOSITION TO PLAINTIFF’S
MOTION TO STRIKE PROVE-UP MEMORANDUM**

NOW COMES Defendant, BRANDON MCGIVERN, pro se, and respectfully
opposes Plaintiff’s Motion to Strike Defendant’s Pro Se Prove-Up Memorandum, and in
support thereof states:

I. INTRODUCTION

1. Plaintiff’s Motion to Strike is a post-hearing attempt to relitigate a proceeding
at which Plaintiff appeared, participated, and raised no objection. On January 26, 2026,
both parties appeared before this Court for the prove-up hearing on Defendant’s
Counterclaims. Plaintiff’s counsel spent his time arguing about a separate motion, the
Motion to Stay Summary Judgment that had been continued due to inclement weather,
and said nothing about the prove-up memorandum, its evidentiary sufficiency, or the
procedure being followed.

2. One day later, on January 27, 2026, counsel filed this Motion claiming
Plaintiff was "deprived of any opportunity to contest the damages alleged." (Motion 2.)

That is false. Plaintiff appeared at the January 26 hearing through counsel. Counsel devoted his argument to a separate motion, the Motion to Stay Summary Judgment, and said nothing whatsoever about the prove-up memorandum. He raised no objection to its evidentiary sufficiency, did not request a live hearing, and did not ask for additional time to respond. The Court then took the memorandum under advisement. Counsel is now asking this Court for a second chance to raise objections he chose not to raise when given the opportunity.

3. This Motion is part of a pattern of serial procedural delay since this Court's December 22, 2025 Order dismissed Plaintiff's ownership claims with prejudice and entered default judgment on Defendant's counterclaims. It was filed simultaneously with a refiled Motion to Stay Summary Judgment Briefing Schedule, addressed in Defendant's separately-filed Response in Opposition to that motion. Neither motion addresses the merits. Both serve the same purpose: prolonging this litigation while Plaintiff continues to occupy Defendant's property at below-market rent and collect unauthorized subletting income. This Motion should be denied.

II. PLAINTIFF WAIVED ANY OBJECTION BY FAILING TO RAISE IT AT THE JANUARY 26, 2026 HEARING

4. This Court's January 26, 2026 Order confirms that both parties appeared: "Plaintiff appearing through Counsel and Defendant appearing pro se, and the Court being fully advised on the matter." The Court then took the prove-up memorandum under advisement.

5. At no point during the January 26 hearing did Plaintiff's counsel object to the

prove-up memorandum, request a live hearing, challenge the evidentiary sufficiency of the exhibits, or ask for additional time to respond. Counsel instead devoted his argument to the Motion to Stay Summary Judgment, a separate matter that had been continued from January 23 due to court closures.

6. Plaintiff's Motion claims the prove-up memorandum contains "no affidavit, sworn testimony, or other admissible evidence establishing damages" and "no damages calculation [or] supporting documentation." (Motion 7.) This is a demonstrable misrepresentation. As detailed in Section III below, the prove-up memorandum included eleven documentary exhibits (Exhibits A through K), Plaintiff's own messages, bank records, and discovery responses, independent contractor estimates, and court orders. The claim that the memorandum consists "solely of unsworn argument" (Motion 1) is false. Counsel's representations in this Motion warrant the same skepticism this Court applied on September 29, 2025, when counsel admitted fabricating responses to Defendant's requests for admission.

6. Illinois law is clear that a party who fails to raise an objection at the appropriate time waives that objection. *Caywood v. Gossett*, 382 Ill. App. 3d 124, 130 (4th Dist. 2008) ("Objections not raised in the trial court are forfeited on review."). Plaintiff cannot sit silently through a prove-up hearing and then file a motion the next day claiming he was denied the opportunity to be heard. He was heard, he simply chose to address a different topic.

7. Counsel is an experienced attorney. He knew the January 26 hearing was scheduled for prove-up on the counterclaims; the December 22, 2025 Order set this

hearing explicitly. Defendant's prove-up memorandum was filed five days before the hearing, on January 21, 2026, giving counsel ample time to review its contents and prepare objections. If counsel wanted to object to the procedure, request cross-examination, challenge the exhibit calculations, or present contrary evidence, January 26 was his opportunity. He chose instead to argue about a different motion. Filing a motion to strike the day after the hearing is not a substitute for participating in the hearing itself. See *Caywood v. Gossett*, 382 Ill. App. 3d 124, 130 (4th Dist. 2008) ("Objections not raised in the trial court are forfeited on review.").

III. THE PROVE-UP MEMORANDUM COMPLIES WITH THIS COURT'S STANDING ORDER

8. Plaintiff argues that a prove-up requires live testimony and that Defendant's memorandum is "procedurally noncompliant." (Motion 1.) This ignores the Court's own Standing Order.

9. Page 8 of Judge Reilly's January 7, 2025 Standing Order states: "Unless otherwise directed by the Court, 'prove-ups' following the entry of an order of default will only be handled on the regular motion call at 10:00 a.m." It further provides: "Parties may submit affidavits in lieu of live courtroom testimony."

10. The Standing Order also requires: "The Court will require plaintiff to make out, through the materials submitted, a prima facie case for the relief sought (this may include the complaint, if verified)." See 735 ILCS 5/2-1301(d).

11. Defendant's memorandum submitted eleven documentary exhibits (Exhibits A through K), organized by counterclaim count: (a) Plaintiff's own WhatsApp message

reporting water damage on January 6, 2025 (Exhibit A); (b) the June 7, 2025 Quality Assurance Restoration repair proposal documenting \$6,500 in mitigation and \$7,500 in repair costs (Exhibit B); (c) insurance claim documentation showing \$13,000 in coverage and a \$1,000 deductible (Exhibit C); (d) the Rescue Plumbing invoice for \$195 (Exhibit D); (e) the July 29, 2024 extended purchase deadline letter establishing the timeline (Exhibit E); (f) a subletting income log compiled from Plaintiff's own bank records documenting \$17,450 in payments from two subtenants (Exhibit F); (g) Plaintiff's own Interrogatory No. 2 response confirming the identities of the subtenants (Exhibit G); (h) 14 rental comparables establishing a \$3,259/month average market rate (Exhibit H); (i) Plaintiff's own Interrogatory #10 answer admitting disposal of functioning appliances (Exhibit I); (j) this Court's September 29, 2025 Order deeming all 30 admissions admitted (Exhibit J); and (k) this Court's December 22, 2025 Order granting default judgment (Exhibit K). This is exactly the procedure the Standing Order contemplates, documentary proof establishing a prima facie case for each count.

IV. THE UNDERLYING FACTS ARE ALREADY ESTABLISHED AND CANNOT BE CONTESTED

12. Plaintiff's Motion proceeds as if the prove-up were a contested hearing on disputed facts. It is not. The facts are established through two independent mechanisms.

A. Default Judgment Admits All Well-Pleaded Facts

13. This Court entered default judgment on Defendant's counterclaims on December 22, 2025, finding Plaintiff's answer was "filed late without leave of court."

Under Illinois law, “[f]ailure to answer a counterclaim results in admission of all well-pleaded facts.” *Jackson v. Graham*, 323 Ill. App. 3d 766, 773 (2d Dist. 2001). “[T]he allegations of the counterclaim stand as admitted.” *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1021 (2d Dist. 2006).

14. Plaintiff’s opportunity to contest these facts was the deadline to answer the counterclaims. He missed it by 107 days. He does not get a second opportunity at prove-up. Indeed, Plaintiff’s Motion implicitly asks this Court to allow him to “contest the damages alleged” (Motion 2) and “challenge the factual basis of Defendant’s claims” (Motion 10). But there is nothing left to contest. The facts are admitted. The only question at prove-up is whether those admitted facts support the damages Defendant calculates, and the documentary exhibits answer that question. Indeed, Plaintiff’s Motion implicitly asks this Court to allow him to “contest the damages alleged” (Motion 2) and “challenge the factual basis of Defendant’s claims” (Motion 10). But there is nothing left to contest. The facts are admitted by default and by deemed admission. The only question at prove-up is whether those admitted facts support the damages Defendant calculates, and the documentary exhibits answer that question.

B. Deemed Admissions Are Conclusive and Binding

15. Additionally, this Court’s September 29, 2025 Order deemed admitted all 30 of Defendant’s Requests for Admission. These deemed admissions are “conclusive” and “binding.” *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 549 (1st Dist. 2005). Plaintiff cannot now contradict them at a prove-up hearing or otherwise.

16. The relevant deemed admissions include: Admission #18 (collected

subletting income without Defendant's consent); Admission #11 (concealed water damage for over four months); Admission #28 (disposed of functioning appliances without authorization). These admissions establish liability on each counterclaim as a matter of law.

V. DAMAGES ARE DOCUMENTED THROUGH PLAINTIFF'S OWN RECORDS

17. Plaintiff's Motion characterizes Defendant's damages as "speculative" and "unsupported by sworn evidence." (Motion ¶¶ 7-8.) This is demonstrably false. The prove-up memorandum calculates damages from Plaintiff's own documents:

18. **Count I (Waste and Property Damage):** Exhibit A is Plaintiff's own WhatsApp message reporting water damage on January 6, 2025. Exhibit B is the Quality Assurance Restoration proposal documenting \$6,500 in mitigation costs and \$7,500 in repair costs. Exhibit C is the insurance claim documentation reflecting \$13,000 in coverage and a \$1,000 deductible paid by Defendant. Exhibit D is the Rescue Plumbing invoice for \$195. After insurance coverage, Defendant's documented out-of-pocket cost is \$1,195.

19. **Count II (Unjust Enrichment):** Exhibit F compiles subletting income from Plaintiff's own bank records, \$12,050 from Timothy Lenihan (August 2022 through April 2025) and \$5,400 from Michael Sheets (November 2024 through December 2025), totaling \$17,450 documented, plus a projected \$800 for January 2026. Exhibit G is Plaintiff's discovery response confirming these subtenants. Exhibit H documents 14 rental comparables establishing a \$3,259/month average market rate, yielding an \$1,179/month

below-market differential over 18 months (\$21,222). Total: \$39,472.

20. **Count III (Conversion):** Exhibit I is Plaintiff's own answer to Interrogatory #10, admitting disposal of Defendant's functioning appliances without authorization. Deemed Admission #28 confirms this. Total: \$5,000.

21. These are not Defendant's assertions, they are Plaintiff's own records, Plaintiff's own admissions, and independent contractor estimates. There is nothing speculative about adding documented income from bank statements or citing a written repair estimate.

22. Notably, Plaintiff's Motion does not identify a single exhibit it contends is inaccurate, dispute a single calculation, or challenge a single damages figure. It seeks to strike the entire memorandum without engaging with any of its substance. This confirms that the Motion is not about evidentiary sufficiency, it is about delay.

VI. PREJUDICE TO DEFENDANT: THE PATTERN OF DELAY

22. This Motion must be understood in context. The eviction case (No. 2025-M1-707919) is stayed "pending the outcome" of this Chancery case. Every procedural motion that delays resolution of the Chancery case extends the eviction stay. Plaintiff's counsel is aware of this dynamic and has exploited it systematically.

23. Consider the timeline since December 22, 2025:

- **December 22, 2025:** Court dismisses Plaintiff's ownership claims with prejudice and enters default judgment on Defendant's counterclaims. Prove-up set for January 26.

- **January 7, 2026:** Plaintiff files Motion to Stay Summary Judgment (defective attorney affidavit, fails basic Rule 191(b) requirement).

- **January 21, 2026:** Defendant files prove-up memorandum with 11 documentary exhibits, five days before the scheduled hearing.

- **January 26, 2026:** Court DENIES Motion to Stay (wrong affidavit). Plaintiff's counsel says nothing about the prove-up memorandum at the hearing. Court takes memorandum under advisement. Plaintiff immediately refiles the same Motion to Stay with corrected affidavit, the same day.

- **January 27, 2026:** Plaintiff files this Motion to Strike Prove-Up, one day after raising no objection at the hearing.

- **February 2, 2026:** Both motions result in a stay of the summary judgment briefing schedule. Hearing pushed to March 17, 2026.

- **March 1, 2026:** Defendant is forced to file responses to two procedural motions that address nothing on the merits, while simultaneously filing a Response in Opposition to Plaintiff's Motion to Stay Summary Judgment, also a delay-motivated motion, as detailed in that separately-filed response.

24. The result: two motions filed within 24 hours of an adverse ruling, neither addressing the merits, both accomplishing the same thing, delay. The summary judgment briefing schedule is now paused. The prove-up ruling is delayed. The Chancery case, which was on track for resolution, has been pushed back months.

25. The financial harm is concrete and ongoing. Plaintiff occupies Defendant's

furnished three-bedroom property at \$2,080 per month, far below the \$3,259 average market rate established by 14 comparable properties. Defendant carries \$2,303.69 per month in mortgage obligations, guaranteeing a monthly deficit of \$223.69. The gap between use-and-occupancy and market rate represents \$1,179 per month in foregone rental income. Each additional month of delay costs Defendant \$1,402.69 in combined losses. Meanwhile, Plaintiff continues collecting unauthorized subletting income from Defendant's property (Deemed Admission #18), profiting from the very delay these motions create.

26. Plaintiff's only remaining claims (Counts I and II) seek monetary damages. They do not require Plaintiff's continued occupancy of the property. Yet every month this case remains pending is another month the eviction stay continues and another month Defendant subsidizes Plaintiff's below-market housing.

VII. IN THE ALTERNATIVE, DEFENDANT SUBMITS A SUPPLEMENTAL AFFIDAVIT

27. While Defendant maintains that his prove-up memorandum was procedurally sufficient under this Court's Standing Order and that Plaintiff waived any objection at the January 26 hearing, Defendant submits, in an abundance of caution, a sworn affidavit attesting to the damages set forth in the memorandum. See Exhibit A (Affidavit of Brandon McGivern in Support of Prove-Up on Counterclaims).

28. This affidavit attests to the same facts and figures contained in the prove-up memorandum, all of which are supported by the documentary exhibits previously filed. Defendant submits this affidavit not as a concession that his original filing was deficient,

but to eliminate any procedural objection and to permit this Court to rule on the merits without further delay.

VIII. CONCLUSION

29. Plaintiff's Motion to Strike should be denied for five independent reasons: (1) Plaintiff waived any objection by appearing at the January 26 hearing and raising no challenge to the prove-up memorandum; (2) the memorandum, with eleven documentary exhibits, complies with this Court's Standing Order; (3) the underlying facts are conclusively established by default and deemed admissions, leaving nothing for Plaintiff to "contest"; (4) the damages are calculated from Plaintiff's own records, and Plaintiff's Motion challenges no specific figure; and (5) Defendant's supplemental affidavit eliminates any remaining procedural objection.

30. What Plaintiff seeks is not procedural compliance but further delay. As detailed in Defendant's simultaneously-filed Response in Opposition to Plaintiff's Motion to Stay Summary Judgment Briefing Schedule, Plaintiff has served zero written discovery in over nine months while filing serial procedural motions. Each month of delay costs Defendant \$1,402.69 in combined losses. This Court should deny the Motion and proceed to issue its written ruling on the prove-up.

WHEREFORE, Defendant Brandon McGivern respectfully requests that this Court:

- (a) DENY Plaintiff's Motion to Strike Defendant's Prove-Up Memorandum;
- (b) Proceed to issue its written ruling on the prove-up;

(c) In the alternative, accept Defendant's supplemental affidavit (Exhibit A) as satisfying any evidentiary requirement; and

(d) Grant such other and further relief as this Court deems just and proper.

Dated: March 1, 2026

RESPECTFULLY SUBMITTED,

/s/ Brandon McGivern

Brandon McGivern, Defendant

Brandon McGivern, *Pro Se*



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Defendant's Response in Opposition to Plaintiff's Motion to Strike Prove-Up Memorandum** and all exhibits attached thereto was served upon Plaintiff's counsel by email to mcole@colesadkin.com on March 1, 2026.

/s/ Brandon McGivern

Brandon McGivern, *Pro Se Defendant*

EXHIBIT A

**Affidavit of Brandon McGivern in Support of Prove-Up on
Counterclaims**

**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

EXHIBIT A

I, BRANDON MCGIVERN, being first duly sworn on oath, depose and state as follows:

I. BACKGROUND

1. I am the Defendant in this action and the record titleholder of the property located at 6122 N. Winthrop Avenue, Chicago, Illinois 60660. I am over the age of 18 and have personal knowledge of the facts stated herein.

2. On December 22, 2025, this Court entered default judgment on my counterclaims after finding that Plaintiff's answer was "filed late without leave of court." On January 21, 2026, I filed a Memorandum in Support of Prove-Up with eleven documentary exhibits establishing my damages.

3. I submit this affidavit in support of the prove-up memorandum previously filed. The damages set forth below are based on my personal knowledge, documentary evidence previously filed as Exhibits A through K, and Plaintiff's own records produced

in this litigation. Every dollar amount below is traceable to a specific document: a contractor estimate, an insurance claim, a bank record, or Plaintiff's own discovery response. I have not included speculative amounts and have sought only actual, documented damages.

II. COUNT I — WASTE AND PROPERTY DAMAGE: \$1,195.00

4. On January 6, 2025, Plaintiff Kyle Hadley reported water damage at the property via WhatsApp message to me. The message stated there was a water stain above the dining table and that it was “currently wet.” A true and correct copy of this message was attached to my prove-up memorandum as Exhibit A.

5. Plaintiff concealed the worsening water damage from January 2025 through May 2025—a period of over four months. This fact is established by Deemed Admission #11 (Plaintiff concealed worsening condition for over four months) and by Plaintiff's default on the counterclaim allegations.

6. On May 10, 2025, I attempted to inspect the property with proper notice. Plaintiff denied me access despite police presence (Event #2513009537). On June 5, 2025, the Court entered an Agreed Order requiring access.

7. On June 7, 2025, Rescue Plumbing and Quality Assurance Restoration inspected the property and provided the following assessments:

- **Plumber initial visit and repair (Rescue Plumbing):** \$195.00 (Exhibit D)
- **Mitigation cost:** \$6,500.00 (Exhibit B)
- **Repair cost:** \$7,500.00 (Exhibit B)

- **Insurance coverage:** -\$13,000.00 (Exhibit C)
- **Defendant's out-of-pocket expense: \$1,195.00**

8. I seek only my actual out-of-pocket costs of \$1,195.00, not the full \$14,195.00 in repair costs, diminished property value, or increased insurance premiums. Plaintiff's default admitted \$28,000 in damages on Count I of the counterclaims. My request of \$1,195.00, less than 5% of the admitted amount, reflects my good faith effort to seek only what I can document.

III. COUNT II — UNJUST ENRICHMENT: \$39,472.00

A. Unauthorized Subletting Income: \$18,250.00

9. Plaintiff collected rental income from subtenants occupying my property without my knowledge or consent. This fact is conclusively established by Deemed Admission #18 (Plaintiff collected income from subletting without consent).

10. Plaintiff's bank records, produced during discovery, document the following subletting payments received by Plaintiff:

- **Timothy Lenihan:** (August 2022 – April 2025): \$12,050.00
- **Michael Sheets:** (November 2024 – December 2025): \$5,400.00
- **Documented subtotal:** \$17,450.00
- **Projected January 2026 (based on documented pattern):** \$800.00
- **Component A Total: \$18,250.00**

11. A true and correct compilation of these payments from Plaintiff's bank records was attached to my prove-up memorandum as Exhibit F. The detailed payment

log documents each individual transaction by date, amount, and payment method (Zelle electronic transfers to Plaintiff's Bank of America account). Plaintiff's own Interrogatory No. 2 response confirmed these individuals resided at the property and made payments to Plaintiff. That response was attached to my prove-up memorandum as Exhibit G.

B. Below-Market Exclusive Use Differential: \$21,222.00

12. I vacated the property on August 2, 2024, as documented by the July 29, 2024 Extended Purchase Deadline Letter (Exhibit E to the prove-up memorandum). Since that date, Plaintiff has had exclusive use of my furnished three-bedroom townhome. Plaintiff paid \$2,080 per month in use and occupancy. The fair market rental value of the property, as established by 14 comparable rental properties within 1.7 miles (Exhibit H), averages \$3,259 per month. All 14 comparables are unfurnished; my property is furnished, making the \$3,259 figure conservative.

13. The below-market differential is \$1,179 per month (\$3,259 market rate minus \$2,080 paid). Over 18 months (August 2024 through January 2026), this differential totals \$21,222.00. A true and correct compilation of the 14 rental comparables was attached to my prove-up memorandum as Exhibit H.

14. The nearest comparable property, located 0.03 miles away on the same street, rents for \$2,500 per month unfurnished, \$420 more than Plaintiff pays for my furnished property.

IV. COUNT III — CONVERSION AND PROFESSIONAL MISCONDUCT:

\$5,000.00

15. Plaintiff disposed of my functioning appliances without my authorization or consent. This fact is established by Deemed Admission #28 (disposed of functioning appliances without authorization) and Plaintiff's default on counterclaim allegations.

16. In response to Interrogatory #10, Plaintiff admitted disposing of appliances but characterized them as "non-functioning." Plaintiff's characterization is contradicted by the deemed admissions, which are conclusive and binding. *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 549 (1st Dist. 2005).

17. Based on my personal knowledge of the appliances that were in the property and current replacement costs for comparable appliances, I estimate the replacement value of the disposed appliances at \$5,000.00. This is a conservative estimate. Deemed Admission #28 conclusively establishes that Plaintiff disposed of these appliances without my authorization, and Plaintiff's default on the counterclaim allegations admits the \$5,000 figure alleged in the counterclaims.

V. TOTAL DAMAGES

18. The total damages I seek on my counterclaims are as follows:

Count I (Waste and Property Damage):	\$1,195.00
Count II (Unjust Enrichment):	\$39,472.00
Count III (Conversion):	\$5,000.00
TOTAL:	<u>\$45,667.00</u>

19. I reserve my right to supplement damages for personal furnishings pending inspection of the property, as requested in my prove-up memorandum.

20. Each amount stated above is supported by documentary exhibits previously filed with this Court as part of my January 21, 2026 Prove-Up Memorandum. I have sought only actual, documented damages. Through Plaintiff's default, all counterclaim allegations are admitted, including total damages substantially exceeding what I seek here. I have exercised restraint because I believe this Court's judgment should rest on documented amounts, not merely on what Plaintiff's procedural failures allowed me to claim.

VI. VERIFICATION

21. I declare under penalty of perjury pursuant to 735 ILCS 5/1-109 that I have read the foregoing affidavit, know the contents thereof, and that the statements made herein are true and correct to the best of my knowledge, information, and belief.

Dated: March 1, 2026



/s/ Brandon McGivern

Defendant *Pro Se*

