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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CHANCERY DIVISION

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

**PLAINTIFF’S REPLY IN SUPPORT OF JANUARY 2026 MOTION TO STRIKE
DEFENDANT’S PRO SE PROVE-UP MEMORANDUM AND FOR ENTRY OF A
PROVE-UP HEARING**

Plaintiff, by and through counsel, respectfully submits this Reply in support of his Motion to Strike Defendant’s Prove-Up Memorandum and states as follows:

- 1. Plaintiff does not challenge this Court’s Entry of Default.** At the outset, Plaintiff clarifies what this Motion is not: Plaintiff does not seek to vacate, modify, or otherwise disturb the Court’s entry of default relating to his late filing, and the procedural posture as to default is not at issue. Rather, the sole question presented is whether Defendant may obtain a damages ruling on disputed, unliquidated claims without presenting competent evidence and without affording Plaintiff a meaningful opportunity to test the claimed damages through deposition, cross-examination, or evidentiary hearing. Defendant’s Response mischaracterizes the Motion as an attempt to avoid the consequences of default; it is not. The Motion addresses only the prematurity and evidentiary insufficiency of Defendant’s purported prove-up.
- 2. Defendant Does Not Rebut Plaintiff’s Legal Authority.** Notably, Defendant’s Response does not substantively challenge the caselaw cited in Plaintiff’s Motion and does not

dispute that unliquidated damages require evidentiary proof, that a memorandum of argument is not evidence, or that a court must have a sufficient evidentiary basis before entering a damages award. Instead, Defendant relies almost entirely on waiver and alleged delay. Waiver, however, cannot substitute for proof, and the requirement that damages be supported by competent evidence is not a technicality but a fundamental prerequisite to entry of judgment.

3. Even where default has been entered, Illinois law is clear that damages must still be proven: default admits well-pleaded liability allegations, but it does not admit the amount of unliquidated damages. Where damages depend on factual determinations—such as causation, reasonableness, mitigation, or calculation—they must be established through admissible evidence, and Defendant’s Response does not explain how an unsworn memorandum satisfies that burden.

4. **The Prove-Up Is Premature and Procedurally Deficient.** The damages claimed here are not liquidated or mechanically calculable; they are fact-dependent and disputed. Plaintiff has not had the opportunity to depose Defendant regarding the claimed damages, examine Defendant under oath concerning causation, mitigation, or calculation, or challenge the foundation or admissibility of any purported damage evidence.

5. Without these procedural safeguards, Plaintiff cannot meaningfully contest the amount of damages, and any determination under these circumstances would rest on untested assertions rather than competent proof. The purpose of a prove-up is not to ratify allegations but to establish damages through admissible evidence, and argument alone—particularly in an unsworn filing—cannot substitute for testimony or properly admitted exhibits.

4. **Plaintiff Did Not Waive His Right to Contest Damages.** Defendant argues that Plaintiff waived any objection by appearing at the prior hearing, but that contention fails. The obligation to establish damages through competent evidence rests with the party seeking judgment, and Plaintiff's presence does not relieve Defendant of that burden.

5. Nor does participation in a hearing constitute acquiescence to the absence of an evidentiary record; a damages award must stand on a legally sufficient foundation regardless of whether an opposing party objects at a particular moment. The issue before the Court is not whether Plaintiff objected forcefully enough at a prior proceeding, but whether the record contains competent evidence sufficient to support a damages award. It does not.

6. **Striking the Prove-Up Preserves Orderly Adjudication.** Plaintiff's Motion seeks orderly process—not delay. Ensuring that damages are proven through admissible evidence protects the integrity of the Court's judgment and reduces the risk of reversible error. If Defendant wishes to pursue damages, he must do so through proper evidentiary means. Until then, a ruling would be premature.

Dated: March 3, 2026

Respectfully Submitted,

By: /s/Mason Cole
Attorney for the Plaintiff

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