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 HADLEY'S PLAINTIFF'S MOTION TO RECONSIDER AND MODIFY AUGUST 18, 2026 FINAL JUDGMENT

NOW COMES Plaintiff KYLE HADLEY ("Hadley"), by and through his attorneys, COLE SADKIN, LLC, and pursuant to 735 ILCS 5/2-1203 moves this Court to reconsider and modify its August 18, 2026 final judgment. In support thereof, Hadley states as follows:

I. INTRODUCTION

1. This Motion asks the Court to reconsider its August 18, 2026 final judgment because the judgment rests on three factual and procedural premises that are not supported by the complete record. First, the Court extended Hadley's deemed admissions beyond the propositions actually contained in Defendant's Requests to Admit. Second, the Court treated Defendant's Counterclaim as uncontested by default even though Hadley filed a complete paragraph-by-paragraph Answer before default was entered, which Answer was stricken solely because it was filed late without prior leave of Court.

2. Most importantly, the judgment permits Defendant Brandon McGivern ("McGivern") to retain Hadley's undisputed $30,000 purchase contribution while separately

awarding McGivern $17,450 in third-party occupancy payments and $23,580 for alleged rental underpayment. McGivern repeatedly acknowledged that the $30,000 consisted of payments toward the contemplated purchase and distinguished those payments from Hadley's recurring monthly occupancy payments. Even if the Court declines to disturb the deemed admissions or default, the judgment should be modified to credit the undisputed $30,000 contribution against McGivern's $43,525 judgment, resulting in a net judgment of $13,525.

II. LEGAL STANDARD

3. Under sections 2-1203 and 2-1301(e) of the Illinois Code of Civil Procedure, the Court may reconsider, modify, or vacate its final judgment and the default incorporated therein within thirty days after entry. 735 ILCS 5/2-1203; 735 ILCS 5/2-1301(e). A motion to reconsider permits correction of errors in the application of existing law or consideration of material facts already appearing in the record. *Kaiser v. MEPC American Properties, Inc.*, 164 Ill. App. 3d 978, 518 N.E.2d 424 (1st Dist. 1987) In determining whether a default should be vacated, the overriding consideration is whether substantial justice is being done, including the movant's diligence, existence of a meritorious defense, and hardship resulting from the default. *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶¶ 16–17.

4. Reconsideration is also appropriate where the judgment overlooks an undisputed payment arising from the transaction or affords relief exceeding that supported by the record. See *Schwinder v. Austin Bank of Chicago*, 348 Ill. App. 3d 461, 473 (1st Dist. 2004) (recognizing that returning purchase funds restores the parties to their original positions when a contemplated real-estate sale is not completed). McGivern admitted that Hadley's $30,000 was contributed toward the contemplated purchase, not as rent, and represented that it would be returned or

credited subject to appropriate deductions. Denying Hadley that credit based on rent-related conduct while separately awarding McGivern the full claimed rent-related damages produces a duplicative recovery warranting modification.

III. PROCEDURAL POSTURE

5. In or about 2022, Hadley and McGivern discussed Hadley's anticipated purchase of the residence located at 6122 N. Winthrop Avenue, Unit C, Chicago, Illinois, for approximately $320,000. While the contemplated purchase remained pending, Hadley made recurring monthly payments associated with his occupancy and, separately, made nine additional payments totaling $30,000 between March and June 2024 toward the anticipated purchase. *See* Hadley Affidavit in Support of this Motion for Reconsideration, attached as **Exhibit 1**. McGivern acknowledged in his February 15, 2025 letter that Hadley had "invested $30,000 toward the purchase price," distinguished those funds from Hadley's monthly occupancy payments, and proposed either crediting the contribution at closing or returning it upon sale subject to documented deductions. *See* February 14 and 15, 2025 Correspondence, attached jointly as **Exhibit 2**. After the contemplated sale failed and McGivern sought possession, Hadley requested return of his purchase contribution and reimbursement for improvements, while McGivern asserted claims concerning occupancy payments, roommate contributions, and alleged property damage.

6. Hadley filed his four-count Complaint on May 21, 2025, asserting breach of the alleged oral purchase agreement, quantum meruit, constructive trust, and injunctive relief. McGivern filed his Answer, Affirmative Defenses, and Counterclaim on June 23, 2025; after the Court deemed his Requests to Admit admitted, McGivern moved for default on October 7, 2025,

and Hadley filed a complete Answer to the Counterclaim on October 8, 2025, before any default had been entered. On December 22, 2025, the Court struck that Answer solely because it had been filed late without prior leave, entered default as a consequence, dismissed Counts III and IV of Hadley's Complaint and Counts IV and V of McGivern's Counterclaim, and set the remaining Counterclaims for prove-up. *See* December 22, 2025 Default Order, attached as **Exhibit 3**. On August 18, 2026, the Court granted summary judgment against Hadley's remaining Counts I and II, awarded McGivern $43,525 on the defaulted Counterclaims, and entered a final order disposing of the action.

IV. ARGUMENT

7. The judgment gives the deemed admissions greater effect than their actual language permits and treats Hadley's Counterclaim default as a failure to defend. Request No. 18 admitted only that Hadley collected payments from an additional occupant beyond Timothy Lenihan after August 2024; it did not establish that Lenihan's payments were rent, that the occupants lacked McGivern's consent, that Hadley paid below-market rent, or the amount of any resulting damages. Moreover, Hadley filed a complete paragraph-by-paragraph Answer to the Counterclaim before default was entered and opposed both McGivern's motion to strike and motion for default. Because the Answer was stricken solely for having been filed late without prior leave—and McGivern suffered no prejudice from the filing—substantial justice favors granting leave nunc pro tunc, vacating the default-dependent judgment, and resolving the Counterclaim on its merits.

8. At minimum, the judgment must be modified to credit Hadley's undisputed $30,000 purchase contribution. The payment records and McGivern's own written admissions

establish that the $30,000 consisted of nine additional purchase-related payments separate from Hadley's recurring monthly occupancy payments, yet the judgment mischaracterizes those funds as "mortgage obligations." The Court then denied Hadley any credit based on his alleged receipt of third-party payments and rental underpayment while separately awarding McGivern $17,450 and $23,580 for those same categories of conduct. Even if the admissions, default, and rent-related awards remain intact, McGivern cannot retain the separate $30,000 purchase contribution in addition to recovering the full rent-related damages; that contribution should be credited against the $43,525 judgment, leaving a net judgment of $13,525.

V. CONCLUSION

9. The August 18, 2026 judgment rests on an overbroad application of the deemed admissions, a procedural default entered despite Hadley's pre-default Answer and active defense, and a failure to credit an undisputed $30,000 purchase contribution. Hadley therefore requests that the Court reconsider the December 22, 2025 default, grant leave nunc pro tunc to file his October 8, 2025 Answer, and vacate the default-dependent portions of the final judgment. Alternatively, the Court should modify the judgment by crediting Hadley's $30,000 contribution against the $43,525 award and entering a net judgment of $13,525. Hadley further requests such other relief as the Court deems just.

Dated: August 25, 2026

Respectfully Submitted,

By: /s/Mason Cole
Attorney for Plaintiff

COLE SADKIN LLC
1652 W. Belmont Ave., Ste. 1
Chicago, Illinois 60657
T: (312) 548-8610
Firm ID: 49001
mcole@colesadkin.com
Counsel for Plaintiff

EXHIBIT 1

EXHIBIT 1

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

AFFIDAVIT OF KYLE HADLEY IN SUPPORT OF THIS MOTION TO RECONSIDER

I, KYLE HADLEY, certify under 735 ILCS 5/1-109 that the following statements are true and correct based upon my personal knowledge:

1. I am the Plaintiff in this action and have personal knowledge of the matters stated herein. In or about 2022, Brandon McGivern and I reached an understanding concerning my anticipated purchase of the residence located at 6122 N. Winthrop Avenue, Unit C, Chicago, Illinois.

2. While the anticipated purchase remained pending, I made recurring monthly payments associated with my occupancy of the Property. Those recurring monthly payments were separate from nine additional payments I made to McGivern between March 13 and June 27, 2024.

3. The nine additional payments consisted of six payments of $3,500 and three payments of $3,000, totaling exactly $30,000. I made those payments toward my anticipated

purchase of the Property and did not understand or intend them to constitute rent or monthly mortgage obligations associated with my occupancy.

4. McGivern acknowledged in writing that I had contributed $30,000 toward the anticipated purchase and distinguished that contribution from my recurring monthly occupancy payments. McGivern also proposed either crediting the $30,000 at closing or returning it upon sale of the Property, subject to identified deductions.

5. Timothy Lenihan and Michael Sheets resided at the Property and contributed amounts toward shared household expenses. I disputed McGivern's characterization of all such contributions as unauthorized rental income belonging to him, and I disputed his contention that the recurring occupancy payments I made were below fair-market value.

6. On October 8, 2025, through counsel, I filed a paragraph-by-paragraph Answer responding to each count of McGivern's Counterclaim. I intended to contest the Counterclaim on its merits and did not abandon, concede, or intentionally default on McGivern's allegations.

7. The August 18, 2026 judgment awarded McGivern damages for third-party occupancy payments and alleged rental underpayment without giving me any credit for the separate $30,000 purchase contribution. I submit this Affidavit in support of my Motion to Reconsider and request that the Court permit my Answer to stand or, alternatively, credit the $30,000 contribution against the judgment.

CERTIFICATION

Under the penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters the undersigned certifies as aforesaid that he, or she, verily believes the same to be true.

By:

Kyle W Hadley
ID vwYYoxXWyEXboWergbqU8XCW

Kyle Hadley, Plaintiff

eSignature Details

Signer ID:	**vwYYoxXWyEXboWergbqU8XCW**
Signed by:	Kyle Hadley
Sent to email:	[redacted]
IP Address:	67.163.36.83
Signed at:	Aug 25 2026, 3:12 pm CDT

EXHIBIT 2

On Fri, Feb 14, 2025 at 10:20 PM Kyle Hadley [redacted] wrote:

> Brandon,
> Since you have chosen to involve an attorney at this point, I think all of our interactions should be documented. If you would prefer for me to communicate directly with your attorney, please include in their information.
>
> In regards to the sale of 6122 N Winthrop:
> During our initial conversations, our plan was for me to purchase the property after the sale of 6166 N Sheridan. Months later, I informed you that due to unforeseen circumstances, obtaining a mortgage would be a long and difficult process. You then agreed to hold onto the mortgage as it would be beneficial for both of us, as you would not have to secure storage for your belongings, and would have a place to stay when you were in the US.
>
> With this change in plan, I proceeded to make decisions that would not have

been possible if I was still planning on taking over the mortgage at that time. This includes giving you $30,000 towards the eventual sale. I also replaced the washer and dryer at a cost of $2,142.28- as well as the air conditioner at a cost of $8,075.

No matter the outcome of our situation, I will still be moving forward to placing myself in a position to obtain a new mortgage. It does not appear I will be able to do that in the next 4 months. If this does not satisfy you, please return the $30,000 plus cost of air conditioner and washer/dryer, for a total reimbursement of 40,217. I will begin to make other living arrangements.

-Kyle

February 15, 2025

Via Certified Mail - Return Receipt Requested
Kyle Hadley
6122 N Winthrop Ave Unit C
Chicago, Illinois 60660

Dear Mr. Hadley:

I am writing to formally address our current situation regarding the property at 6122 N Winthrop Ave Unit C, Chicago, Illinois 60660.

As documented in my letter dated July 29, 2024, I stated my need to complete the sale of the property by the end of 2024. Pursuant to our previous correspondence, multiple attempts to communicate via text message and telephonic communication from July 29, 2024, through February 15, 2025, have been met with substantial non-responsiveness, constituting a material breach of our prior agreements. This letter serves to formally document the current situation and outline available options moving forward.

<u>Background</u>

- In 2022, we entered into a verbal agreement for you to purchase the property for \$320,000, with this price reflecting a significant discount due to your agreement to handle the transaction in your professional capacity as a licensed real estate agent with no commission.
- Furthermore, the original agreement included approximately \$40,000 worth of furnishings that have sustained damage during your tenancy. These furnishings were to be included in the sale price and their current condition significantly impacts their value and the overall property value.
- You have invested \$30,000 toward the purchase price and made certain property modifications, including:
    - Replacement of an existing AC unit (\$8,075) without prior consultation or documentation of original unit's condition
    - Replacement of functioning washer/dryer (\$2,142.28) without approval, resulting in disposal of my property
- The original agreement was predicated on your purchase of the property following the sale of your condo. Your condo sold in October 2023, yet the purchase has not been completed.
- In your email dated February 14, 2025, you stated that you are unable to secure financing within the next four months and requested return of your investments totaling \$40,217.

This confirms that you are unable to complete the purchase under our original agreement terms.

- Monthly payments received, ranging from $1,200 to $2,080, are acknowledged solely as compensation for property use and occupancy. Pursuant to the Illinois Installment Sales Contract Act (815 ILCS 35/), these payments do not accrue as purchase credits and were significantly below market rate, thereby providing you substantial benefit during your tenancy.
- The ongoing situation has created additional complications and burdens:
    - While you maintain full access with keys and security system codes, you have denied me access to my own property
    - You maintain exclusive remote access to the property's security and temperature control systems
    - The continued mortgage liability affects my credit and borrowing capacity
    - Your limited communication since July 2024 has prevented resolution of these issues
    - Your denial of my access rights as property owner violates Illinois landlord-tenant law

<u>Current Status</u>

The original verbal agreement is hereby terminated pursuant to multiple material breaches, including but not limited to:

- Violation of contractual timeline as specified in our original agreement, constituting a material breach under 810 ILCS 5/2-612 of the Uniform Commercial Code, specifically failing to complete the purchase by the December 2024 deadline;
- Persistent non-communication in violation of the implied covenant of good faith and fair dealing, as evidenced by extended periods of unresponsiveness despite documented attempts to communicate, which substantially impairs the purpose of our original agreement;
- Unauthorized modifications to the property in direct contravention of 765 ILCS 705/3, which requires landlord consent for substantial property alterations;
- Violation of property owner access rights under 765 ILCS 730/10, which explicitly protects the property owner's right to access and inspect their own property;
- Continued occupation at a rate below fair market value without completing the purchase, which constitutes a breach of the original agreement's intent and spirit;
- Explicit acknowledgment of inability to secure financing within the agreed-upon timeline, as confirmed by your February 14, 2025 correspondence, rendering the original agreement commercially impracticable under Illinois contract law.

These cumulative breaches constitute sufficient grounds for termination of the existing agreement, with all rights reserved to pursue appropriate legal remedies.

<u>Available Options</u>

1. **Deferred Purchase at Market Value**
   - New written lease at current market rate ($2,500/month)
   - Purchase must be completed within 12 months (accounting for your stated need of at least 4 months to secure financing)
   - Purchase price at current market value
   - Return of $30,000 investment credited at closing
   - Credit for improvements (subject to documentation and adjustment for disposed property)
   - Written agreements for both lease and purchase required
   - Monthly rent not credited toward purchase
   - Damage to property and furnishings must be addressed prior to closing
   - Previous monthly payments were for use and occupancy only and do not create credits toward purchase
   - Security system and remote access credentials to be updated
   - Security deposit required at current market rate
   - Professional inspection required before new agreement execution

2. **Termination and Separation**
   - Return of your $30,000 investment upon sale of property, less:
     i. Cost of repairs for all documented damage to the property and furnishings
     ii. Specific deductions for damage to the approximately $40,000 in furnishings that were to be included in sale, including:
        1. Restoration/repair costs
        2. Replacement costs where necessary
        3. Loss of value due to excessive wear and tear
        4. Cleaning costs for upholstered items
     iii. Cost to restore unauthorized modifications
     iv. Difference between paid rent and market rate since July 2024 notice
     v. Value of disposed appliances and fixtures
     vi. Any cleaning or restoration needed for sale
     vii. Note: Monthly payments made were for use and occupancy of the property and do not create any equity or credits due
   - Professional assessment of furniture condition and value required
   - Documentation of all deductions will be provided
   - Property and furnishings must be vacated in good condition

- Professional inspection to document current condition
- Final settlement amount determined after sale and completion of necessary repairs
- Move-Out Requirements:
  i. All keys must be returned upon vacancy
  ii. Security system codes will be changed upon vacancy
  iii. Remote access to all systems will be terminated
  iv. Professional move-out inspection required
  v. All utilities must be transferred out of your name by vacancy date
  vi. Property must be professionally cleaned
  vii. All tenant's personal property must be removed
  viii. Forwarding address must be provided in writing
- Property Access:
  i. Pre-move-out inspection to be scheduled 14 days before vacancy
  ii. Final walk-through inspection required on vacancy date
  iii. Any items left behind will be considered abandoned property
  iv. Documentation of utility transfers required at final inspection

Please be advised that your current investment funds are tied to the property. Any return of funds would be contingent upon the property's sale. Option 1 provides a structured approach to potentially recovering your investment in the most timely manner.

Please respond in writing within 14 days of receipt of this letter, clearly indicating your preferred option from those outlined in this document. You may respond via certified mail to Brandon McGivern, 5701 N Sheridan Rd #23G, Chicago, Illinois 60660 or via email to [redacted]. If responding via email, please include a clear subject line referencing the property address and include your full contact information in your response.

If I do not receive a response within this 14-day period, I will be compelled to pursue appropriate legal and administrative remedies, which may include:

- Filing a formal complaint with the Illinois Department of Financial and Professional Regulation
- Initiating legal proceedings to regain full property possession
- Seeking financial damages for:
  - Unauthorized property modifications
  - Disposal of personal property
  - All damage to furnishings
  - Restoration of property to its original condition
  - Compensation for unauthorized replacements of appliances and fixtures

I remain committed to resolving this matter professionally and efficiently. Given your professional status as a licensed real estate agent, I expect a timely, comprehensive, and professional response that addresses the substantive issues outlined in this letter.

Sincerely,

Brandon McGivern

EXHIBIT 3

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

Kyle Hadley, Plaintiff(s), v. Brandon McGivern, Defendant(s).	Case No: 2025CH05527 Calendar 7

ORDER

THIS MATTER coming before the Court for oral argument on five fully briefed motions: (1) Defendant's Motion for Judgment on the Pleadings; (2) Defendant's Motion to Compel Complete Discovery Responses and for Sanctions; (3) Defendant's Motion for Entry of Order Specifying Rule 137 Sanctions; (4) Defendant's Motion for Default Judgment on Counterclaims; and (5) Defendant's Motion to Strike Plaintiff's Untimely Answer to Counterclaims, the Court being fully advised on the matter. It is hereby ordered:

1. Defendant's Motion for Judgment on the Pleadings is DENIED. Even in consideration of the admissions contained within Plaintiff's Responses to the Request to Admit, there remains a question of material fact as to whether there was partial performance of the oral agreement by Plaintiff as an exception to the Statute of Frauds.

2. However, the Court, *sua sponte*, dismisses Counts III (Constructive Trust) and IV (Injunctive Relief) of Plaintiff's Complaint with prejudice as they are remedies and do not state valid causes of action. Similarly, Counts IV (Holdover Tenancy Damages) and V (Attorneys' Fees and Costs) of the Counterclaim are also dismissed, *sua sponte,* with prejudice as they also do not state valid causes of action.

3. Defendant's Motion for Entry of Rule 137 Sanctions is DENIED because the Court already issued a sanction in the form of deeming facts admitted.

4. As to Defendant's Motion to Compel, the Motion is granted, in part, as follows:

    a. Plaintiff shall produce the missing Bank of America Statements for January 2023 – July 2023, October 2023 – December 2023, August 2024 – September 2024, and June 2025 – July 2025.

    b. Plaintiff shall also produce legible copies of the Venmo Statements as they are currently illegible.

    c. All objections contained within Plaintiff's Responses to written discovery requests are overruled. However, it appears that responses were provided over objection and were sufficient notwithstanding those in need of supplementation as specified herein.

5. Defendant's Motion to Compel is DENIED, in part, as to Interrogatory #5. Further, the Court declines to enter sanctions relating to this Motion to Compel.

6. All of Plaintiff's supplemental discovery production shall be completed by or before January 20, 2026.

7. Defendant's Motion to Strike the Answer to the Counterclaims as untimely is GRANTED as it was filed late without leave of court. As such, Defendant's Motion for Default Judgment on the Counterclaims is GRANTED.

8. This matter is set for prove-up on the remaining counterclaims for January 26, 2026 at 10:00 a.m. via Zoom Teleconference (Meeting ID: 943 7767 4389; Passcode; 980847; Dial-in: (312) 626-6799).

Judge Eve M. Reilly
DEC 22 2025
Circuit Court-2122

Entered:

ER 2122

Judge Eve M. Reilly