

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JEROME TATE,)	
)	
Plaintiff,)	08 C 0218
)	
v.)	Judge Coar
)	
)	Magistrate Judge Cox
CITY OF CHICAGO,)	
a municipal corporation,)	
LOUIS JONES, Star Number 11648,)	JURY DEMANDED
)	
Defendants.)	

**DEFENDANT CITY OF CHICAGO'S MOTION TO VACATE ANY AND ALL
DEFAULTS AND FOR AN EXTENSION OF TIME TO ANSWER
OR OTHERWISE PLEAD TO PLAINTIFF'S COMPLAINT**

Defendant City of Chicago (the "City"), by and through its attorney, Mara S. Georges, Corporation Counsel for the City, moves this honorable court to vacate any and all defaults entered against it and respectfully asks for an extension of time of 21 days, or until March 17, 2008, to answer or otherwise plead to the plaintiff's complaint, and an additional 14 days to confer with the parties and participate in the Parties' Planning Conference. In support, the City states:

1. Plaintiff filed his complaint against the City and unnamed Chicago police officers on or about January 9, 2008.
2. On information and belief, summons issued to the City on January 9, 2008, and was returned executed on January 11, 2008.
3. Thereafter, on information and belief, it is the undersigned counsels' understanding that a City law department attorney worked with plaintiff's counsel and provided information which enabled plaintiff to identify the unknown officer named as a defendant in the

original complaint.

4. Accordingly, on January 24, 2008, plaintiff filed his First Amended Complaint against the City and Chicago Police Officer Louis Jones (“Jones”).

5. On February 12, 2008, the undersigned counsels were assigned to this matter to represent the City. Mindful that a proposed scheduling order had to be filed by February 15, 2008, in this matter, undersigned counsel, ACC Ashley C. Kosztia, called plaintiff’s counsel, Richard Dvorak (“Mr. Dvorak”), at his offices. He was unavailable, so ACC Kosztia left a message with one of his colleagues stating that she would be filing an appearance on this case and that they should confer regarding the proposed scheduling order.

6. ACC Kosztia then contacted the City’s Individual Defense Litigation Division (“IDLD”) on February 14, 2008, and inquired as to which IDLD attorney would be assigned to represent defendant Jones, so that he or she could also participate in the Parties’ Planning Conference.

7. In response, a representative from IDLD notified ACC Kosztia that the case had been settled in its entirety.

8. Relying on the information from IDLD that the case had settled, ACC Kosztia called Mr. Dvorak’s law offices. Once again, Mr. Dvorak was unavailable, so ACC Kosztia left a message with Mr. Dvorak’s colleague, Brian Barrido, stating that she had been informed that the case had settled, and therefore, there was no need for the Planning Conference. ACC Kosztia did not receive a return call.

9. Based on the IDLD’s representation and the lack of response from plaintiff’s counsel after the two phone calls placed to his office, the undersigned attorneys of record

believed that the case had been settled in its entirety.

10. On February 20, 2008, the undersigned attorneys learned that due to their absence from the court's status hearing, the City had been defaulted.

11. Shortly thereafter, the undersigned counsel contacted IDLD and after inquiry by the IDLD attorney, were informed that the IDLD attorney had made an error and that the case had not been settled. Undersigned counsel also contacted Mr. Dvorak, who informed counsel that the case had not settled and that he was not aware that ACC Kosztia had called him a second time.

12. As a direct result of the information that the case had settled, counsels for the City did not participate in the Report of the Parties Planning Conference or begin the process of investigating all of the allegations in the plaintiff's complaint and gathering and examining the pertinent records.

13. The absence of the undersigned counsels at the hearing on February 20, 2008, was inadvertent, and any delay caused by the undersigned counsels in this case was unintentional.

14. Therefore, the City respectfully requests an extension of 21 additional days, to March 17, 2008, to answer or otherwise plead to plaintiff's complaint, and an additional 14 days to confer with the rest of the parties in order to participate in the Parties' Planning Conference.

15. Counsel for plaintiff has informed the City that he has no objection to this Motion.

WHEREFORE, the City respectfully requests that this Court vacate all defaults, technical or otherwise, including the default entered on February 20, 2008, which may have been previously entered against the City, allow the City an additional 21 days to answer or otherwise plead to plaintiff's First Amended Complaint, provide the City with an additional 14 days to

conduct the Parties' Planning Conference, and for any additional relief deemed just by this Honorable Court.

DATED: February 25, 2008

MARA S. GEORGES
Corporation Counsel
of the City of Chicago

_____ BY: s/Ashley C. Kosztva
ASHLEY C. KOSZTYA
Assistant Corporation Counsel

BY: s/Robert C. Rutherford, Jr.
ROBERT C. RUTHERFORD, Jr.
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CERTIFICATE OF SERVICE

I certify that, on February 25, 2008, I caused true and correct copies of **Defendant City of Chicago's Motion to Vacate Any and All Defaults and For An Extension of Time to Answer of Otherwise Plead to Plaintiff's Complaint**, to be served on plaintiff's counsels by electronic filing.

Richard J. Dvorak,
Brian J. Barrido,
Neil L. Toppel
3859 West 26th Street
Chicago, Illinois 60623
(773) 521-1300 _____

s/ Robert C. Rutherford, Jr.

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