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Case No. 26-1238

**In The UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Michael D. Dalton, Jr.; Leah M. Dalton; Michael A. Deem

Plaintiffs-Appellants

v.

CHOICEONE BANK

Defendant-Appellee

**On Appeal From the United States District Court
for the Western District of Michigan, Southern Division
Case No. 1:26-cv-163
U.S. Magistrate Judge Ray Kent**

**OPPOSITION TO CHOICEONE BANK'S MOTION TO EXTEND TIME
FOR RESPONSE TO PLAINTIFFS-APPELLANTS' EMERGENCY
MOTION FOR INJUNCTION PENDING APPEAL AND
TO EXPEDITE APPEAL**

Michael D. Dalton, Jr.,
Leah M. Dalton, and
Michael A. Deem
3360 Dexter Trail
Stockbridge, MI 49285

CHOICEONE BANK
By: John R. Tucker, Esq.
Winegarden, Haley, Lindholm,
Tucker, & Himelhoch, P.L.C.
9460 S. Saginaw Road, Suite A
Grand Blanc, MI 48439

STATEMENT OF FACTS

ChoiceOne Bank has moved to “extend the allowable time for [it] to respond to the Plaintiffs-Appellants’ Emergency Motion for Preliminary Injunction Pending Appeal and to Expedite Appeal (Document 3-1) to March 27, 2026.” Doc. 8, p. 3.

In support of its motion counsel for ChoiceOne Bank asserts in a four-page document, which does not conform to 28 U.S.C. § 1746 and is unsworn, that:

1. On *February 27, 2026*, [he] left the continent to embark on a 3-plus week vacation in the southern hemisphere [].
9. [He] believed, apparently erroneously, that the 10-day clock for responding to the Plaintiffs-Appellants’ Motion would not begin to run until the undersigned had actually appeared in the appellate case as the Motion had never been directly served on ChoiceOne Bank.
10. [He] returned to work following his vacation on *March 24, 2026*.
12. There was insufficient time to respond to the Motion due to [his] unavailability whilst on vacation and due to the apparently erroneous belief that the Response to the Motion was not due until March 28, 2026.

However, on March 6, 2026, opposing counsel was able to file ECF 50 and 51 in the district court.

On **March 16, 2026**, opposing counsel was able to file **ECF 57** in the district court.

On **March 17, 2026**, opposing counsel was able to file **ECF 59 and 60** in the district court.

Plaintiffs-Appellants filed the instant motion on March 9, 2026.

ChoiceOne Bank's response was due on or by March 19, 2026.

ARGUMENT

I. Opposing Counsel's Instant Motion To Extend Time Must Be Denied

Opposing counsel offers two reasons why he did not file his response timely: he was out of the country and his own ignorance.

As for not being able to file timely because he "left the continent," opposing counsel is not credible as a matter of law. Opposing counsel filed five separate documents (ECF 50, 51, 57, 59, 60) on three different days (March 6, 16 and 17, 2026) in the district court regarding this matter. *Three of those documents (ECF 57, 59, 60) were filed on two different days (March 16 and 17, 2026) during the ten-day period of time (March 9 – 19, 2026) in which to file a response to the instant emergency motion.* Opposing counsel provides no explanation why he was able to file papers in the district court but, allegedly, not this court because there is no valid explanation.

The proffered excuse is not credible as a matter of law.

The second purported reason for not filing a response timely is because of opposing counsel's "erroneous belief." FRAP 27(a)(3)(A) governs the time to file a response to a motion in this court. There is no local rule that deviates from the general rule for all federal circuit courts. To put opposing counsel's second

purported reason another way, opposing counsel is unfamiliar with the rules governing federal appellate practice and was negligent in learning about them. This second excuse is accurately characterized as “lame.” *See Halmon v. Jones Lang Wootton USA*, 355 F.Supp.2d 239, 242 (D.D.C. 2005). It’s worse than “the classic ‘my dog ate my homework’ line [and] plainly unacceptable.” *See Fox v. Am. Airlines, Inc.*, 389 F.3d 1291, 1294 (D.C. Cir. 2004).

A name partner in a law firm, just like “a *pro se* litigant, [] is expected to know the procedural rules [of this court].” *See, e.g. Wieland v. Shumake*, 2023 WL 9066909, at *1 (6th Cir. 2023) (*citing McNeil v. United States*, 508 U.S. 106, 113 (1993)); *Cordle v. Guarino*, 428 F.3d 46, 49 (1st Cir. 2005) (noting that ignorance of filing deadlines does not excuse untimely filing). “[C]lients must be held accountable for the acts and omissions of their attorneys.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 396 (1993).

[ChoiceOne Bank] voluntarily chose [Mr. Tucker and his firm] as [it]s representative in the action, and [it] cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have ‘notice of all facts, notice of which can be charged upon the attorney.’

Id., at 397 (*citing Link v. Wabash R. Co.*, 370 U.S. 626, 633-34 (1962)).

ChoiceOne Bank has failed to show excusable neglect for not filing its responsive papers timely and its motion to extend the time must be denied.

CONCLUSION

In light of the aforementioned, Plaintiffs-Appellants respectfully request that this Court grant their pending, unopposed motion and issue an injunction restoring them to possession of both properties, 305 W. Elizabeth Street and 3468 Catholic Church Road, Stockbridge, Michigan, forthwith, effective until final resolution on the merits and all appeals are exhausted.

Dated: April 6, 2026



Michael D. Dalton, Jr.
Plaintiff



Leah M. Dalton
Plaintiff



Michael A. Deem
Plaintiff

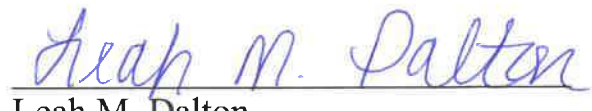
CERTIFICATE OF SERVICE

We hereby certify that on April 6, 2026, we mailed a copy of the foregoing Opposition to ChoiceOne Bank's Motion to Extend Time for Response to Plaintiffs-Appellants' Emergency Motion For Injunction Pending Appeal and To Expedite Appeal to: John R. Tucker, Esq., Winegarden, Haley, Lindholm, Tucker & Himelhoch, PLC, 9460 S. Saginaw Road, Suite A, Grand Blanc, MI 48439.

Dated: April 6, 2026



Michael D. Dalton, Jr.
Plaintiff



Leah M. Dalton
Plaintiff