

COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT

SUPERIOR COURT DEPARTMENT

SUFFOLK, ss.

Civil Action No. 2484CV02931

DANY ABOUELHKIER, Pro Se
Plaintiff,

v.

VIRTUAL FULFILLMENT CENTER, LLC,
MOHAMED KASSEM,
OMAR NEAMATALLA,
MOHAMED ALI, and
AHMED KASEM,
Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT-IN-COUNTERCLAIM'S
MOTION FOR LEAVE TO FILE LATE ANSWER**

I. INTRODUCTION

Defendant-in-Counterclaim Dany Abouelkhier respectfully moves pursuant to Mass. R. Civ. P. 6(b) for leave to file his Answer to Counterclaims one day late. The brief delay was caused by a declared state of emergency and official court closure due to severe winter storm conditions on February 23, 2026, the extended deadline agreed to by assent. The delay was minimal, not willful, and resulted in no prejudice to Plaintiffs-in-Counterclaim. Under settled Massachusetts law, such circumstances constitute excusable neglect warranting allowance of the late filing.

II. PROCEDURAL BACKGROUND

The original deadline for Defendant's Answer was February 12, 2026. Prior to that date, Defendant requested and received assent from Plaintiffs-in-Counterclaim's counsel, pursuant to Superior Court Rule 9A, to extend the deadline to February 23, 2026.

On February 23, 2026, the Commonwealth declared a state of emergency due to severe winter storm conditions, and the Massachusetts Trial Courts were officially closed. Defendant experienced storm-related internet disruption and was unable to complete and electronically file the Answer on that date.

Defendant filed the Answer promptly upon restoration of service and court operations.

The filing is one day late.

III. LEGAL STANDARD

Mass. R. Civ. P. 6(b)(1) provides that:

“When by these rules... an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion... permit the act to be done where the failure to act was the result of excusable neglect.”

Massachusetts courts favor resolution of cases on their merits and evaluate claims of excusable neglect in light of the circumstances presented. Under the framework articulated in *Berube v. McKesson Wine & Spirits Co.*, 7 Mass. App. Ct. 426, 430–31 (1979), the court considers whether the moving party acted promptly, whether the neglect was the product of a deliberate tactical decision, and whether relief would unfairly prejudice the opposing party.

Trial courts possess broad discretion in these matters, as determinations of excusable neglect are inherently fact-specific and equitable in nature. See *Mailer v. Mailer*, 387 Mass. 401, 406 (1982) (recognizing discretion under Rule 6(b)).

Where, as here, the delay was brief, non-prejudicial, and not the result of bad faith or strategic indifference, equitable considerations support permitting the matter to be resolved on its merits.

The determination is equitable and fact-specific, focusing on:

- Length of delay
- Reason for delay
- Good faith
- Prejudice to opposing party

IV. ARGUMENT

A. The One-Day Delay Resulted from Extraordinary Circumstances Beyond

Defendant's Control

The extended deadline fell on February 23, 2026 a date on which the Commonwealth declared a state of emergency due to severe winter storm conditions and the Massachusetts Trial Courts were officially closed.

Defendant experienced storm-related internet disruption and was unable to electronically file the Answer on that date. The delay was therefore caused by extraordinary weather conditions and official court closure circumstances plainly outside Defendant's control.

Such conditions constitute classic excusable neglect under Rule 6(b).

B. The Delay Was Minimal and Caused No Prejudice

The Answer was filed one day late.

There has been:

- No default entered
- No request for default
- No prejudice to Plaintiffs-in-Counterclaim
- No impact on scheduling or case progression

Massachusetts courts routinely allow far longer delays where no prejudice exists.

C. Defendant Acted Diligently and in Good Faith

Defendant:

- Requested and obtained assent to extend the original deadline
- Prepared the Answer
- Filed promptly upon restoration of court operations.

There is no evidence of bad faith, delay tactics, or disregard of court rules.

V. CONCLUSION

The delay was minimal, caused by a declared state of emergency and official court closure, and resulted in no prejudice. Under Mass. R. Civ. P. 6(b), allowance of the late filing is appropriate and consistent with the equitable discretion afforded to this Court.

For the foregoing reasons, Defendant respectfully requests that the Court allow the late filing of his Answer to Counterclaims.

Respectfully submitted,

Dany Abouelkhier (Pro Se)

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Date: February 24, 2026

/s/ Dany Abouelkhier

Dany Abouelkhier (Pro Se)

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2026 a copy of the foregoing was served via electronic mail on all counsel of record.

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Respectfully submitted,

Dany Abouelkhier, appearing pro se

/s/ Dany Abouelkhier

Dany Abouelkhier (Pro Se)