

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>TITAN FOWLES,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 19-2222-KHV-GEB</b>
	)	
<b>ATCHISON AUTOMOTIVE PLAZA, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	
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**ORDER**

This matter is before the Court on Defendant’s Motion for Leave to File Answer Out of Time (**ECF No. 5**). Plaintiff’s Response indicates that, although Plaintiff does not consent to the motion, he also does not oppose it. Therefore, the motion could be granted as unopposed. In addition, the Court finds Defendant has shown its failure to answer was a result of excusable neglect under Fed. R. Civ. P. 6(b)(1)(B).<sup>1</sup> Plaintiff demonstrates no prejudice by Defendant’s untimely answer, and because the Answer was sought to be filed only 16 days after the original deadline, there is no true impact on these proceedings. The Court accepts Defendant’s

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<sup>1</sup> See *Beecham v. XPO Logistics*, No. 218CV02641JARGEB, 2019 WL 2053891, at \*1 (D. Kan. May 9, 2019) (citing *United States v. Torres*, 372 F.3d 1159, 1162 (10th Cir. 2004) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993)) (outlining the factors the court considers when determining whether the failure to act was the product of excusable neglect: “[1] the danger of prejudice to the [nonmoving party], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith.”).

good-faith explanation that a mechanical/technological error caused Defendant's confusion over the service and answer deadlines.

Although Plaintiff contends a similar untimely answer was sought in an unrelated action, in an attempt to support some pattern by Defendant in filing untimely responses, the Court notes the action referenced was one year ago, in a state court action, with different defense counsel. However, Defendant should be on notice that future requests for extension may be met with some skepticism.

**IT IS THEREFORE ORDERED** that Defendant's Motion for Leave to File Answer Out of Time (**ECF No. 5**) is **GRANTED**. Defendant shall file its Answer no later than July 24, 2019.

**IT IS SO ORDERED.**

Dated at Wichita, Kansas this 11th day of July 2019.

s/ Gwynne E. Birzer  
GWYNNE E. BIRZER  
United States Magistrate Judge