

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

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|----------------------------------|---|---------------------------------|
| BD MEDICAL SUPPLIES, LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. 21-1056-KHV-GEB |
| |) | |
| BLUESTEM MANAGEMENT |) | |
| ADVISORS, LLC and |) | |
| THOMAS D. JOHNSON, |) | |
| |) | |
| Defendants. |) | |
| | | |

NOTICE AND ORDER TO SHOW CAUSE

TO THE PLAINTIFF:

On February 26, 2021, Plaintiff filed its Complaint against Bluestem Management Advisors, LLC (“Bluestem”) (ECF No. 1). A Summons was issued as to Defendant Bluestem on March 1, 2021 for attorney service. Pursuant to Fed. R. Civ. P. 4(c) “the plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m).” Fed. R. Civ. P. 4(m) sets a deadline of 90 days “after the complaint is filed.” Rule 4(m) also provides if a defendant is not served within that time the court on its own after notice to plaintiff “must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” The court, however, must “extend the time for service for an appropriate period” if a plaintiff shows good cause for the failure. *Fed. R. Civ. P. 4(m)*.

Plaintiff filed an Amended Complaint against Bluestem, adding Defendant Thomas D. Johnson (“Johnson”) as a party and adding additional claims on June 14, 2021 (ECF No. 5). A Summons was again issued as to Defendant Bluestem on June 14, 2021 for attorney service. However, the Tenth Circuit has held the service period under Rule 4(m) “is not restarted by the filing of an amended complaint except to those defendants newly added in the amended complaint.” *Bolden v. City of Topeka*, 441 F.3d 1129, 1148 (10th Cir. 2006). See also *Hoover v. Unified Govt. of Wyandotte County*, No. 14-2410-JWL, 2015 WL 1756830, at *10 (D. Kan. April 17, 2015). The service deadline for Defendant Bluestem ran May 27, 2021. The record of the court does not reflect that service has been accomplished on Defendant Bluestem.

Therefore, the Court **ORDERS** Plaintiff BD Medical Supplies, LLC to show good cause in writing on or before **July 8, 2021**, why service was not made upon Defendant Bluestem within the time prescribed under Rule 4(m) and to further show good cause why the undersigned should not recommend this action be dismissed without prejudice against Defendant Bluestem.

IT IS SO ORDERED.

Dated at Wichita, Kansas this 29th day of June, 2021.

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