

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

In Re: FEMA TRAILER
FORMALDEHYDE PRODUCTS
LIABILITY LITIGATION

MDL NO. 07-1873

SECTION "N" (5)

THIS DOCUMENT RELATES TO
Member Cases listed herein

ORDER

Certain service issues were detailed in this Court's Order at Rec. Doc. 25687. Most of these service issues remain unaddressed and unremedied by counsel. Accordingly, after considering the applicable law, the Court rules as set forth herein:

A.

IT IS ORDERED, ADJUDGED, AND DECREED that the claims of Plaintiffs against the specified defendants in the following member cases are hereby **DISMISSED WITHOUT PREJUDICE** in accordance with Rule 4(m) of the Federal Rules of Civil Procedure, as more than 120 days have elapsed since the filing of the Complaints in these actions. In each of the cases, either no summons has been issued or, if summons has been issued, no executed return has been timely placed in the record. Counsel for Plaintiffs have failed to show good cause why service of process has not been effected upon the defendants listed below. Indeed, counsel offered no response

whatsoever to this Court's service order. *See Redding v. Essex Crane Rental Corp. Of Alabama*, 752

F.2d 1077 (5th Cir. 1985):

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>
American Camper Manufacturing, LLC d/b/a Ameri-Camp	10-1041
American Camper Manufacturing, LLC d/b/a Ameri-Camp	12-194
American Camper Manufacturing, LLC d/b/a Ameri-Camp	12-220
Circle B Enterprises, Inc.	10-1041
Design Homes, Inc.	10-1041
Dreams R.V. Sales, Inc.	10-1041
Homestead Manufacturing	12-221
Lakeside Park Homes, Inc.	10-1041
Lakeside Park Homes, Inc.	12-182

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>
Lakeside Park Homes, Inc.	12-222
Liberty RV & Marine, Inc.	08-4630
Liberty RV & Marine, Inc.	10-257
Liberty RV & Marine, Inc.	10-452
Liberty RV & Marine, Inc.	10-459
Liberty RV & Marine, Inc.	10-1041
Mitchell County Industries, LLC	10-1041
Mitchell County Industries, LLC f/k/a Superior Park Model Homes	10-4118
Oakwood Homes, LLC	08-4630
Razz Electrical Services	09-8645
Stewart Park Homes, Inc.	10-1041
Stewart Park Homes, Inc.	12-197
Stewart Park Homes, Inc.	12-212

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>
Stewart Park Homes, Inc.	12-214
Superior Homes, LLC	10-1041
Superior RV Manufacturing, Inc.	10-1041

B.

In this Court's Order at Rec. Doc. 25687, the Court noted that the time for responsive pleading has expired in the following cases:

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>	<u>PLAINTIFF ATTORNEY</u>	<u>REC. DOC. NO. SHOWING SUMMONS RETURNED EXECUTED</u>
Liberty RV & Marine, Inc.	10-2224	Hilliard	18760
Lakeside Park Homes, Inc.	10-2363	Gibson	24700

The Court warned that failure to obtain a responsive pleading/Notice of Preservation of Defenses or preliminary default on the served defendants listed above by June 29, 2012 would result in the dismissal of any such defendant, for failure to prosecute, without any further notice, in accordance with Rule 41(b) of the Federal Rules of Civil Procedure. The plaintiffs in case No. 10-2363 have made no response whatsoever to the Court's order, whether by filing a motion for preliminary

default, by obtaining responsive pleadings, or otherwise. Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED that the plaintiffs' claims against Lakeside Park Homes, Inc. in case number 10-2363 are hereby **DISMISSED** for failure to prosecute, in accordance with Rule 41(b) of the Federal Rules of Civil Procedure.

The plaintiffs in case number 10-2224 did not file a motion for preliminary default or obtain responsive pleadings. Rather, they again filed into the record the previously filed executed return establishing proof of service. *See* Rec. Docs. 18760, 25706. Because the plaintiffs have responded to the show cause order in some fashion, the Court will allow them one final opportunity to either obtain responsive pleadings from Liberty RV & Marine, Inc. or file a motion for preliminary default against this defendant.

Further, the plaintiffs in the following cases, in response to the Court's order at Rec. Doc. 25687, have now filed executed returns establishing that service was made on Liberty RV & Marine, Inc. in both cases on August 24, 2009. *See* Rec. Docs. 25707, 25710.

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>
Liberty RV & Marine, Inc.	09-4726
Liberty RV & Marine, Inc.	09-6946

Thus, the record now reflects that the time for obtaining a responsive pleading or notice of preservation of defenses has expired. Accordingly,

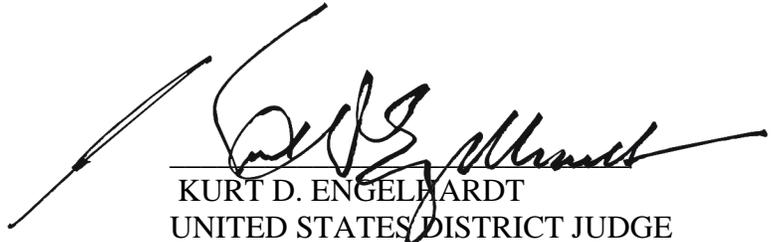
IT IS ORDERED that the plaintiffs in the following member cases shall either obtain a

responsive pleading (or notice of preservation of defenses) from Liberty RV & Marine, Inc. or file a motion seeking to obtain a preliminary default on Liberty RV & Marine, Inc. by **July 18, 2012**.

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>	<u>PLAINTIFF ATTORNEY</u>	<u>REC. DOC. NO. SHOWING SUMMONS RETURNED EXECUTED</u>
Liberty RV & Marine, Inc.	09-4726	Hilliard	25707
Liberty RV & Marine, Inc.	09-6946	Hilliard	25710
Liberty RV & Marine, Inc.	10-2224	Hilliard	18760, 25706

Failure to do so timely will result in the DISMISSAL of this defendant, for failure to prosecute, without any further notice, in accordance with Rule 41(b) of the Federal Rules of Civil Procedure.

New Orleans, Louisiana, this 3rd day of July, 2012.



KURT D. ENGELHARDT
UNITED STATES DISTRICT JUDGE