

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
the Member Case Nos. listed herein

ORDER

Certain service issues were detailed in this Court's Orders at Rec. Docs. 24551 and 24554. In this Court's May 4, 2012 Order (Rec. Doc. 25495), this Court noted that service issues relating to the defendants in certain specified member cases were the subject of a Motion for Entry of Default Judgment (Rec. Doc. 25074) and would be addressed in a separate Order. The motion at Rec. Doc. 25074 was ultimately denied without prejudice, based on Plaintiffs' failure to initially seek a preliminary default through the Clerk, pursuant to Federal Rule of Civil Procedure 55(a). (Rec. Doc. 25494). A Motion for Entry of Preliminary Default (Rec. Doc. 25605) has recently been filed; however, many cases with service issues addressed in the original Motion for Entry of Default Judgment (Rec. Doc. 25074) are not addressed in the motion at Rec. Doc. 25605. Accordingly, after considering the memoranda and filings of counsel and the applicable law, the Court rules as set forth herein:

A.

A review of the record indicates that service of the complaint has been made upon the defendants in the member cases listed below and the time to file responsive pleadings/Notice of

Preservation of Defenses has expired. Further, no preliminary default has been sought by Plaintiffs.

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>
Lakeside Park Homes	10-2242
Lakeside Park Homes	10-2254
American Camper Manufacturing, LLC d/b/a Ameri-Camp	09-7852
American Camper Manufacturing, LLC d/b/a Ameri-Camp	10-2177
Biscayne RV, Inc.	09-8304
Integrity Midwest Inc., d/b/a U.S. Adventure RV	10-2273
Tom Stinnett Holiday RV Center	10-2287
Murillo Modular Group, Ltd.	09-3745
Murillo Modular Group, Ltd.	09-8650
Murillo Modular Group, Ltd.	09-8654

Murillo Modular Group, Ltd.	09-8658
Superior RV Manufacturing	09-4637

Thus, as warned in Rec. Docs. 24551 and 24554,

IT IS ORDERED that, based on Plaintiffs' failure to obtain a responsive pleading/Notice of Preservation of Defenses or a preliminary default, the defendants in the cases listed above are hereby **DISMISSED**, for failure to prosecute, in accordance with Rule 41 (b) of the Federal Rules of Civil Procedure.

B.

Specifically in reference to Plaintiffs' claims against Superior RV Manufacturing in member case no. 10-758:

On February 29, 2012, Special Master Ballay received an email sent on behalf of Roberta Burns, Plaintiff attorney in this matter, explaining that Rec. Doc. 10195, reflected in the Order at Rec. Doc. 24554 as proof of service, was not filed by Burns' office. The email indicated that Burns' office has no proof of service upon Superior RV Manufacturing in this matter. Accordingly, **IT IS ORDERED** that the claims of Plaintiffs in member case no. 10-758 against Superior RV Manufacturing are **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 Complaint in these action. Counsel for Plaintiffs has failed to show good cause why service of process has not been effected upon Superior RV Manufacturing. See *Redding v. Essex Crane Rental Corp. Of Alabama*, 752 F.2d 1077 (5th Cir. 1985).

C.

Last, the Court notes that service issues relating to the defendants in the following member cases are the subject of a Motion for Entry of Preliminary Default (Rec. Doc. 25605) and will be addressed in a separate Order.

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>
Stewart Park Homes, Inc.	09-3922
Stewart Park Homes, Inc.	09-3993
Stewart Park Homes, Inc.	09-3994
Stewart Park Homes, Inc.	09-4016
Stewart Park Homes, Inc.	09-4065
Stewart Park Homes, Inc.	09-4741
Stewart Park Homes, Inc.	09-4824
Stewart Park Homes, Inc.	09-4927
Stewart Park Homes, Inc.	09-4975
Stewart Park Homes, Inc.	09-4993
Stewart Park Homes, Inc.	09-5251

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>
Stewart Park Homes, Inc.	09-5523
Stewart Park Homes, Inc.	09-5524
Stewart Park Homes, Inc.	09-5738
Stewart Park Homes, Inc.	09-5752
Stewart Park Homes, Inc.	09-5767
Stewart Park Homes, Inc.	09-5965
Stewart Park Homes, Inc.	09-6167
Stewart Park Homes, Inc.	09-6282
Stewart Park Homes, Inc.	09-6572
Stewart Park Homes, Inc.	09-6775
Stewart Park Homes, Inc.	09-6930
Stewart Park Homes, Inc.	09-7746
Stewart Park Homes, Inc.	09-7757
Stewart Park Homes, Inc.	09-8310
Stewart Park Homes, Inc.	09-8331

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>
Stewart Park Homes, Inc.	09-8389
Stewart Park Homes, Inc.	10-228
Stewart Park Homes, Inc.	10-543
Stewart Park Homes, Inc.	10-1377
Stewart Park Homes, Inc.	10-2217
Stewart Park Homes, Inc.	10-2269
Stewart Park Homes, Inc.	10-2393
Stewart Park Homes, Inc.	10-3441
American Camper Manufacturing, LLC d/b/a Ameri-Camp	10-2205

New Orleans, Louisiana, this 29th day of May, 2012.


KURT D. ENGELHARDT
UNITED STATES DISTRICT JUDGE