

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**

**A.**

For the defendants in the member cases listed below, the following service issues exist: (a) service has not been made at all, (b) no return of service has been filed into the record, or (c) summons has been returned "unexecuted":

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>	<u>PLAINTIFF ATTORNEY</u>	<u>NO SERVICE OF SUMMONS</u>	<u>SUMMONS ISSUED BUT NO EXECUTED RETURN IN RECORD</u>	<u>SUMMONS RETURNED "UNEXECUTED"</u>
Superior Homes, LLC	09-8395	Buzbee		13748	
Superior Homes, LLC	09-8428	D'Amico		13026	
Superior Homes, LLC	09-8429	D'Amico		13025	
Superior Homes, LLC	09-8430	D'Amico		Member Case, Rec. Doc. 4	

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>	<u>PLAINTIFF ATTORNEY</u>	<u>NO SERVICE OF SUMMONS</u>	<u>SUMMONS ISSUED BUT NO EXECUTED RETURN IN RECORD</u>	<u>SUMMONS RETURNED "UNEXECUTED"</u>
Superior Homes, LLC	10-2548	D'Amico	✓		
Superior Homes, LLC	10-4094	D'Amico	✓		
Mitchell County Industries	09-3717	Torres	✓		
Mitchell County Industries	10-758	Torres	✓		
Mitchell County Industries	10-3717	Torres	✓		
Mitchell County Industries	10-3799	Torres	✓		
Mitchell County Industries, LLC	09-4742	Hilliard			23577
Mitchell County Industries, LLC	09-6341	Becnel		20864	
Mitchell County Industries, LLC	09-6639	Hilliard			23578

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>	<u>PLAINTIFF ATTORNEY</u>	<u>NO SERVICE OF SUMMONS</u>	<u>SUMMONS ISSUED BUT NO EXECUTED RETURN IN RECORD</u>	<u>SUMMONS RETURNED "UNEXECUTED"</u>
Mitchell County Industries, LLC	09-7098	Hilliard			23576
Mitchell County Industries, LLC	09-7266	Becnel		20865	
Mitchell County Industries, LLC	09-7820	Hilliard			23575
Mitchell County Industries, LLC	09-7829	Hilliard			23574
Mitchell County Industries, LLC	09-8719	Becnel		20866	
Mitchell County Industries, LLC	09-8728	Becnel		20867	
Mitchell County Industries, LLC	10-478	Gibson	✓		
Mitchell County Industries, LLC	10-1293	Hilliard			23573

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>	<u>PLAINTIFF ATTORNEY</u>	<u>NO SERVICE OF SUMMONS</u>	<u>SUMMONS ISSUED BUT NO EXECUTED RETURN IN RECORD</u>	<u>SUMMONS RETURNED "UNEXECUTED"</u>
Mitchell County Industries, LLC	10-1354	Gibson	✓		
Mitchell County Industries, LLC	10-2181	Hilliard			23571
Mitchell County Industries, LLC	10-2274	Hilliard			23572
Mitchell County Industries, LLC	10-2387	Meunier	✓		
Mitchell County Industries, LLC	10-2397	Meunier	✓		
Mitchell County Industries, LLC	10-2694	Jacobs		Member Case, Rec. Doc. 1, Sub-part 2, Rec. Doc. 2	
Mitchell County Investments, LLC	09-5292	Dominick	✓		
Mitchell County Investments, LLC	09-7861	Sunseri	✓		

<u>DEFENDANT</u>	<u>MEMBER CASE NO.</u>	<u>PLAINTIFF ATTORNEY</u>	<u>NO SERVICE OF SUMMONS</u>	<u>SUMMONS ISSUED BUT NO EXECUTED RETURN IN RECORD</u>	<u>SUMMONS RETURNED “UNEXECUTED”</u>
Mitchell County Investments, LLC	10-921	Jacobs		Member Case, Rec. Doc. 1, Sub-part 3, Rec. Doc. 10	

Fed R. Civ. P. 4(m) provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the Court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the Court shall extend time for service for an appropriate period.

Accordingly, unless service is made on the named defendants **within 15 days of this date** or unless within that time you show good cause **in writing** for having failed to do so, the plaintiff's claims against the named defendants in the above member cases will be dismissed without further notice.

**B.**

It has also come to the Court's attention that in member case no. 09-3629, the plaintiffs (represented by Hugh Lambert) filed suit against Mitchell County Industries, LLC. Summons was issued (Member Case, Rec. Doc. 2, Rec. Doc. 1669) and was returned executed (Rec. Doc. 2464). Counsel appeared on behalf of Mitchell County Industries, LLC and filed a Preservation of Defenses (Rec. Doc. 2609). Thereafter, said counsel requested the right to withdraw from the case (See Rec. Doc. 6969), and such motion was granted by the Court (Rec. Doc. 7114). Thus, in this particular

member case, Mitchell County Industries, LLC is listed as a *pro se* defendant.

Although individuals have the right to proceed *pro se* in federal court pursuant to 28 U.S.C. §1654, the law is clear that corporations are fictional legal persons who can only be represented by licensed counsel. *Donovan v. Road Rangers Country Junction, Inc.*, 736 F.2d 1004, 1005 (5<sup>th</sup> Cir. 1984) (per curiam); *Southwest Express Co., Inc. v. Interstate Commerce Commission*, 670 F.2d 53, 55-56 (5<sup>th</sup> Cir. 1982); *In re K.M.A., Inc.*, 652 F.2d 398, 399 (5<sup>th</sup> Cir. 1981). When counsel is not hired to represent a corporation, the court may dismiss its claims (if it is a plaintiff) or strike its defenses (if it is a defendant). *See id.*

Accordingly, **IT IS FURTHER ORDERED** that Mitchell County Industries, LLC is hereby allowed **15 days from this date** to obtain licensed counsel to represent it in this case. Mitchell County Industries, LLC is hereby warned that failure to do so will result in its Preservation of Defenses (See Rec. Doc. 2609) being stricken from the record. Thereafter, the plaintiffs in this particular member case shall obtain a preliminary default on Mitchell County Industries, LLC. Failure to do so shall 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.

The Court notes that this Order is the product of a massive undertaking (i.e., the review of over 25,600 documents in the record as well as a review of the documents in the above listed member cases). If a member case is listed in this Order in error, the applicable plaintiff attorney is instructed to contact Special Master Amanda Ballay by email at [ajbfemamdl@gmail.com](mailto:ajbfemamdl@gmail.com), with reference to applicable record document numbers to support the assertion that the member case was included in this Order in error.

New Orleans, Louisiana, this 17th day of May, 2012.



KURT D. ENGELHARDT  
UNITED STATES DISTRICT JUDGE

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