

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

| | | |
|-----------------------------|---|-------------------|
| ROBERT KRAMER and JAYNE |) | 4:08CV3020 |
| KRAMER, |) | |
| |) | |
| Plaintiffs, |) | |
| v. |) | MEMORANDUM |
| |) | AND ORDER |
| CEQUENT CONSUMER |) | |
| PRODUCTS, INC. and HIGHLAND |) | |
| GROUP, INC., BRIGGS AND |) | |
| STRATTON, and MURRAY, INC., |) | |
| |) | |
| Defendants. |) | |

The plaintiffs and two defendants, Cequent Consumer Products, Inc., and Highland Group, Inc., have filed a joint stipulation for dismissal with prejudice ([filing 11](#)), which the court construes as having been filed pursuant to [Federal Rule of Civil Procedure 41\(a\)\(1\)\(A\)\(iii\)](#) (providing that “the plaintiff may dismiss an action without a court order by filing . . . a stipulation of dismissal signed by all parties who have appeared.”). The other two defendants, Briggs & Stratton and Murray, Inc., have not entered appearances in the action.¹ The court is unable to determine from the wording of the joint stipulation whether the plaintiffs are dismissing their action with prejudice as against all defendants, or only as against the two defendants that signed the joint stipulation. Accordingly,

¹ The court does not know whether these non-appearing defendants have been served. If they were served prior to removal of the action from state court, then the removal was defective, *see Pritchett v. Cottrell, Inc.*, 512 F.3d 1057, 1062 (8th Cir. 2008), but the defect is non-jurisdictional, *see Midlock v. Apple Vacations West, Inc.*, 406 F.3d 453, 455 (7th Cir. 2005). If they have not been served, the action against them may be subject to dismissal under [Federal Rule of Civil Procedure 4\(m\)](#).

IT IS ORDERED that:

1. On or before October 17, 2008, the plaintiffs shall either file a notice of dismissal with respect to the non-appearing defendants, Briggs & Stratton and Murray, Inc., or else a statement that they intend to prosecute the action against these defendants.
2. If the plaintiffs intend to prosecute the action against the non-appearing defendants, they shall also file a return of service for each defendant no later than November 3, 2008. Absent such filing(s), the action may be dismissed without prejudice as against the non-appearing defendant(s), without further notice.
3. The court will withhold entry of judgment on the joint stipulation ([filing 11](#)) until after the plaintiffs have filed the notice or statement required by paragraph 1 above, or until after the time allowed for such filing has expired. If no filing is made by the plaintiffs within the time allowed, the joint stipulation for dismissal with prejudice will be construed to apply only to the two defendants that signed the document, Cequent Consumer Products, Inc., and Highland Group, Inc.

October 2, 2008.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge