

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. 07-23077-CIV-UNGARO

FALCON FARMS, INC.,

Plaintiff,

v.

R.D.P. FLORAL, INC.,

Defendant.

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**ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATION**

THIS CAUSE came before the Court upon Plaintiff's Motion for Sanctions for Defendant's Failure to Appear for Court-Ordered Depositions and Incorporated Memorandum of Law, filed on August 14, 2008. (D.E. 74.)

THE MATTER was referred to the Honorable Andrea Simonton, United States Magistrate Judge. (D.E. 76.) A Report and Recommendation dated September 11, 2008, has been entered, recommending that Plaintiff's Motion be granted. (D.E. 82). Defendant filed its objections to the Report and Recommendation on September 18, 2008. (D.E. 83.) Plaintiff filed a response to Defendant's objections on September 18, 2008. (D.E. 84.) The matter is ripe for disposition.

THIS COURT has made a *de novo* review of the entire file and record herein and is otherwise fully advised in the premises. In its Motion, Plaintiff argues that Defendant should have its pleadings stricken and be defaulted as sanctions for Defendant's discovery-related misconduct and failure to have its corporate representatives appear for depositions. (Pl.'s Mot. 3-4.) After Magistrate Judge Simonton recommended that Plaintiff's Motion be granted and

Defendant sanctioned through the striking of its pleadings and the entry of default against it, Defendant objected to such recommendation, arguing that Magistrate Judge Simonton incorrectly stated that Defendant has totally refused to comply with the discovery process and that Defendant did not cooperate with attempts to set the depositions at issue. (*See* Def.'s Objections ¶¶ 1-2.) Plaintiff filed a response to Defendant's objections, arguing that the purportedly erroneous comments made by Magistrate Judge Simonton were not essential to the rationale of her conclusion and cannot fairly be portrayed as error. (Pl.'s Resp. to Def.'s Objections ¶ 2.)

After carefully reviewing Defendant's objections and Plaintiff's response, the Court agrees, for the same reasons found by Magistrate Judge Simonton, that Plaintiff's Motion for Sanctions should be granted. As Magistrate Judge Simonton properly found, Defendant has displayed willful, bad faith misconduct in persistently neglecting its discovery obligations and ignoring this Court's Orders. Additionally, Plaintiff has been severely prejudiced by this conduct, as it faces an upcoming trial without the aid of the deposition testimony of Defendant's corporate representatives that is so sorely needed, given the nature of the case at hand. Further, no sanction short of a default judgment would be appropriate here. Accordingly, it is hereby

ORDERED and ADJUDGED that United States Magistrate Judge Simonton's Report and Recommendation of September 11, 2008 (D.E. 82) is RATIFIED, AFFIRMED and ADOPTED and Plaintiff's Motion for Sanctions (D.E. 74) is GRANTED. Defendant's Answer is STRICKEN and Defendant's Counterclaim is DISMISSED. The Clerk of the Court is DIRECTED to enter DEFAULT against the above-named Defendant. It is further

ORDERED AND ADJUDGED that Plaintiff SHALL file a Motion for Default Final Judgment, duly supported by affidavits and other documentation and a proposed final order, by October 7, 2008.

DONE AND ORDERED in Chambers at Miami, Florida, this 30th day of September,  
2008.



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URSULA UNGARO  
UNITED STATES DISTRICT JUDGE

copies provided:  
U.S. Magistrate Judge Simonton  
Counsel of Record