

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MARIA RICO,

Plaintiff,

vs.

JBS USA, LLC,

Defendant.

**8:13CV58**

**MEMORANDUM AND ORDER**

Before the court is the Findings and Recommendation (“F&R”) of United States Magistrate Judge Thomas D. Thalken, [Filing No. 25](#). No objection has been filed to the F&R. Pursuant to NECivR [41.2](#), the court has conducted a de novo review of the record and adopts the F&R in its entirety.

Plaintiff filed this lawsuit against the defendant in the District Court of Hall County, Nebraska. Defendant removed the action to federal court. See [Filing No. 1-1](#). The court entered an initial progression order, Filing No. 9, and gave the parties until May 17, 2013, to exchange mandatory initial discovery. On July 23, 2013, defendant served plaintiff with interrogatories and requests for production of documents. On September 4, 2013, counsel for the defendant wrote a letter to plaintiff’s counsel asking for the discovery. [Filing No. 13-3](#). Counsel also talked with the plaintiff’s counsel by phone concerning the discovery. On September 25, 2013, defendant filed a motion to compel the discovery, and then plaintiff’s attorney filed a motion to withdraw. Plaintiff did not respond to the motion to withdraw, but counsel for plaintiff represented that his client instructed him to “drop the case.” [Filing No. 14](#). The court granted the motion to withdraw, and the plaintiff then proceeded pro se. The court thereafter granted

defendant's motion to compel and show cause by February 21, 2014, why defendant should not be awarded reasonable costs and attorney fees incurred in bringing the motion to compel. The court further warned that failure to comply might result in monetary sanctions and dismissal of the case. The plaintiff did not respond.

The magistrate judge determined that under the circumstances this case should be dismissed. This court agrees. See [Hunt v. City of Minneapolis, 203 F.3d 524, 527-28 \(8th Cir. 2000\)](#) (no error in dismissing action where plaintiff "engaged in a persistent pattern of intentional delay by willfully disregarding court orders and violating the Federal Rules.").

The magistrate judge further recommended that sanctions and expenses not be imposed for failure to comply with discovery, unless plaintiff chooses to continue this lawsuit or to file another lawsuit against this defendant. See [Fed. R. Civ. P. 37](#) and [NECivR 41.2](#). The court finds this recommendation is both fair and reasonable in view of the circumstances.

THEREFORE, IT IS HEREBY ORDERED:

1. The F&R of the magistrate judge, [Filing No. 25](#), is adopted in its entirety; and the defendant's Motion for Sanctions and Expenses, [Filing No. 23](#), is granted in part and denied in part as set forth in the F&R.
2. The plaintiff's complaint is dismissed, without prejudice, pursuant to [Fed. R. Civ. P. 37](#) and [NECivR 41.2](#).
3. The defendant's motion is denied in all other respects subject to the condition the plaintiff must pay the attorney fees and costs reasonably incurred by the defendant

related to discovery before the plaintiff is allowed to continue this lawsuit or pursue a new lawsuit against the defendant.

Dated this 28th day of April, 2014.

BY THE COURT:

s/ Joseph F. Bataillon  
United States District Judge

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