

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**TEAM LOGISTICS, INC.
and PAUL TITUS,**

Plaintiffs,

v.

Case No. 04-2061-JWL

**ORDERPRO LOGISTICS, INC.,
JEFFREY SMUDA and
RICHARD WINDORSKI,**

Defendants.

MEMORANDUM AND ORDER

Plaintiffs filed this suit against OderPro Logistics, Inc, Jeffrey Smuda and Richard Windorski alleging several claims arising out of the acquisition of Great Plains Transportation, Inc. This matter is presently before the court on plaintiff's motion for default judgment and other sanctions against defendant Windorski (Doc. # 70), a motion that the court referred to Magistrate Judge David Waxse for a report and recommendation. On May 20, 2005, Judge Waxse issued his Report and Recommendation (Doc. # 100), recommending that the court grant in part and deny in part plaintiff's motion. Specifically, Judge Waxse recommended that the court deny plaintiffs' request that judgement by default be entered against defendant Windorski and recommended that plaintiffs' request for sanctions be granted, ordering defendant Windorski to pay plaintiffs' reasonable expenses, including attorney's fees, upon consideration of an affidavit in support, caused by defendant Windorski's

failure to appear at his deposition scheduled for March 28, 2005. Objections to Judge Waxse's report and recommendation were due before June 6, 2005, and neither party filed an objection with the court. Therefore, the court adopts in its entirety the Report and Recommendation of Judge Waxse.

IT IS THEREFORE ORDERED BY THE COURT that the Report and Recommendation (Doc. # 100) is adopted in its entirety. Plaintiffs' motion for default judgment and other sanctions against defendant Windorski (Doc. # 70) is granted in part and denied in part. Specifically, plaintiffs' motion for default judgment against defendant Windorski is denied and defendant Windorski is ordered to pay the reasonable expenses caused by his failure to appear at his scheduled deposition.

IT IS FURTHER ORDERED that plaintiffs shall have until June 27, 2005 to file an affidavit itemizing reasonable expenses, including attorney's fees, that plaintiffs incurred due to defendant Windorski's failure to attend his deposition scheduled for March 28, 2005.

IT IS SO ORDERED this 16th day of June, 2005.

s/ John W. Lungstrum
John W. Lungstrum
United States District Judge