

Case No. 1:14-CV-02526
Gwin, J.

whether less drastic sanctions were imposed or considered before dismissal was ordered.^{4/}

Plaintiff Rodriguez has failed to comply with the Court's ordered deposition on August 3, 2015. He failed to make himself available for any alternative dates. He offers no independent assessment of his physical health, the stated reason for his failure to appear. Plaintiff Rodriguez offers to respond to a written deposition instead. However, a written deposition is not equivalent to an oral deposition, especially given the nature of Rodriguez's claims.

Nevertheless, dismissing the case with prejudice is a drastic remedy at this stage. The Court **DENIES** the motion to dismiss. But in light of Plaintiff's failure to cooperate in discovery, the Court hereby **ORDERS** that Rodriguez will not be allowed to offer his own testimony in affidavits or by trial testimony until he has submitted to a deposition under oral examination by Defendant. The Court **GRANTS** Defendant's request that Plaintiff pay \$87.60 in fees associated with the attempted deposition.

IT IS SO ORDERED.

Dated: August 24, 2015

s/ James S. Gwin

JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

^{4/} *Id.*