

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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| NIGEL FREDRICKS, | : | |
| | : | |
| Plaintiff, | : | 21-CV-5669 (JGK) (OTW) |
| | : | |
| -against- | : | <u>ORDER</u> |
| | : | |
| CORRECTION OFFICER SMITH, | : | |
| | : | |
| Defendant. | : | |
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ONA T. WANG, United States Magistrate Judge:

The Court has reviewed ECF 49.

Defendant maintains that Plaintiff did not appear for his deposition scheduled November 17, 2022. Defendant further represents that they communicated multiple times with Plaintiff’s facility, who informed Defendant that although Plaintiff was advised of his legal proceedings and that he would need to be present for a video conference, “Plaintiff was refusing to come out of his cell.” (See ECF 49 at 2). As a result, Defendant canceled the scheduled Plaintiff’s deposition. Defendant now asks that Court enter an order or recommendation of dismissal, or in the alternative, require Plaintiff to be present at a rescheduled deposition and warn him that non-appearance may result in a dismissal of the case.

By **December 2, 2022**, Plaintiff shall file a letter with the Court explaining his reasons for not appearing at the November 17 deposition.

Defendant's request for a recommendation or order of dismissal is **DENIED** at this time without prejudice. Plaintiff is warned that failure to attend his rescheduled deposition may result in a recommendation of dismissal for failure to prosecute.

The Court has also reviewed ECF 39. The Court is unable to read Plaintiff's handwriting. Plaintiff is directed to resubmit this letter in legible, readable form.

The fact discovery deadline is extended to December 23, 2022.

The Clerk of Court is respectfully directed to close ECF 40.

SO ORDERED.

Dated: November 18, 2022
New York, New York

s/ Ona T. Wang

Ona T. Wang
United States Magistrate Judge