

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

AROR ARK O'DIAH,

Plaintiff,

DECISION AND ORDER

10-CV-6592L

v.

C.O. NETH, Correctional Officer
Wyoming Correctional Facility, et al.,

Defendants.

Defendants moved to dismiss the complaint (Dkt. #69), and the Court issued a scheduling order (Dkt. #72) for plaintiff to respond. Plaintiff did respond (Dkt. #73), opposing the defendants' motion and cross-moving for summary judgment. Both motions are now pending before the Court for decision.

Although the Court did issue a scheduling order to defendants (Dkt. #74) relating to plaintiff's cross-motion, that was not necessary since the cross-motion was in essence in opposition and response to the defendants' original motion to dismiss.

Therefore, plaintiff's present motion (Dkt. #75) for summary judgment based on defendants' failure to respond is not appropriate and is in all respects denied.

CONCLUSION

Plaintiff's motion for summary judgment (Dkt. #75), based on defendants' failure to respond is in all respects denied.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 17, 2011.