

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC-SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC#:  
DATE FILED: 2/11/20

MARCELINO CASTRO,

Plaintiff,

v.

CITY OF NEW YORK; JANET SMITH;  
LEISHA ORTIZ; OCTAVIAN DUGGINS &  
TRISHANN MOWAT,

Defendants.

No. 16-CV-8147 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

On October 3, 2019, Defendants filed a motion for summary judgment. Dkt. 81. Pursuant to the Court's Individual Rules in *Pro Se* Cases, Plaintiff's response to Defendants' motion was due by October 24, 2019. On November 15, 2019, the Court issued an Order directing Plaintiff to either file a response to Defendants' motion for summary judgment or a letter indicating that he does not intend to file a response by December 6, 2019. Dkt. 87. The Court's November 15, 2019 Order stated that if Plaintiff did not respond to the Order, either by responding to the motion for summary judgment or by submitting a letter indicating that he did not intend to do so, the Court may dismiss the action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *Id.* On December 12, 2019, the Court extended Plaintiff's deadline to file a response to December 30, 2019, and again provided that failure to do so could result in dismissal pursuant to Rule 41(b). Dkt. 88. On January 2, 2020, the Court again extended Plaintiff's deadline to file a response to January 31, 2020. Dkt. 89. Unlike the Court's November 15, 2019 and December 12, 2019 Orders, which stated that failure to respond "may" result in dismissal for failure to prosecute under Rule 41(b), the January 31, 2020 Order stated that "**the Court will dismiss this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b)**" if Plaintiff failed to respond. *Id.*

The Court has still not received a response to Defendants' motion for summary judgment or a letter indicating that Plaintiff does not intend to file a response. However, the Court notes that the address listed for Plaintiff on the docket is:

Marcelino Castro  
Apt. 1A  
644 Riverside Drive  
New York, NY 11370


Accordingly, the Clerk of Court mailed the Court's November 15, 2019, December 12, 2019, and January 31, 2020 Orders to that address. 11370 is the zip code for the Rikers Island Facility at the Anna M. Kross Center, where Plaintiff was housed at the outset of this action. However, the change of address letter that Plaintiff filed on January 5, 2018 listed Plaintiff's zip code as 10031. *See* Dkt. 34. It is therefore possible that Plaintiff never received the Court's prior orders.

Accordingly, Plaintiff is granted an extension until March 11, 2020, to file a response to Defendants' motion for summary judgment or a letter indicating that he does not intend to respond. If Plaintiff informs the Court that he intends to pursue this action but chooses not to oppose Defendants' motion, then the Court will deem the motion fully briefed and take it under submission. *See Jackson v. Fed. Exp.*, 766 F.3d 189, 194 (2d Cir. 2014). If, however, Plaintiff does not respond to this Order, either by responding to the motion for summary judgment or by submitting a letter indicating that he does not intend to do so, then **the Court will dismiss this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).**

The Clerk of Court is respectfully directed to update the docket with Plaintiff's proper zip code, 10031, and mail a copy of this Order to Plaintiff.

SO ORDERED.

Dated: February 11, 2020  
New York, New York

  
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Ronnie Abrams  
United States District Judge