

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KENNETH K. HASLINGER,

Plaintiff,

-against-

ARAMARK CORRECTIONAL SERVICES, *et al.*,

Defendants.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 10/4/2021

18-CV-5413 (NSR)

ORDER TO SHOW CAUSE

NELSON S. ROMÁN, United States District Judge

Plaintiff Kenneth Haslinger (“Plaintiff”) commenced this action on June 14, 2018 under the 42 U.S.C. § 1983 (“Section 1983”) asserting claims against Aramark Correctional Services, Manual Mendoza, Darnell Flax, Westchester County, Law Librarian K. Hewitt, and Westchester DOC Commissioner Spano in connection with, among other things, food related issues he experienced as a pre-trial detainee at Westchester County Jail. (See Complaint (ECF No. 2).) On September 9, 2020, this Court granted the motion to dismiss of Aramark Correctional Services, Manual Mendoza, and Darnell Flax. (ECF No. 44.) Later, Defendants Westchester County, Law Librarian K. Hewitt, and Westchester County DOC Commissioner Spano attempted to serve their motion to dismiss moving papers on Plaintiff and the it was returned in the mail as undeliverable. (ECF No. 46.) The Court ordered those Defendants to engage in a good faith effort to identify Plaintiff’s new address by, among other things, consulting databases identifying the whereabouts of inmates in correctional facilities. (ECF No. 47.) After engaging in such efforts, Defendants confirmed that Plaintiff does in fact live at the address listed on ECF and once again mailed their motion to dismiss papers to him. (ECF No. 52.) Despite repeated mailings to his address, Plaintiff has taken no

action in this matter since advising the Court of his change in address on September 11, 2019. (ECF No. 29).

Under Rule 41(b) of the Federal Rules of Civil Procedure, “If the plaintiff fails to prosecute . . . a defendant may move to dismiss the action or any claim against it.” Fed. R. Civ. P. 41(b). “Dismissal for want of prosecution is a matter committed to the discretion of the trial judge.” *Peart v. City of New York*, 992 F.2d 458, 461 (2d Cir. 1993) (internal quotation marks omitted). This discretion, however, “is conditioned by certain minimal requirements.” *Id.* (internal quotation marks omitted). In particular, the Court should consider:

(1) the duration of plaintiff's failures; (2) whether plaintiff had received notice that further delays would result in dismissal; (3) whether defendant is likely to be prejudiced by further delay; (4) whether the district judge has carefully balanced the need to alleviate court calendar congestion and a party's right to due process; and (5) whether the court has assessed the efficacy of lesser sanctions.

Id. (internal quotation marks omitted).

Here, Plaintiff has not taken any steps to advance this action for over two years. Plaintiff has also failed to respond to dispositive motions filed by Defendants. Moreover, Plaintiff's failure to prosecute this action has impeded the Court's efforts to “avoid calendar congestion and ensure an orderly and expeditious disposition of cases.” *Cortez v. Suffolk Cty. Corr. Facility*, No. 15-CV-1957 (JFB) (AKT), 2016 WL 6302088, at *2 (E.D.N.Y. Oct. 25, 2016).

Accordingly, it is hereby ORDERED that Plaintiff show cause in writing on or before November 5, 2021, why this action should not be dismissed without prejudice for want of prosecution pursuant to Fed R. Civ. P. 41(b). Failure to comply with this Court's present order will result in dismissal of this case for want of prosecution. Separately, in light of this Order to Show Cause, the Court denies the motion at ECF No. 48 as moot. To the extent that Plaintiff responds to the Order to Show Cause, Defendants Westchester County, Law Librarian K. Hewitt, and Westchester County DOC Commissioner Spano will be granted leave to refile their motion to dismiss and the Court will

establish a briefing schedule for Plaintiff to respond. The Clerk of the Court is directed to terminate the Motion at ECF No. 48. The Clerk of the Court is further directed to mail a copy of this Order to Plaintiff at his address on the docket and show proof of service on the docket. The Clerk of the Court is also directed to mail a copy of this Order to the following address and show proof of service on the docket:

Kenneth K. Haslinger
Plaintiff, Pro Se
c/o Jessica Cooper
181 Forest Avenue
Yonkers, NY 10705

Dated: October 4, 2021
White Plains, New York

SO ORDERED:



NELSON S. ROMÁN
United States District Judge