

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

KERWIN M. WARD,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO. 1:10cv0429 WL
)	
JOSHUA FRANCISCY, <i>et al.</i> ,)	
)	
Defendants.)	

OPINION AND ORDER

This matter is before the Court on the motion for default judgment filed by Plaintiff Kerwin Ward, a *pro se* prisoner. The original complaint named Fort Wayne Police Officer Joshua Franciscy as the sole defendant. The Court screened the original complaint on January 26, 2011, and ordered the Marshals Service to serve Defendant Franciscy. Service was executed on Defendant Franciscy on February 8, 2011. Defendant Franciscy did not enter an appearance or file a response to the original complaint.

The Plaintiff filed an amended complaint, naming Officer Franciscy and Fort Wayne Police Officer Michael Bell as defendants. An amended Complaint supercedes and replaces the original complaint. *See Flannery v. Recording Indus. Assoc. Of Am.*, 354, F.3d 632, 638 n.1 (7th Cir. 2004). The Court screened the amended complaint on April 20, 2011, allowed the Plaintiff to proceed against both defendants, ordered the Marshals Service to serve both defendants with process, and ordered the defendants to respond to the complaint in accordance with 42 U.S.C. § 1997e(g)(2). According to the docket, the amended complaint has not yet been served on either defendant.

The plaintiff seeks a default judgment against Defendant Franciscy, asserting that he has not appeared and defended against the original complaint. The Plaintiff's argument would have merit if the original complaint had not already been superceded and replaced by the amended complaint. But Ward filed an amended complaint in this case which has superseded and replaced his original complaint. The Court screened the amended complaint, on April 20, 2011, ordered it served on both defendants, and ordered both defendants to respond to the amended complaint. After the screening order was entered, Defendant Franciscy was no longer under any obligation to respond to the original complaint. Accordingly, the Plaintiff's motion for default judgment filed on May 2, 2011, is without merit because Defendant Franciscy has not yet been served with the amended complaint, and is under no obligation to respond to the amended complaint until it has been served on him.

For the foregoing reasons, the Court DENIES the Plaintiff's motion for Default Judgment against Defendant Franciscy (DE 17).

SO ORDERED.

DATED: May 4, 2011

s/William C. Lee
William C. Lee, Judge
United States District Court