

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 JOSEPH PEREZ,

12 Plaintiff,

13 vs.

14 R. PADILLA,

15 Defendant.
16
17

1:14-cv-01730-GSA (PC)

ORDER DENYING MOTION FOR
IMMEDIATE INITIATION OF
SERVICE
(ECF No. 17.)

18 **I. BACKGROUND**

19 Joseph Perez (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis
20 with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
21 commencing this action on November 6, 2014. (ECF No. 1.) On November 6, 2014, Plaintiff
22 consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c), and no
23 other parties have made an appearance. (ECF No. 3.) Therefore, pursuant to Appendix A(k)(4)
24 of the Local Rules of the Eastern District of California, the undersigned shall conduct any and
25 all proceedings in the case until such time as reassignment to a District Judge is required.
26 Local Rule Appendix A(k)(3).

27 The court screened Plaintiff’s Complaint and issued an order on February 5, 2015,
28 dismissing the Complaint for failure to state a claim, with leave to amend. (ECF No. 9.) On

1 April 15, 2015, Plaintiff filed the First Amended Complaint, which awaits the court's requisite
2 screening. (ECF No. 12.)

3 On September 18, 2015, Plaintiff filed a motion for the court to initiate service of
4 process upon defendant R. Padilla. (ECF No. 17.)

5 Plaintiff's motion for initiation of service is now before the court.

6 **II. SCREENING AND SERVICE OF PROCESS**

7 The court is required by law to screen complaints brought by prisoners seeking relief
8 against a governmental entity or officer or employee of a governmental entity, such as the
9 instant action brought pursuant to 42 U.S.C. § 1983. 28 U.S.C. § 1915A(a). The court must
10 dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
11 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
12 monetary relief from a defendant who is immune from such relief. 28 U.S.C.
13 § 1915A(b)(1),(2).

14 With respect to service, the court will, *sua sponte*, direct the United States Marshal to
15 serve the complaint only after the court has screened the complaint and determined that it
16 contains cognizable claims for relief against the named defendant.

17 Plaintiff requests the court to initiate service of process upon defendant R. Padilla in
18 this action. Plaintiff's First Amended Complaint awaits the court's screening. Therefore, it is
19 not yet time for service in this action.

20 **III. CONCLUSION**

21 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motion for
22 immediate initiation of service of process, filed on September 18, 2015, is DENIED.

23 IT IS SO ORDERED.

24 Dated: October 5, 2015

25 /s/ Gary S. Austin
26 UNITED STATES MAGISTRATE JUDGE