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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 ISAIAH J. PETILLO,

12 Plaintiff,

13 vs.

14 GALLIGER, et al.,

15 Defendants.
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1:18-cv-00217-LJO-GSA-PC

**ORDER DENYING PLAINTIFF'S
MOTION FOR COURT TO DIRECT
DEFENDANTS TO FILE ANSWER**

(ECF No. 23.)

17 **I. BACKGROUND**

18 Isaiah J. Petillo ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis*
19 with this civil rights action pursuant to 42 U.S.C. § 1983. On February 12, 2018, Plaintiff filed
20 the Complaint commencing this action. (ECF No. 1.) The court screened the Complaint and
21 issued an order on October 31, 2018, dismissing the Complaint for violation of Rule 18, with
22 leave to amend. (ECF No. 16.) On November 19, 2018, Plaintiff filed the First Amended
23 Complaint. (ECF No. 17.)

24 On April 17, 2019, Plaintiff filed a motion for the court to direct defendants to file an
25 answer to the First Amended Complaint. (ECF No. 23.)

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

27 It is not time for defendants to answer the First Amended Complaint in this case. First,
28 the court is required by law to screen complaints brought by prisoners seeking relief against a

1 governmental entity or officer or employee of a governmental entity, such as the instant action
2 brought pursuant to 42 U.S.C. § 1983. 28 U.S.C. § 1915A(a). The court must dismiss a
3 complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or
4 malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary
5 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).
6 Plaintiff’s First Amended Complaint awaits the court’s requisite screening.

7 Second, the defendants have not been served with the First Amended Complaint. With
8 respect to service, the court will, *sua sponte*, direct the U.S. Marshal to serve the complaint
9 only after the court has screened the complaint and determined that it contains cognizable
10 claims for relief against the named defendants. After defendants have been served with a
11 summons and complaint, it is defendants’ own obligation to respond to the complaint pursuant
12 to federal rules, without direction from the court.

13 Based on these facts, Plaintiff’s motion for the court to direct defendants to file an
14 answer to the First Amended Complaint shall be denied.

15 **III. CONCLUSION**

16 In light of the foregoing, it is **HEREBY ORDERED** that Plaintiff’s motion for the
17 court to direct defendants to file an answer to the First Amended Complaint, filed on April 17,
18 2019, is DENIED.

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20 IT IS SO ORDERED.

21 Dated: April 22, 2019

22 /s/ Gary S. Austin
23 UNITED STATES MAGISTRATE JUDGE
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