

1 The District Court conducted a pre-answer screening of the FAC. *See* Doc. No. 16.
2 As explained in its Order dated September 22, 2021, the District Court determined that
3 “plaintiff’s Eighth Amendment allegations against [d]efendants [were] sufficient to survive
4 the ‘low threshold’ set for *sua sponte* screening . . .” *Id.* at 4. The District Court also
5 granted plaintiff’s motion to proceed *in forma pauperis*. *Id.* at 3. Accordingly, the District
6 Court directed that a summons be issued and that plaintiff, with the assistance of the United
7 States Marshal, take steps to serve defendants with the FAC. *Id.* at 4-5. Plaintiff’s FAC
8 was docketed as of August 12, 2021. *See* Doc. No. 10. The summons was issued on
9 September 22, 2021. Doc. No. 17. On November 19, 2021, all defendants named in the
10 FAC waived service through their counsel, Deputy Attorney General Agustin Lopez. *See*
11 Doc. Nos. 25-28; *see also* Doc. No. 37 at 2 (acknowledging waiver).

12 On October 26, 2021, the undersigned Magistrate Judge granted plaintiff’s Motion
13 to Amend, allowing plaintiff to add state-law tort claims to the then-operative FAC. Doc.
14 No. 21. The Court ordered plaintiff to file the SAC by December 10, 2021 and specifically
15 instructed plaintiff that the SAC must not add any new defendants or new federal claims.
16 *See id.* Plaintiff filed the SAC on November 29, 2021, which, in compliance with the
17 Court’s order, named the same defendants as the FAC and re-pled the same federal claims.
18 *Compare* Doc. No. 10 *with* Doc. No. 29.

19 On April 21, 2022, plaintiff moved the Court to set a pretrial schedule. Doc. No. 34.
20 On April 27, 2022, the Court denied plaintiff’s motion as premature.¹ *See* Doc. No. 35. The
21 Court explained that it “typically does not set a pretrial schedule” or initiate discovery
22 “until the pleadings are settled,” and that “for reasons unknown to the Court, despite
23 waiving service defendants have neither appeared nor responded to the SAC.” *See id.* at 2.
24 The Court directed that a copy of the Order be sent directly to Mr. Lopez, who signed the
25 waivers of service on behalf of defendants. *Id.* at 4.

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28 ¹ Plaintiff also moved for production of certain documents from defendants, which the
Court denied as both premature and procedurally improper. *See* Doc. Nos. 34, 35.

1 On May 23, 2022, the District Court issued an Order to Show Cause (“OSC”). Doc.
2 No. 36. The District Court noted that defendants had not responded to the SAC after
3 waiving service and ordered defendants to show cause why a default judgment should not
4 be entered against them. *See id.* Thirty days later, on June 22, 2022, defendants responded
5 to the OSC. Doc. No. 38. Defendants stated that the SAC had not been screened by the
6 Court and that they were “under the impression that they were not obligated to respond to
7 the SAC until it was screened.” *Id.* at 1-2. On the same day, defendants filed the Request
8 now before the Court. Doc. No. 37.

9 DISCUSSION

10 Defendants assert that Section 1915A commands the Court to screen the SAC, and
11 request that the Court do so before any response to the SAC is required. Doc. No. 37 at 3,
12 5. According to defendants, screening is necessary here because the SAC is “materially
13 different” from the already-screened FAC. *Id.* at 4. Defendants identify such “material[]
14 differen[ces]” as “different factual details” which “change the nature and severity” of
15 plaintiff’s damages, the repleading of an already-dismissed Fourteenth Amendment claim,
16 and newly alleged state law claims. *Id.*

17 Section 1915A provides that “[t]he court shall review, before docketing, if feasible
18 or, in any event, as soon as practicable after docketing, a complaint in a civil action in
19 which a prisoner seeks redress from a governmental entity or officer or employee of a
20 governmental entity” and dismiss the complaint or any portion thereof that fails to state a
21 claim. 28 U.S.C. § 1915A(a) and (b). “Based on the ‘plain meaning’ of the terms ‘before
22 docketing’ or ‘as soon as practicable after docketing,’ Section 1915A “‘mandates early
23 screening of prisoner complaints’” before an answer is filed. *Newton v. Eatmon*, No.
24 21cv15-LAB(KSC), 2021 WL 5494812, at *1 (S.D. Cal. Nov. 23, 2021) (quoting *Olausen*
25 *v. Murguria*, No. 3:13-cv-00388-MMD-VPC, 2014 WL 6065622, at *3 (D. Nev. Nov. 12,
26 2014). Complaints that do not survive this early screening will not be served upon
27 defendants, relieving them of the need to respond. In this District and many others,
28 defendants “are not required to respond to the majority of the civil rights cases filed by

1 prisoners . . . [because] [m]ost are dismissed after screening and before service and
2 response is required.” *Harris v. Ford*, 32 F.Supp.2d 1109, 1110-11 (D. Alaska 1999).

3 Where the Court dismisses a prisoner-plaintiff’s complaint in its entirety but with
4 leave to amend before ordering U.S. Marshal service on any defendant, it again screens
5 any subsequent amended complaint pursuant to Section 1915A until a determination is
6 made that the pleading contains a cognizable claim “sufficient to warrant ordering
7 [defendants] to file an answer.” *See Wilhelm v. Rotman*, 680 F.3d 1113, 1116 (9th Cir.
8 2012). The Court is also authorized pursuant to 28 U.S.C. § 1915(e)(2) and 42 U.S.C.A.
9 § 1997e(c) to dismiss a complaint “at any time” if it finds the allegations are frivolous or
10 fail to state a claim, or that defendants are immune from suit. But, once the plaintiff has
11 stated a cognizable claim, Section 1915A “does not *require* a court, either explicitly or
12 implicitly, to screen every time a plaintiff seeks to amend the complaint.” *Olausen*, 2014
13 WL 6065622, at *3 (emphasis added); *see also id.* at *2 (finding that “[j]ust because a court
14 has authority to dismiss the case at any time does not mean it is compelled to re-screen
15 every proposed amended complaint filed after the initial pre-answer screening”).
16 Defendants’ contrary position has been repeatedly rejected by courts in this District and
17 throughout the Ninth Circuit as unsupported by the text of the statute and contrary to its
18 purpose.²

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22 ² *See, e.g., id.* at *4 (finding that “[t]he Court is not compelled under 28 U.S.C.
23 § 1915A(a) to re-screen” an amended complaint); *Scott v. Cox*, No. 2:17-cv-00702-JAD-
24 BNW, 2020 WL 9056041, at *1 (D. Nev. Sept. 29, 2020) (stating that Section 1915A’s
25 “compulsory judicial screening requirement does not extend to every proposed amended
26 complaint”); *Simmons v. CDCR*, 49 F.Supp.3d 700, 701 (E.D. Cal. 2014) (denying request
27 for screening and noting that “the court performed its duty under § 1915A when it
28 screened” plaintiff’s previous complaint); *Rincon v. Cate*, No. 09cv2698–JLS (NLS), 2011
WL 1642615, at *2 (S.D. Cal. Apr. 29, 2011) (noting that once a complaint survives initial
screening, “if an amended complaint [is] filed . . . counsel for [d]efendants [is] required to
defend the case by filing a motion under Rule 12(b)(6) or face a default judgment”); *see*
also Festa v. Sandoval, No. 2:17-cv-00850-APG-NJK, 2020 WL 8087918, at *1 (D. Nev.

1 As has been explained elsewhere, “[t]he Supreme Court has [] recognized that ‘the
2 PLRA mandated early judicial screening to reduce the burden of prisoner litigation on the
3 courts.’ [] Construing the PLRA ... to require court screening of every amended complaint
4 ... would increase, not reduce, the burden on federal courts.” *Hucker v. Daub*, No. 21-cv-
5 00577-JLS-AHG, 2021 WL 4375950, at *2 (S.D. Cal. Sept. 22, 2021) (quoting *Olausen*,
6 2014 WL 6065622, at *4). This is particularly true where the Court has already found some
7 of plaintiff’s claims viable. As the Court explained in *Newton*, ““even if the Court were to
8 ‘re-screen’ the [amended complaint] and dismiss it in part for some minor pleading
9 irregularity, there would be no reduction in the volume of inmate litigation or any decrease
10 in the burden on the Court,” since “plaintiff would still be able to proceed on” the claims
11 that survived initial screening and were re-pled in the amended complaint. *Newton*, 2021
12 WL 5494812, at *2. These considerations are manifest in this case. Whatever the
13 deficiencies may be in the pleading of plaintiff’s state-law tort claims or changes to the
14 “nature and severity” of his damages (*see* Doc. No. 37 at 4), the fact remains that plaintiff
15 has stated a cognizable Eighth Amendment claim to which defendants must respond. The
16 Court finds there is no efficiency to be gained from conducting another screening pursuant
17 to Section 1915A.

18 Implicit in defendants’ Request is that plaintiff’s claims would not survive a second
19 screening. If defendants believe – for reasons not detailed in their four-page filing – that
20 the SAC does not state a claim against them, they are not without recourse. Subject to the
21 District Court’s determination regarding defendants’ response to the OSC, defendants are
22 “free” to make a motion under Rule 12. *See Harris*, 32 F.Supp.2d at 1111 (observing that
23 defendants were “free” to file a dispositive motion once the court determined that plaintiff
24 had stated a cognizable claim). Indeed, they have been “free” to do so since the filing of
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27 Nov. 30, 2020) (finding “no need to *sua sponte* screen” a prisoner’s amended complaint
28 and construing the request for screening as an opposition to plaintiff’s motion to amend).

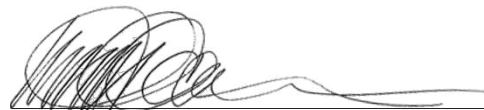
1 the SAC on December 8, 2021. *See id.* Because “the Court’s role is not to act as counsel
2 for the defense,” the Court declines defendants’ invitation to undertake the task of testing
3 plaintiff’s pleading on their behalf. “This is not the first time a Court of this District has
4 made this point clear.” *Rincon*, 2011 WL 1642615, at *1 (citing *Brooks v. Alameida*, No.
5 04-cv-2059-H-CAB, Doc. No. 30 at 8–13 (S.D. Cal. Sept. 7, 2005)).

6 **ORDER**

7 For the above reasons, the Court declines to screen the SAC pursuant to Section
8 1915A. Defendants’ Request for Screening of the Second Amended Complaint [Doc. No.
9 37] is therefore **DENIED**.

10 **IT IS SO ORDERED.**

11 Dated: June 30, 2022



Hon. Karen S. Crawford
United States Magistrate Judge