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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

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9 ROBERTO A. SOTELO,

CASE NO. 1:08-cv-01342-LJO-SKO

10 Plaintiff,

ORDER VACATING HEARING DATE,  
REQUIRING DEFENDANTS TO FILE A  
REPLY, AND DENYING MOTION FOR  
TELEPHONIC APPEARANCE AS MOOT

11 v.

12 T. BIRRING, et al.,

(Docs. 89 and 90)

13 Defendants.  
14 \_\_\_\_\_/

15 Plaintiff Roberto A. Sotelo, a state prisoner proceeding in forma pauperis, filed this civil  
16 rights action pursuant to 42 U.S.C. § 1983 on September 10, 2008. This action is currently  
17 proceeding on Plaintiff's second amended complaint, filed on March 22, 2012, against Defendants  
18 Birring, Das, Diep, Coleman, and Green for acting with deliberate indifference to Plaintiff's medical  
19 needs, in violation of the Eighth Amendment of the United States Constitution.

20 On April 20, 2012, Defendants Birring, Das, Diep, and Coleman filed a motion to dismiss  
21 for failure to comply with the statute of limitation, which is set for a hearing on May 23, 2012, at  
22 9:30 a.m. before the undersigned.<sup>1</sup> Fed. R. Civ. P. 12(b)(6). Plaintiff filed an opposition on May 9,  
23 2012.

24 Having considered the filings to date, the Court finds that a hearing on the motion to dismiss  
25 is unnecessary. Defendants are required to file a reply to Plaintiff's opposition, and the motion shall  
26 be submitted upon the record following receipt of the reply. Local Rule 230(g).

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28 <sup>1</sup> Service of process has been initiated on Defendant Green, but he has not yet made an appearance in the  
action. (Doc. 87.)

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Accordingly, it is HEREBY ORDERED that:

1. The hearing set for May 23, 2012, at 9:30 a.m. is vacated;
2. Defendants are required to file a reply;
3. Following the filing of the reply, the motion shall be submitted upon the record; and
4. Defendants' motion to appear for the hearing by telephone is denied as moot.

IT IS SO ORDERED.

**Dated: May 11, 2012**

**/s/ Sheila K. Oberto**  
**UNITED STATES MAGISTRATE JUDGE**