1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF CALIFORNIA 10 11 RALPH GARBARINI, Case No.: 1:14-cv-01058-AWI-SAB (PC) 12 Plaintiff, ORDER SETTING TELEPHONIC HEARING ON DEFENDANTS' MOTION TO DISMISS, FOR 13 v. MAY 6, 2015 AT 10:00 A.M. BEFORE THE **UNDERSIGNED IN COURTROOM 9** 14 WAYNE ULIT, et al., [ECF No. 14] 15 Defendants. 16 Plaintiff Ralph Garbarini is appearing pro se and in forma pauperis in this civil rights action 17 18 pursuant to 42 U.S.C. § 1983. 19 On February 10, 2015, Defendants filed a motion to dismiss for failure to state a cognizable 20 claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff filed an opposition on 21 April 13, 2015, and Defendants filed a reply on April 20, 2015. Pursuant to Local Rule 230(1), the 22 motion is deemed submitted for review. 23 Because the screening standard does not differ from the standard governing Rule 12(b)(6) 24 motions, Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012), the Court generally views motions to dismiss for failure to state a claim with disfavor. Unless a motion sets forth new or different grounds 25

(E.D.Cal. Mar. 15, 2011) (citing United States v. Rezzonico, 32 F.Supp.2d 1112, 1116 (D.Ariz.1998))

not previously considered by the Court, it is disinclined to rethink what it has already thought.

Sequoia Forestkeeper v. U.S. Forest Service, No. CV F 09-392 LJO JLT, 2011 WL 902120, at *6

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(quotation marks omitted). It is not apparent from a review of Defendants' motion to dismiss that this case presents an exception, as the Court screened Plaintiff's complaint pursuant to 28 U.S.C. § 1915A, and found it stated a cognizable claim against Defendants Doctors Wayne Ulit, David Gail Smith, Jong Yeoung Moon, and Jeffrey Jeng-Tao Wang for deliberate indifference to a serious medical need in violation of the Eighth Amendment. (ECF No. 7.) Accordingly, the Court shall set a telephonic hearing on May 6, 2015 at 10:00 a.m., to address the Defendants' motion in light of the fact that the Court previously screened the complaint and found cognizable claims.

Based on the foregoing, it is HEREBY ORDERED that:

- 1. This matter is set for telephonic oral hearing on May 6, 2015, to address Defendants' motion to dismiss, filed February 10, 2015;
- 2. Counsel for Defendants is directed to arrange for telephone contact with Plaintiff, who is presently incarcerated at California State Prison, in Corcoran; and
- 3. Counsel for Defendants shall also contact Courtroom Deputy, Mamie Hernandez, at (559) 499-5672, prior to the hearing date, to receive instructions regarding the conference call.

IT IS SO ORDERED.

Dated: **April 24, 2015**

UNITED STATES MAGISTRATE JUDGE