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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

TED DARNELL DANIELS,

Plaintiff,

vs.

O. ALVARADO; M. HARRIS, A.  
ROBERTS; and W. MITCHELL,

Defendants.

CASE NO. 07cv1822 JM(POR)

ORDER ADOPTING REPORT AND  
RECOMMENDATION RE:  
GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS

On February 6, 2009 Magistrate Judge Porter entered a Report and Recommendation to Grant in Part and Deny in Part Defendants' Motion to Dismiss ("R & R"). Plaintiff filed Objections to the R & R. Defendants neither filed Objections nor a reply to Plaintiff's Objections.

The R & R denied Defendants motion to dismiss for failure to exhaust administrative remedies, denied the motion to dismiss the Eighth Amendment claim against Defendants Alvarado and Harris, and granted the motion to dismiss the Eighth Amendment claim against Defendant Mitchell. The R & R did not address any asserted claims against Defendant Roberts because Plaintiff has yet to effectuate service on this Defendant.


In his Objections, Plaintiff seeks an order to compel Defendants to disclose the identity and/or location of Defendant Roberts. As this Objection does not undermine or challenge the R & R in any manner, the court denies this Objection. To the extent Plaintiff desires to file any discovery related motion to discover the identity or location of Defendant Roberts, the court notes that all such motions

1 must be originally brought before the Magistrate assigned to the case, and not this court. See Local  
2 Rule 26.1(c).

3 In sum, the court adopts the R & R in its entirety and denies Plaintiff's Objections.

4 **IT IS SO ORDERED.**

5 DATED: March 9, 2009

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7 Hon. Jeffrey T. Miller  
United States District Judge

8 cc: All parties  
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