

1 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
2 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
3 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

4 Plaintiff identifies three claims in his complaint. As for claims 2 and 3, plaintiff states
5 claims upon which he may proceed under the Eighth Amendment against defendant Giddings.
6 Claim 1 is not a claim upon which plaintiff may proceed as, at most, the claim amounts to
7 negligence in violation of California law. Plaintiff may only proceed on a claim arising under
8 California law if he pleads compliance with California’s Government Claims Act which plaintiff
9 has not done. California v. Sup. Court of Kings County, 32 Cal.4th 1234, 1241-42 (2004).¹

10 Plaintiff identifies J. Clark Kelso, Federal Receiver, and M. Spearman, Warden at High
11 Desert State Prison as defendants, but fails to make any allegations against them. Accordingly,
12 the court will recommend that they be dismissed.

13 In accordance with the above, IT IS HEREBY ORDERED that:

14 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 3) is granted.

15 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
16 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
17 § 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the
18 California Department of Corrections and Rehabilitation filed concurrently herewith.

19 3. Service is appropriate for defendant Giddings relative to claims 2 and 3 in plaintiff’s
20 complaint.

21 4. The Clerk of the Court shall send plaintiff one USM-285 form, one summons, an
22 instruction sheet and a copy of the complaint.

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26 ¹ Plaintiff asserts with respect to claim 1 that he “filed a Government Claim Form with California
27 that was not answered.” This is not sufficient as a plaintiff must at least allege facts
28 demonstrating he is excused from complying with the Government Claims Act, not simply allege
that he made a single attempt to comply. California v. Sup. Court of Kings County, 32 Cal.4th at
1241-42.

1 5. Within thirty days from the date of this order, plaintiff shall complete the attached
2 Notice of Submission of Documents and submit the following documents to the court:

- 3 a. The completed Notice of Submission of Documents;
4 b. One completed summons;
5 c. One completed USM-285 form; and
6 d. Two copies of the complaint.

7 6. Plaintiff need not attempt service on defendant Giddings and need not request waiver
8 of service. Upon receipt of the above-described documents, the court will direct the United States
9 Marshal to serve defendant Giddings pursuant to Federal Rule of Civil Procedure 4 without
10 payment of costs.

11 IT IS HEREBY RECOMMENDED that Claim 1 and all defendants other than defendant
12 Giddings be dismissed.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after
15 being served with these findings and recommendations, plaintiff may file written objections with
16 the court. The document should be captioned “Objections to Magistrate Judge’s Findings and
17 Recommendations.” Plaintiff is advised that failure to file objections within the specified time
18 waives the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
19 1991).

20 Dated: October 18, 2017

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23 CAROLYN K. DELANEY
24 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TOM MARK FRANKS,
Plaintiff,
v.
J. CLARK KELSO, et al.,
Defendants.

No. 2:17-cv-1056 GEB CKD P

NOTICE OF SUBMISSION
OF DOCUMENTS

Plaintiff submits the following documents in compliance with the court's order filed

- _____:
- _____ completed summons form
- _____ completed USM-285 forms
- _____ copies of the _____
Complaint

DATED:

Plaintiff