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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

QUINCY MACK,

 Plaintiff,

 v.

K. BERTHOLF,

 Defendant.

No. 2:18-cv-0636 MCE CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). As plaintiff was informed in the court’s July 30, 2018 order, the court conducted the required screening and found that claim 1 in plaintiff’s complaint states a claim upon which relief could be granted arising under the Eighth Amendment against defendant. As for claim 2, which arises under California law, plaintiff was informed that he has not pled compliance with the California Tort Claims Act. Plaintiff was given the option of filing an amended complaint or proceeding on claim1. Plaintiff has elected to proceed on claim 1.

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

2 1. Service is appropriate for defendant Bertholf.

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

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

7 a. The completed Notice of Submission of Documents;

8 b. One completed summons;

9 c. One completed USM-285 form; and

10 d. Two copies of the complaint.

11 4. Plaintiff need not attempt service on defendant and need not request waiver of service.

12 Upon receipt of the above-described documents, the court will direct the United States Marshal to
13 serve defendant pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

14 IT IS HEREBY RECOMMENDED that claim 2 in plaintiff's complaint be dismissed.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen after
17 being served with these findings and recommendations, plaintiff may file written objections with
18 the court. The document should be captioned "Objections to Magistrate Judge's Findings and
19 Recommendations." Plaintiff is advised that failure to file objections within the specified time
20 waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir.
21 1991).

22 Dated: August 28, 2018



23 CAROLYN K. DELANEY
24 UNITED STATES MAGISTRATE JUDGE

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26 mack0636.1(s)

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

QUINCY MACK,

Plaintiff,

v.

K. BERTHOLF,

Defendant.

No. 2:18-cv-0636 MCE 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