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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERTO J. BLANDINO,	)	No. C 11-5119 JSW (PR)
Plaintiff,	)	<b>ORDER OF DISMISSAL</b>
v.	)	
TWO UNNAMED AGENTS,	)	
Defendants.	)	

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Plaintiff, a detainee of the United States Customs Enforcement (“ICE”), filed this complaint under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 392-97 (1971) (allowing a private right of action implied from the Constitution itself for allegations of constitutional violations made against federal employees or their agents), against two ICE agents. Plaintiff brought the same claims in a prior lawsuit, No. C 10-4529 JSW (PR). The complaint in that case failed to name any defendants, however. Plaintiff was given time to discover the defendants’ names and file an amended complaint naming the two defendants. Plaintiff filed an amended complaint, but it did not name the two individuals who allegedly violated his constitutional rights. Consequently, that case was dismissed without prejudice to filing a new lawsuit *in which Plaintiff provides the names of the defendants*. Plaintiff then filed this action, but he still does not name the defendants as he was ordered to do. Consequently, this action is DISMISSED without

1 prejudice to Plaintiff raising his *Bivens* claims in an amended complaint filed in his  
2 currently pending case (Case No. C 11-4807 JSW (PR), see discussion below).

3 The Court notes that Plaintiff presently has another pending case (Case No. C 11-  
4 4807 JSW (PR)). That case is based on the same alleged events as the *Bivens* claims  
5 raised herein and in Plaintiff's earlier-dismissed case (Case No. C 10-4529 JSW (PR)).  
6 The currently pending case, however, sets forth a claim under the Federal Torts Claim  
7 Act ("FTCA") against the United States of America. Plaintiff only needs one case based  
8 upon the same events, anything more is a waste of judicial resources. Consequently, if  
9 Plaintiff discovers the name of the agents who are defendants to his *Bivens* claims, he  
10 must present such claims in an amended complaint in his pending action (Case No. C 11-  
11 4807 JSW (PR)), not by filing a new complaint in a new case. The amended complaint  
12 must include the words "Court-Ordered First Amended Complaint" and the case number  
13 (Case No. C 11-4807 JSW (PR)) in the caption. The amended complaint supercedes the  
14 original complaint, and consequently Plaintiff may not incorporate matters from the  
15 original complaint by reference, but rather it must include all the claims he wishes to  
16 present. If Plaintiff wants to pursue both *Bivens* and FTCA claims, he must present both  
17 claims in his amended complaint because any claims not included in the amended  
18 complaint will be deemed dismissed and will not be considered.

19 IT IS SO ORDERED.

20 DATED: November 2, 2011

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23 JEFFREY S. WHITE  
24 United States District Judge  
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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 ROBERTO X. BLANDINO,  
6 Plaintiff,  
7

Case Number: CV11-05119 JSW

**CERTIFICATE OF SERVICE**

8 v.

9 TWO UNKNOWN NAMED AGENTS et al,  
10 Defendant.  
\_\_\_\_\_ /

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
12 Court, Northern District of California.

13 That on November 2, 2011, I SERVED a true and correct copy(ies) of the attached, by placing  
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office  
16 delivery receptacle located in the Clerk's office.

17 Roberto X. Blandino 077 223 173  
18 41777 Grimmer Blvd F1  
19 Fremont, CA 94538

20 Dated: November 2, 2011



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk

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