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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAJAMES ELLIS JOHNSON,
Plaintiff,

No. C-13-2405 EMC

v.

ORDER TO SHOW CAUSEUNITED STATES OF AMERICA, *et al.*,
Defendants.

On May 28, 2013, Plaintiff, James Ellis Johnson, a United States veteran, filed a complaint against the United States and several other defendants. Plaintiff brought several tort causes of action, alleging that the Department of Veterans Affairs Police (“Police”) used excessive force during an arrest on January 30, 2012. Plaintiff also alleged a constitutional violation, alleging that the San Francisco Veterans Affairs Medical Center violated his due process rights because it placed behavioral restrictions on him and deprived him of medical benefits without a hearing. Pending before the Court is the United States’ motion to dismiss. Docket No. 22.

The Federal Tort Claims Act requires a claimant to have first “presented” his claim to the “appropriate federal agency” and receive a denial before instituting an action against the United States. 28 U.S.C. § 2675. The claim is “presented” when it is received by the agency within two years after the claim accrues. *See Vacek v. U.S. Postal Service*, 447 F.3d 1248, 1251 (9th Cir. 2006). If the agency fails to make a “final disposition of a claim within six months after it is filed,” the claimant may deem this to be a denial of the claim. 28 U.S.C. § 2675.

1 “The claim requirement of section 2675 is jurisdictional in nature and may not be waived.”
2 *Burns v. United States*, 764 F.2d 722, 724 (9th Cir. 1985). “[T]he jurisdictional requirement of
3 minimum notice is satisfied by ‘(1) a written statement sufficiently describing the injury to enable
4 the agency to begin its own investigation, and (2) a sum certain damages claim.’” *Id.* (quoting
5 *Warren v. United States Department of the Interior Bureau of Land Management*, 724 F.2d 776, 780
6 (9th Cir. 1984)).

7 Plaintiff has attached to his Opposition to the United States the first sheet of a claim form.
8 Docket No. 45 at 93. The form is addressed to the Office of Regional Counsel in San Francisco. It
9 is dated April 23, 2012, which is well within two years of when Plaintiff was arrested, and more than
10 six months before Plaintiff filed this action. Plaintiff states on the form that he is attaching the letter
11 to Judge Beeler and other documents, including MRI reports, which describe Plaintiff’s injury. He
12 also states a sum certain of \$2 million. However, there is no proof that the form and attached
13 documents were received.

14 The United States does not assert that Plaintiff has failed to meet the jurisdictional
15 requirements of Section 2675 (except to the extent that Plaintiff’s due process claim sounds in tort)
16 and moves to dismiss on other grounds. Nonetheless, because Section 2675 is a jurisdictional
17 requirement that cannot be waived, the Court lacks jurisdiction to hear Plaintiff’s tort claims unless
18 the “appropriate federal agency” has received Plaintiff’s documents. The United States shall file by
19 December 2, 2013 a statement indicating whether the claim form and attached documents were
20 received.

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22 IT IS SO ORDERED.

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24 Dated: November 22, 2013

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EDWARD M. CHEN
United States District Judge