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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL RODRIGUEZ,

Plaintiff,

No. C 10-2249 PJH

v.

ORDER

SHERIFF MICHAEL HENNESSEY,

Defendant.

Pro se plaintiff Daniel Rodriguez filed this action on May 25, 2010, against defendant Michael Hennessey, Sheriff of the County of San Francisco. Plaintiff, who was in the custody of the Sheriff's Department at various times from November 2009 through March 2010, alleges that on November 4, 2009, he was assaulted and battered by one or more Sheriff's Deputies, including a Deputy J. Aguirre. Plaintiff was released from custody on March 25, 2010.

Defendant moved to dismiss the complaint based on failure to exhaust administrative remedies. On September 9, 2010, the court denied the motion, on the basis that plaintiff was not in custody when he filed the complaint. Defendant then moved for judgment on the pleadings. Plaintiff did not respond to the motion, and did not appear at the noticed hearing. On December 9, 2010, the court granted the motion as to any federal claims, and dismissed the state law claims without prejudice to refile in state court. Also on December 9, 2010, the court entered judgment in favor of defendant. Plaintiff did not file a notice of appeal.

On December 21, 2011, plaintiff filed a motion for "a new trial." On December 27, 2011, plaintiff filed a second motion for "a new trial." To the extent that these motions are

1 intended as motions to alter or amend the judgment pursuant to Federal Rule of Civil
2 Procedure 59, they are DENIED as untimely. See Fed. R. Civ. P. 59(e). To the extent that
3 they are intended as motions for relief from judgment pursuant to Federal Rule of Civil
4 Procedure 60(b) (1), (2), or (3), they are DENIED as untimely. See Fed. R. Civ. P.
5 60(b)(c)(1), To the extent that they are intended as motions for relief from judgment
6 pursuant to Rule 60(b)(4), (5), or (6), they are DENIED because plaintiff has stated no
7 basis for the motion, whatsoever, under those subsections.

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9 **IT IS SO ORDERED.**

10 Dated: January 4, 2012

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PHYLLIS J. HAMILTON
United States District Judge

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