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8 **UNITED STATES DISTRICT COURT**

9 EASTERN DISTRICT OF CALIFORNIA

10
11 SUSAN MAE POLK,

12 Plaintiff,

13 v.

14 GODINA, *et al.*,

15 Defendants.
16

Case No. 1:12-cv-01094-LJO-BAM (PC)

ORDER DENYING PLAINTIFF'S MOTION
FOR RELIEF FROM JUDGMENT
PURSUANT TO FRCP 60(b)(5) AND (6)

(ECF No. 69)

17 **I. Introduction**

18 Plaintiff Susan Mae Polk ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*
19 *pauperis* in this civil rights action under 42 U.S.C. § 1983.

20 On November 16, 2015, judgment was entered dismissing this action with prejudice for
21 failure to state a claim. (ECF Nos. 48, 49.) On December 3, 2015, Plaintiff filed a motion to alter
22 or amend the judgment pursuant to Federal Rule of Civil Procedure 59(e) with objections to the
23 order dismissing her case. (ECF No. 50.) On December 9, 2015, Plaintiff filed a superseding,
24 amended motion to alter or amend the judgment pursuant to Federal Rule of Civil Procedure
25 60(b). (ECF No. 53.)

26 On the same day Plaintiff filed her amended motion under Rule 60(b), she also filed a
27 notice of appeal. (ECF Nos. 54, 55.) Pursuant to Rule 62.1, the Court found that it retained
28 jurisdiction and authority to deny Plaintiff's amended motion, which it did on December 17,

1 2015. (ECF No. 60.)

2 On July 3, 2017, the United States Court of Appeals for the Ninth Circuit affirmed the
3 Court's judgment. (ECF No. 67.) The Ninth Circuit issued its mandate on January 23, 2018.
4 (ECF No. 68.)

5 **II. Motion for Relief from Judgment**

6 Currently before the Court is Plaintiff's motion for relief from judgment, filed July 8,
7 2019. (ECF No. 69.)

8 Federal Rule of Civil Procedure 60(b) governs the reconsideration of final orders of the
9 district court. Rule 60(b) permits a district court to relieve a party from a final order or judgment
10 on grounds of: "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered
11 evidence . . .; (3) fraud . . . of an adverse party; (4) the judgment is void; (5) the judgment has
12 been satisfied . . . or (6) any other reason justifying relief from the operation of the judgment."
13 Fed. R. Civ. P. 60(b). A motion under Rule 60(b) must be made within a reasonable time, in any
14 event "not more than one year after the judgment, order, or proceeding was entered or taken." Id.

15 Moreover, when filing a motion for reconsideration, Local Rule 230(j) requires a party to
16 show the "new or different facts or circumstances claimed to exist which did not exist or were not
17 shown upon such prior motion, or what other grounds exist for the motion." Motions to
18 reconsider are committed to the discretion of the trial court. Combs v. Nick Garin Trucking, 825
19 F.2d 437, 441 (D.C. Cir. 1987); Rodgers v. Watt, 722 F.2d 456, 460 (9th Cir. 1983) (en banc).
20 To succeed, a party must set forth facts or law of a strongly convincing nature to induce the court
21 to reverse its prior decision. See, e.g., Kern-Tulare Water Dist. v. City of Bakersfield, 634 F.
22 Supp. 656, 665 (E.D. Cal. 1986), aff'd in part and rev'd in part on other grounds, 828 F.2d 514
23 (9th Cir. 1987).

24 **III. Discussion**

25 First, Plaintiff argues that due to the Supreme Court's decision in Knick v. Township of
26 Scott, Pennsylvania, 139 S. Ct. 2162 (2019), she is no longer required to seek relief in state court
27 before filing a federal suit for deprivation of property in violation of the Takings Clause of the
28 Fifth Amendment, which abrogates the Court's original reasoning for finding she did not state a

1 claim under the Fifth Amendment. (ECF No. 69.)

2 Plaintiff's argument is unpersuasive. Plaintiff alleges in the second amended complaint
3 that Defendant Stockton destroyed her typewriter after stating that he had the authority based on
4 her classification level to destroy it, when Plaintiff actually had a right under the applicable rules
5 and regulations to either have the typewriter in her cell or have it mailed home rather than
6 destroyed. (ECF No. 41, pp. 19–20.) Thus, Plaintiff alleges an unauthorized, intentional
7 deprivation of property, which is actionable under the Due Process Clause, not the Takings
8 Clause. As originally noted in the findings and recommendations, later adopted in full by the
9 Court, due process is satisfied if there is a meaningful post-deprivation remedy available for the
10 unauthorized, intentional deprivation. Hudson v. Palmer, 468 U.S. 517, 533 (1984); Quick v.
11 Jones, 754 F.2d 1521, 1524 (9th Cir. 1984). The Supreme Court's decision in Knick does
12 nothing to change this analysis, and in fact draws a distinction between “due process for the
13 unauthorized act of a single employee” and “the taking of property *by the government* through
14 physical invasion or a regulation.” Knick, 139 S. Ct. at 2174 (emphasis in original).

15 Plaintiff next contends that her access to courts claim under the First Amendment was
16 dismissed by this Court due to her failure to show actual injury by explaining the ultimate
17 disposition of her pending appeal of the dismissal of her habeas petition as time-barred.
18 However, since judgment was entered in this action, the Ninth Circuit affirmed the dismissal of
19 her habeas action as time-barred and the Supreme Court denied her petition for rehearing of that
20 decision, and this is evidence of the actual injury she suffered. (ECF No. 69.)

21 Again, this argument is unavailing. In fact, the Court's November 16, 2015 order
22 adopting the findings and recommendations and dismissing this action addressed a similar
23 argument raised in Plaintiff's objections. As explained in that order, Plaintiff's allegations related
24 to her untimely habeas petition were found insufficient for multiple reasons, only one of which
25 was her failure to allege a sufficient injury, related to her pending appeal. The adopted findings
26 and recommendations also found that (1) although Plaintiff contended she was denied access to
27 certain legal materials and the law library, she admitted she had access to the materials and law
28 library for substantial periods of time prior to the deadline for her petition; and (2) Plaintiff did

1 not allege facts showing the occasional deprivation of access to her legal materials was the cause
2 of her missing the deadline for filing her petition. (ECF No. 43, pp. 12–13.) The resolution of
3 Plaintiff’s appeal of her habeas petition do not change these findings, or the Court’s original
4 judgment.

5 **IV. Conclusion and Order**

6 Based on the foregoing, Plaintiff’s motion for relief from judgment, (ECF No. 69), is
7 HEREBY DENIED. This action remains closed.

8
9 IT IS SO ORDERED.

10 Dated: November 22, 2019

/s/ Lawrence J. O’Neill
UNITED STATES CHIEF DISTRICT JUDGE