

1 A motion for relief under Rule 60(b)(2) on the basis of newly discovered evidence
2 requires the moving party to show that the evidence “(1) existed at the time of trial, (2) could not
3 have been discovered through due diligence, and (3) was ‘of such magnitude that production of it
4 earlier would have been likely to change the disposition of the case.’” Jones v. Aero/Chem Corp.,
5 921 F.2d 875, 878 (9th Cir. 1990) (citation omitted).

6 Without ruling on the first two factors, the court finds that this motion fails under the
7 third. The court granted summary judgment on the claim for deprivation of personal property
8 because plaintiff had an adequate post-deprivation remedy under California law. (See Findings
9 and Recommendations (Doc. No. 85) at 10; Order Adopting Findings and Recommendations
10 (Doc. No. 93).) “[W]here the state provides a meaningful post deprivation remedy, only
11 authorized, intentional deprivations constitute actionable violations of the Due Process Clause.”
12 (Findings and Recommendations at 10 (relying on Hudson v. Palmer, 468 U.S. 517, 533 (1984)).)
13 The court found no evidence of an *authorized* deprivation of property; therefore dismissal of the
14 claim was appropriate. The Ninth Circuit affirmed this court’s judgment on the same ground.
15 (USCA Memorandum (Doc. No. 125) at 2 (citing Barnett v. Centoni, 31 F.3d 813, 816 (9th Cir.
16 1994).) Plaintiff’s newly obtained affidavits from witnesses to the alleged deprivation of his
17 personal property would not have changed the application of that rule of law to dismiss his claim.
18 In other words, plaintiff has made no showing that these sworn declarations would have had any
19 effect on the final disposition of his case. Therefore the motion to vacate judgment on the basis of
20 newly discovered evidence is without merit.

21 Finally, plaintiff has attached a written statement from a prisoner attesting to the alleged
22 inadequacy of inmates’ access to the prison library at High Desert State Prison and of the legal
23 materials there. (See Motion at 33-34.) The statement is not signed, sworn or dated and is
24 therefore of little reliability. Moreover, plaintiff makes no showing that because of inadequate
25 library access or materials he was prejudiced or hindered in pursuing his claims in this case. See
26 Lewis v. Casey, 518 U.S. 343, 348-51 (1996). Therefore, to the extent plaintiff seeks relief from
27 judgment on the basis of this third, unsworn declaration, his motion fails.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Accordingly, IT IS HEREBY ORDERED that:

1. The motion to vacate (Docket No. 124) is denied.
2. This case be closed.

DATED: March 20, 2015

/s/ John A. Mendez

UNITED STATES DISTRICT COURT JUDGE