NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 1 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. MICHAEL CAREY and LEONE CAREY, Defendants - Appellants, and DOUGLAS J. CARPA, (or his successor trustee), as Trustee of the Ranch Holding Trust; et al., Defendants, JOHN CAREY; et al., Applicants for Intervention.	No. 10-16361 D.C. No. 2:05-cv-02176-MCE-CMK MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted June 15, 2011[**]

Before: CANBY, O'SCANNLAIN, and FISHER, Circuit Judges.

Michael Carey and Leone Carey appeal pro se from the district court's order denying their motion to vacate the judgment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's decision on a Fed. R. Civ. P. 60(b)(4) motion. *Retail Clerks Union Joint Pension Trust v. Freedom Food Ctr., Inc.*, 938 F.2d 136, 137 (9th Cir. 1991). We affirm.

The district court properly denied the Careys' motion to vacate as untimely because the motion was filed nearly three years after the judgment, and the Careys did not provide any legitimate excuse for the delay. *See, e.g.*, *Hammer v. Drago (In re Hammer)*, 940 F.2d 524, 526 (9th Cir. 1991) (un-excused two year delay in filing a motion for relief from judgment was unreasonable). Moreover, contrary to the Careys' contentions, the bankruptcy court ruled that their tax liability was non-dischargeable. *See United States v. Carey (In Re Carey)*, 326 B.R. 816, 824 (Bankr. E.D. Cal. 2005).

The Careys' remaining contentions are unpersuasive.

We do not consider matters that are not specifically and distinctly raised and

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[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

AFFIRMED.