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NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

In re: ) Case No. 09-35077-D-13L  
 ) Docket Control No. [none]  
ILONA and GREGORIO SAMPAYAN, )  
 )  
 )  
Debtors. )  
\_\_\_\_\_ )

**This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.**

**MEMORANDUM DECISION**

On July 21, 2009 Ilona and Gregorio Sampayan, the debtors herein, filed their Chapter 13 case. On October 5, 2009 the court conducted a continued hearing on First Federal Bank's ("First Federal") motion for relief from automatic stay. Following the hearing the court granted First Federal relief from stay by order entered October 6, 2009 (the "Relief From Stay Order"). On January 20, 2010 the debtors filed a Notice of Motion and Motion to Vacate Order, and Memorandum of Points and Authorities in Support Thereof (the "Motion"). The Motion seeks to "vacate" the Relief From Stay Order. The debtors seek this relief on an ex parte basis without a hearing after notice to First Federal. For the reasons stated, the Motion will be denied.

1           The Motion is procedurally defective. The Motion is  
2 governed by Fed. R. Bankr. P. 9014, and as such, the relief  
3 requested can only be granted after a hearing on notice to First  
4 Federal. Second, the Motion does not comply with Local  
5 Bankruptcy Rule 9014-1(c). Third, the notice, motion and  
6 memorandum of points and authorities are all filed as a single  
7 document contrary to Local Bankruptcy Rule 9014-1(d) and the  
8 court's Guidelines for the Preparation of Documents.

9           The court will turn to the merits of the Motion. The Motion  
10 requests that the court vacate the Relief From Stay Order  
11 pursuant to Fed. R. Civ. P. 60(b)2), as made applicable by Fed.  
12 R. Bankr. P. 9024, asserting newly discovered evidence. However,  
13 neither the Motion, nor the attendant declarations, identify any  
14 newly discovered evidence that, with reasonable diligence, could  
15 not have been discovered in time for a new trial under Rule  
16 59(b). Accordingly, the debtors have not met their burden that  
17 relief from the Relief From Stay Order is warranted under Rule  
18 60(b)(2).

19           For the reasons stated the Motion will be denied by separate  
20 order.

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22 Dated: January 26, 2010

\_\_\_\_\_/s/\_\_\_\_\_  
ROBERT S. BARDWIL  
United States Bankruptcy Judge

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