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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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12 GENERAL ELECTRIC CAPITAL  
CORPORATION, et al.,

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Plaintiffs,

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v.

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16 TEN FORWARD DINING, INC., et  
al.,

17

Defendants.

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No. 2:09-cv-03296 JAM-AC

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR CORRECTION OF FINAL  
JUDGMENT**

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This matter is before the Court on Plaintiffs General Electric Capital Corporation, CEF Funding II, L.L.C., and CEF Funding V, LLC's ("Plaintiffs") Motion for Correction of Final Judgment (Doc. #180).<sup>1</sup> Defendant Kobra Restaurant Properties, LLC ("KRP") opposes the motion (Doc. #189) and Plaintiffs replied (Doc. #194). For the following reasons, Plaintiffs' motion is granted.

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<sup>1</sup> The motions were determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for November 20, 2013.

1 I. BACKGROUND

2 This action originated when Plaintiffs filed their complaint  
3 on November 29, 2009, alleging that Defendants Ten Forward  
4 Dining; Delightful Dining, Inc.; TGIA Restaurants, Inc.; Kobra  
5 Restaurant Properties, LLC; and Abolghassem Alizadeh defaulted on  
6 or breached seven written loan contracts made with Plaintiffs  
7 (Doc. #1). The complaint alleged that the loans were secured by  
8 real and physical property. Through the course of the  
9 litigation, Plaintiffs have either obtained summary judgment  
10 against each named entity or voluntarily dismissed outstanding  
11 claims. On July 5, 2013, the Court granted Plaintiffs' motions  
12 for entry of judgment and appointment of a receiver (Doc. #169).  
13 On July 31, 2013, the Court issued its judgment and foreclosure  
14 decree. Decree, Doc. #177.

15 As set forth in the Decree, a declaration was entered that  
16 (1) "the outstanding amount due is \$672,693.29, plus accruing  
17 interest thereon from and after March 31, 2013, as provided in  
18 the 11726 Kobra Loan Documents (the '11726 Kobra Indebted  
19 Amount')" and (2) "the outstanding amount due is \$467,389.83,  
20 plus accruing interest thereon from and after March 31, 2013, as  
21 provided in the 11794 Kobra Loan Documents (the '11794 Kobra  
22 Indebted Amount' and collectively with the 11726 Kobra Indebted  
23 Amount, the 'Kobra Indebted Amount')." Decree at 5-6.

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25 II. OPINION

26 A. Legal Standard

27 Pursuant to Federal Rule of Civil Procedure 60(a) ("Rule  
28 60(a)"), "The court may correct a clerical mistake or a mistake

1 arising from oversight or omission whenever one is found in a  
2 judgment, order, or other part of the record." Fed. R. Civ. P.  
3 60(a). This limits the use of Rule 60(a) to correct errors in  
4 oversight and omission, which are "blunders in execution."  
5 Blanton v. Anzalone, 813 F.2d 1574, 1577 n. 2 (9th Cir. 1987).  
6 The error can be corrected whether it is made by a clerk or by  
7 the judge. Id. at 1577; see also Jones & Guerrero Co., Inc. v.  
8 Sealift Pac., 650 F.2d 1072, 1074 (9th Cir. 1981) ("Rule 60(a)  
9 allows correction of clerical mistakes, even those not committed  
10 by the clerk.")

11 B. Discussion

12 Plaintiffs argue that the actual dollar amounts of the  
13 outstanding balances are correct, but Plaintiffs erred by  
14 reversing the outstanding balances of the two Kobra Loans. KPR  
15 opposes the motion to correct the judgment because it claims that  
16 the loan balances are inflated and argues that ruling on this  
17 motion should be deferred until Plaintiffs provide a complete  
18 accounting so the loan balances/judgment amount can be verified.  
19 Opp. at 8.

20 Under Rule 60(a), the Court may not make substantive changes  
21 to the final judgment. Blanton v. Anzalone, 813 F.2d 1574, 1577  
22 (9th Cir. 1987) (noting that mistakes that cannot be corrected  
23 pursuant to Rule 60(a) "consist of instances where the court  
24 *changes its mind*, either because it made a legal or factual  
25 mistake in making its original determination, or because on  
26 second thought it has decided to exercise its discretion in a  
27 manner different from the way it was exercised in the original  
28 determination.") (emphasis in original) (citation omitted).

1 Here, KPR's argument is that there is a factual mistake in  
2 the judgment because Plaintiffs have incorrectly calculated the  
3 loan balances. However, correcting a factual mistake, which  
4 alters the judgment substantively, is outside of the Court's  
5 power under Rule 60(a). Therefore, the Court cannot provide the  
6 relief KPR seeks. Contrastingly, Plaintiffs neither seek to  
7 recalculate the outstanding loan amounts nor seek to change the  
8 Decree substantively. Moreover, as Plaintiffs argue, KPR had an  
9 opportunity in its opposition to Plaintiffs' Motion for Final  
10 Judgment to contest the entry of the Decree and the calculation  
11 of the 11726 Kobra Indebted Amount and the 11794 Kobra Indebted  
12 Amount. See KPR's Opposition to Plaintiffs' Motion for Final  
13 Judgment KPR, Doc. #160. Finally, KPR has failed to oppose  
14 Plaintiffs' arguments that Rule 60(a) applies and that the  
15 outstanding balances for the two loans are transposed.

16 Accordingly, the Court finds that it has the authority  
17 under Rule 60(a) to correct the final judgment. Because the  
18 Court has decided this issue on the merits, the Court need not  
19 address Plaintiffs' argument that KPR's opposition is time  
20 barred under the Local Rules.

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22 III. ORDER

23 Plaintiffs' motion for correction of final judgment is  
24 GRANTED. The Decree shall be corrected as follows:

25 (a) the dollar amount stated as the outstanding amount under  
26 Paragraph (i)(i) of the Decree on page 5 is corrected from  
27 \$672,693.29 to \$467,389.83, plus accruing interest thereon from  
28 and after March 31, 2013, as provided in the 11726 Kobra Loan

1 Documents; and

2 (b) the dollar amount stated as the outstanding amount under  
3 Paragraph (k)(i) of the Decree on page 6 is corrected from  
4 \$467,389.83 to \$672,693.29, plus accruing interest thereon from  
5 and after March 31, 2013, as provided in the 11794 Kobra Loan  
6 Documents.

7 IT IS SO ORDERED.

8 Dated: December 10, 2013

  
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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE

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