1		
2		
3		
4		
5		
6		
7		
8	UNITED STATES DISTRICT COURT	
9	SOUTHERN DISTRICT OF CALIFORNIA	
10		
11	BEN and NELIE HAZEL,	CASE NO. 09cv2432 JM(CAB)
12	Plaintiffs, vs.	ORDER GRANTING MOTION FOR RECONSIDERATION; GRANTING
13	BANK OF AMERICA CORPORATION,	LEAVE TO AMEND
14	Defendant.	
15	Disintiffs Den and Nellie Hand move for reconsideration of this court's Echnomy 11, 2010	
16	Plaintiffs Ben and Nellie Hazel move for reconsideration of this court's February 11, 2010	
17	order granting Defendant's motion to dismiss ("Order"). Specifically, Plaintiffs move to reconsider	
18	the court's dismissal of the rescission claim with prejudice and without leave to amend. Plaintiffs	
19	correctly argue that the court misconstrued the tolling date for TILA's three year statute of limitations	
20	and therefore the motion for reconsideration is GRANTED.	
21	Reconsideration is generally appropriate "if the district court (1) is presented with newly	
22	discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if	
23	there is an intervening change in controlling law There may also be other, highly unusual	
24	circumstances warranting reconsideration." <u>School Dist. No. 1J, Multnomah County, Oregon v.</u>	
25	ACandS, Inc., 5 F.3d 1255, 1263 (9 th Cir. 1993) (citations omitted). Here, reconsideration is	
26	appropriate to correct a clear error.	
27	In the Order, the court concluded that the October 30, 2009 filing date came three days too late	
28	to be timely under TILA's three year statute of limitations. However, as correctly noted by Plaintiffs,	

09cv2432

the operative date for calculating the statute of limitations is October 6, 2009, the date Plaintiffs exercised their right to rescind. As the October 6, 2009 letter occurred within the three year statute of limitations, the claim is timely. See Beach v. Ocwen Federal Bank, 523 U.S. 410, 417 (1998).

In sum, the court grants the motion for reconsideration and grants Plaintiffs an additional 10 days from the date of entry of this order to file the amended complaint, including a claim for rescission.

DATED: March 10, 2010

IT IS SO ORDERED.

cc: All parties

T. Thieles

Hop. Jeffrey T. Miller United States District Judge

- 2 -