

MARK W. BROPHY; SUSAN A. BROPHY, Plaintiffs-Appellants,
v.
JPMORGAN CHASE BANK, N.A., Defendant-Appellee.

[No. 17-35141.](#)

United States Court of Appeals, Ninth Circuit.

Submitted October 23, 2017. [\[**\]](#)

Filed November 1, 2017.

Appeal from the United States District Court for the Eastern District of Washington; D.C. No. 2:16-cv-00053-TOR, Thomas O. Rice, Chief Judge, Presiding.

Before: LEAVY, WATFORD, and FRIEDLAND, Circuit Judges.

NOT FOR PUBLICATION

MEMORANDUM [\[*\]](#)

Mark W. Brophy and Susan A. Brophy appeal from the district court's judgment dismissing their action alleging a Truth in Lending Act ("TILA") claim for rescission. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(6). [Serra v. Lappin, 600 F.3d 1191, 1195 \(9th Cir. 2010\)](#). We affirm.

The district court properly dismissed the Brophys' action as time-barred because the Brophys did not send a notice of rescission to defendant within three years of consummation of the loan. *See* 15 U.S.C. § 1635(f) (providing a right of rescission within three years of the date of the consummation of a loan if the lender fails to make required disclosures to the borrower); [Jesinoski v. Countrywide Home Loans, Inc., 135 S. Ct. 790, 792 \(2015\)](#) (a borrower may exercise right of rescission by notifying the lender of borrower's intent to rescind within three years after the transaction is consummated); [Miguel v. Country Funding Corp., 309 F.3d 1161, 1164 \(9th Cir. 2002\)](#) ("[Section] 1635(f) is a statute of repose, depriving the courts of subject matter jurisdiction when a § 1635 claim is brought outside the three-year limitation period."). **We reject as supported by the record the Brophys' contention that the subject loan transaction was not consummated.**

We reject as without merit the Brophys' contention that their action is not frivolous and the district court erred in imposing Rule 11 sanctions.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. See [Padgett v. Wright, 587 F.3d 983, 985 n.2 \(9th Cir. 2009\)](#).

AFFIRMED.

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

[*](#) This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.