

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VICKY PERRY,  
Plaintiff,  
  
v.  
  
SELECT PORTFOLIO SERVICING, INC.,  
et al.,  
  
Defendants.

Case No. [15-cv-03629-RS](#)

**ORDER OF DISMISSAL**

On February 10, 2016, plaintiff and the remaining defendant in this action, Bank of America, jointly represented that a settlement had been reached. (Dkt. No. 61) Plaintiff was then twice ordered to either dismiss the action or appear and show cause why it should not be dismissed. (Dkt. Nos. 62 and 64). She was explicitly advised that failure to comply with those orders could result in dismissal without further notice. Plaintiff did not file a response or appear at the hearing on the order to show cause. Accordingly, for good cause, this action is hereby dismissed.

As a separate and independent ground for dismissal, Bank of America’s motion to dismiss is hereby granted. Bank of America has shown that the only remaining claim<sup>1</sup> —for alleged

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<sup>1</sup> An order granting a prior motion to dismiss brought by other defendants noted that technically the claims against the Bank were not before the Court in that motion, but that absent some difference in circumstances, the other claims would all fail against the Bank as well. The present motion assumes there are no such differences, and plaintiff does not suggest otherwise. Accordingly, to the extent any of the other claims were not yet dismissed as to the Bank, they hereby are.

1 negligence in its handling of a loan modification application—is barred by the applicable statute of  
2 limitations.<sup>2</sup> Plaintiff does not dispute that negligence claims such as this are ordinarily governed  
3 by a two year limitations period, or that her action was filed long after that period expired.  
4 Instead, she argues that there is an “exception” that applies to “actions for recovery of real  
5 property.” Indeed, such actions are governed by California Code of Civil Procedure § 318, and  
6 must be brought within five years of the time “plaintiff, his ancestor, predecessor, or grantor, was  
7 seized or possessed of the property in question.” The remaining claim against the Bank, however,  
8 is not an action for recovery of real property. Rather, it seeks damages for the Bank’s alleged  
9 negligence in handling plaintiff’s 2009 loan modification. Accordingly, the claim is time-barred  
10 and must be dismissed on that basis as well.

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12 **IT IS SO ORDERED.**

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14 Dated: April 8, 2016

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RICHARD SEEBORG  
United States District Judge

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24 <sup>2</sup> The Bank cites to California Code of Civil Procedure §335.1, which provides for a two-year  
25 limitation period in actions for “assault, battery, or injury to, or for the death of, an individual  
26 caused by the wrongful act or neglect of another.” This language has been held to include “all  
27 infringements of personal rights as opposed to property rights,” *Simmons v. Edouarde*, 98 Cal.  
28 App. 2d 826, 828 (1950), and likely does not apply here. The “catch-all” provision for torts not  
otherwise specified, however, also sets a two-year limitations period. See California Code of Civil  
Procedure §339(1).