

1 THE HONORABLE RICHARD A. JONES
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DENNIS P. MC GEOUGH, et al.,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, et al.,

Defendant.

NO. 2:16-cv-01606-RAJ

ORDER

This matter comes before the Court on three motions to dismiss brought by Nationstar Mortgage, LLC, Bank of America, and Thomas P. Cialino (collectively, “Defendants”). Dkts. #6, 11, 14. Plaintiffs Dennis and Katherine McGeough (collectively, “Plaintiffs”) have not filed any opposition to Defendants’ motions. For the reasons that follow, the Court **GRANTS** Defendants’ motions and **DISMISSES** this action **with prejudice**.

I. BACKGROUND

Plaintiffs’ Complaint contains no factual background or explanation of Plaintiffs’ relationship to the Defendants. The Court ascertains the following from a series of exhibits attached to the Complaint: Plaintiffs obtained a mortgage loan from

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1 Bank of America; Thomas Cialino, an attorney representing Bank of America, sent a
2 letter to Plaintiffs in October 2013 notifying them that servicing of their loan was
3 transferred to Nationstar Mortgage; and Nationstar notified Plaintiffs that the loan was
4 in default.
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6 Plaintiffs bring claims for conversion against Bank of America, Cialino, and
7 Nationstar, alleging that each “has converted the plaintiffs’ property for its own gains
8 and profit.” Dkt. # 1-1 at 3, 6, 8. Plaintiffs allege that each Defendant “has denied the
9 plaintiff[s] free use of his [sic] property by engaging in a foreclosure action which is
10 not authorized by law, in which the defendant has no legal rights or interests and
11 which may involve the laundering of forged and counterfeited negotiable instruments
12 using state laws and the county court system.” *Id.* at 6. While the alleged foreclosure
13 appears to be the crux of Plaintiffs’ claim, Plaintiffs also appear to allege an unlawful
14 acquisition of their personal information, including their “legal names, dates of birth,
15 signatures, credit information, banking information, tax and financial information and
16 other private information.” *Id.* at 3. Plaintiffs allege that this information was
17 “acquired and used for commercial purposes without the[ir] express consent” and “to
18 make it appear as if by having this information, the defendant[s] had some legal right
19 to undertake the actions involving foreclosure against plaintiffs’ property.” Dkt. # 1-1
20 at 3.
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1 All three Defendants now move to dismiss Plaintiffs' claims under Federal Rule
2 of Civil Procedure 12(b)(6).¹

3 **II. LEGAL STANDARD**

4 Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint
5 for failure to state a claim upon which relief can be granted. The rule requires the
6 Court to assume the truth of the Complaint's factual allegations and credit all
7 reasonable inferences arising from those allegations. *Sanders v. Brown*, 504 F.3d 903,
8 910 (9th Cir. 2007). However, a court "need not accept as true conclusory allegations
9 that are contradicted by documents referred to in the complaint." *Manzarek v. St. Paul*
10 *Fire & Marine Ins. Co.*, 519 F.3d 1025, 2031 (9th Cir. 2008). The plaintiff must point
11 to factual allegations that "state a claim to relief that is plausible on its face." *Bell Atl.*
12 *Corp. v. Twombly*, 550 U.S. 544, 568 (2007). If the plaintiff succeeds, the complaint
13 avoids dismissal if there is "any set of facts consistent with the allegations in the
14 complaint" that would entitle the plaintiff to relief. *Id.* at 563; *Ashcroft v. Iqbal*, 556
15 U.S. 662, 679 (2009).

16 Where, as here, a plaintiff proceeds *pro se*, the court must construe the
17 "complaint[] liberally even when evaluating it under the *Iqbal* standard." *Johnson v.*
18 *Lucent Techs. Inc.*, 653 F.3d 1000, 1011 (9th Cir. 2011) (citing *Hebbe v. Piller*, 627
19 F.3d 338, 342 (9th Cir. 2010). "Furthermore, '[l]eave to amend should be granted
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26 ¹ Defendant Cialino argues alternatively that Plaintiffs' claim against him should be dismissed for lack
of personal jurisdiction. The Court does not reach this argument in light of Defendants' collective
agreement that Plaintiffs' suit should be dismissed under Rule 12(b)(6).

1 unless the pleading could not possibly be cured by the allegation of other facts, and
2 should be granted more liberally to pro se plaintiffs.” *Id.* (quoting *McQuillion v.*
3 *Schwarzenegger*, 369 F.3d 1091, 1099 (9th Cir. 2004)).
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5 III. DISCUSSION

6 Before proceeding to the substance of the motions, the Court notes that
7 Plaintiffs have failed to file any opposition to Defendants’ motions. Pursuant to this
8 Court’s Local Rules, Plaintiffs’ failure “to file papers in opposition to a motion . . .
9 may be considered by the court as an admission that the motion has merit.” *See* Local
10 Rules W.D. Wash. LCR 7(b)(2). While parties proceeding *pro se* are afforded
11 substantial lenience, they must still comply with the Local Rules (*cf. Draper v.*
12 *Coombs*, 792 F.2d 915, 924 (9th Cir. 1986)), which require opposition papers to “be
13 filed and served not later than the Monday before the noting date.” LCR 7(d)(3). The
14 December 2016 noting dates for Defendants’ motions passed without opposition from
15 Plaintiffs. Therefore, the Court concludes that Plaintiffs have admitted that the
16 motions have substantial merit and should be granted.
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18 Further, Defendants’ arguments that Plaintiffs have failed to properly state a
19 claim for conversion are compelling. “Conversion is the unjustified, willful
20 interference with a chattel which deprives a person entitled to property of possession.”
21 *Lang v. Hougan*, 150 P.3d 622, 626 (Wash. App. 2007). “A chattel is ‘[a]n article of
22 personal property, as distinguished from real property[,] [a] thing personal and
23 moveable.’ *In re Marriage of Langham*, 106 P.3d 212, 218 (Wash. 2005) (citing
24 BLACK’S LAW DICTIONARY 251 (8th Ed. 2004)). While Plaintiffs initially assert their
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1 property interest in their personal information—names, dates of birth, signatures,
2 credit information, banking information, tax information, and financial information—it
3 appears that their cause of action is focused on a piece of real property they claim has
4 been wrongfully foreclosed on. Because it is axiomatic that real property is not chattel
5 and, therefore, cannot be converted, there is no legal basis for Plaintiffs' claim.
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7 **IV. CONCLUSION**

8 For all the foregoing reasons, the Court **GRANTS** Defendants motions to
9 dismiss. Dkts. # 6, 11, 14. Plaintiffs have failed to oppose the motions and to state a
10 valid claim for conversion. Plaintiffs' Complaint is therefore **DISMISSED with**
11 **prejudice.** The Clerk is directed to close this case.
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14 Dated this 22nd day of May, 2017.
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The Honorable Richard A. Jones
United States District Judge