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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 STEVEN E. RICHFIELD and CAROLYN
9 TRUMBULL,

10 Plaintiffs,

11 v.

12 FISH FOOD BANKS OF PIERCE
13 COUNTY,

14 Defendant.

CASE NO. C14-5516 BHS

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS

15 This matter comes before the Court on Defendant FISH Food Banks of Pierce
16 County's ("Food Bank") motion to dismiss (Dkt. 7). The Court has considered the
17 pleadings filed in support of and in opposition to the motion and the remainder of the file
18 and hereby grants the motion for the reasons stated herein.

19 **I. PROCEDURAL HISTORY**

20 On June 27, 2014, Plaintiffs Steven Richfield and Carolyn Trumbull ("Plaintiffs")
21 filed a complaint against the Food Bank alleging numerous causes of action. Dkt. 1.
22 Plaintiffs later clarified their claims as (1) a violation of the Americans With Disabilities

1 Act (“ADA”), (2) slander, and (3) a violation of the Racketeer Influenced and Corrupt
2 Organizations Act (“RICO”). Dkt. 8 at 2–3.

3 On July 31, 2014, the Food Bank filed a motion to dismiss. Dkt. 7. On August
4 19, 2014, Plaintiffs responded. Dkt. 8. On August 28, 2014, the Food Bank replied.
5 Dkt. 10.

6 **II. FACTUAL BACKGROUND**

7 Plaintiffs’ suit arises out of the Food Bank banning Plaintiffs from the premises.
8 Plaintiffs allege that they have been shopping at the Food Bank for approximately three
9 years. Dkt. 1 at 10. On a visit in February 2014, Plaintiffs allege that the Food Bank
10 coordinator Kate Wright cornered Ms. Trumbull and inquired about supposed threats
11 made by Food Bank volunteer Angela toward Ms. Trumbull on a prior visit. *Id.* Ms.
12 Trumbull informed Mr. Richfield of the inquiry, and Mr. Richfield proceeded to Ms.
13 Wright’s office speaking “harshly to [Ms.] Wright” *Id.* Plaintiffs did not go to the
14 Food Bank for several weeks after this incident. *Id.* at 11.

15 When they did return, they allege that Ms. Wright permanently banned them from
16 the Food Bank. *Id.* They allege that Ms. Wright said that she felt threatened by Plaintiffs
17 in front of a crowd of Food Bank customers. *Id.*

18 **III. DISCUSSION**

19 Motions to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil
20 Procedure may be based on either the lack of a cognizable legal theory or the absence of
21 sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d
22 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the complaint is

1 construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295, 1301 (9th Cir.
2 1983). To survive a motion to dismiss, the complaint does not require detailed factual
3 allegations but must provide the grounds for entitlement to relief and not merely a
4 “formulaic recitation” of the elements of a cause of action. *Bell Atlantic Corp. v.*
5 *Twombly*, 127 S. Ct. 1955, 1965 (2007). Plaintiffs must allege “enough facts to state a
6 claim to relief that is plausible on its face.” *Id.* at 1974. When deciding a motion to
7 dismiss, the Court’s consideration is limited to the pleadings. Fed. R. Civ. P. 12(d).

8 **A. ADA**

9 Subchapter III of the ADA provides that “[n]o individual shall be discriminated
10 against on the basis of disability in the full and equal enjoyment of the goods, services,
11 facilities, privileges, advantages, or accommodations of any place of public
12 accommodation by any person who owns, leases (or leases to), or operates a place of
13 public accommodation.” 42 U.S.C. § 12182(a).

14 In this case, Plaintiffs fail to state an ADA claim because they fail to allege that
15 they were discriminated against based on a disability. In fact, their own allegations
16 establish that they were banned due to threatening behavior. While Plaintiffs argue that
17 they were not threatening, this issue is irrelevant for purposes of the ADA. Therefore, the
18 Court grants the Food Bank’s motion on Plaintiffs’ ADA claim.

19 **B. Slander**

20 In a slander case, the plaintiff must establish four elements: falsity, an
21 unprivileged communication to a third party, fault, and damages. *Mohr v. Grant*, 153
22 Wn.2d 812, 822 (2005).

1 In this case, Plaintiffs have failed to state a plausible claim for slander. A Food
2 Bank employee stating to Plaintiffs that she felt threatened by Plaintiffs is not a false
3 unprivileged communication to a third party. Therefore, the Court grants the Food
4 Bank's motion on Plaintiffs' slander claim.

5 **C. RICO**


6 To state a claim under RICO, a plaintiff must allege (1) conduct (2) of an
7 enterprise (3) through a pattern (4) of racketeering activity. 18 U.S.C § 1961, *et seq.*;
8 *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985); *Sanford v. MemberWorks, Inc.*,
9 625 F.3d 550, 557-58 (9th Cir. 2010) (dismissal of pro se plaintiffs' RICO claim for lack
10 of pleading predicate RICO violations).

11 In this case, Plaintiffs fail to allege facts sufficient to state a plausible claim. For
12 example, they fail to allege a pattern of predicate acts, let alone racketeering acts.
13 Therefore, the Court grants the Food Bank's motion on Plaintiffs' RICO claim.

14 **IV. ORDER**

15 Therefore, it is hereby **ORDERED** that the Food Bank's motion to dismiss (Dkt.
16 7) is **GRANTED** and Plaintiffs' complaint is dismissed. The Clerk shall close this case.

17 Dated this 3rd day of September, 2014.

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20 **BENJAMIN H. SETTLE**
21 United States District Judge
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