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

8 STEVEN E. RICHFIELD and CAROLYN  
9 G. TRUMBULL,

10 Plaintiffs,

11 v.

12 FISH FOOD BANKS OF PIERCE  
13 COUNTY,

14 Defendant.

CASE NO. C14-5516 BHS

ORDER GRANTING  
PLAINTIFFS' MOTION TO  
VACATE AND DENYING  
PLAINTIFFS' OTHER MOTIONS

15 This matter comes before the Court on Plaintiffs Steven Richfield and Carolyn  
16 Trumbull's ("Plaintiffs") motion to strike and convert (Dkt. 13), motion to vacate (Dkt.  
17 14), and motions to appeal *in forma pauperis* (Dkts. 16 & 17).

18 On September 3, 2014, the Court granted Defendant's motion to dismiss and  
19 dismissed Plaintiffs' complaint for failure to state a claim. Dkt. 11. On September 4,  
20 2014, Plaintiffs filed a motion to strike Defendant's reply brief and to convert  
21 Defendant's motion to dismiss to a motion for summary judgment. Dkt. 12. The motion  
22 is untimely and irrelevant because the Court did not rely on matters outside the pleadings

1 when considering the motion to dismiss. Therefore, the Court **DENIES** Plaintiffs'  
2 motion.

3 On September 24, 2014, Plaintiffs filed a motion to vacate the judgment because  
4 the Court failed to allow them an opportunity to amend their complaint. Dkt. 14. "A pro  
5 se litigant must be given leave to amend his or her complaint unless it is 'absolutely clear  
6 that the deficiencies of the complaint could not be cured by amendment.'" *Noll v.*  
7 *Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987). The Court agrees that it is not absolutely  
8 clear that the identified deficiencies in Plaintiffs' complaint could not be cured by any  
9 amendment. Therefore, the Court **GRANTS** Plaintiffs' motion to vacate the judgment.  
10 Plaintiffs shall file an amended complaint no later than November 7, 2014. Failure to file  
11 a complaint or show good cause why a complaint was not filed will result in  
12 **DISMISSAL** without further order of the Court.

13 With regard to Plaintiffs' motions to appeal *in forma pauperis*, the Court **DENIES**  
14 the motions as moot.

15 **IT IS SO ORDERED.**

16 Dated this 21st day of October, 2014.

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BENJAMIN H. SETTLE  
United States District Judge