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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 ENPAC, LLC,

7 Plaintiff,

CASE NO. C11-0037BHS

8 v.

9 CHASSIDY F. LUCAS, et al.,

ORDER GRANTING ENPAC'S  
MOTION TO DISMISS

10 Defendants.

11  
12 This matter comes before the Court on Plaintiff Enpac, LLC's ("Enpac") motion to  
13 dismiss counterclaim (Dkt. 48). The Court has reviewed the briefs filed in support of the  
14 motion and the remainder of the file and hereby grants the motion for the reasons stated  
15 herein.

16 **I. PROCEDURAL HISTORY**

17 On January 7, 2011, Enpac filed a complaint against Defendants CB Stormwater,  
18 LLC, and Chassidy F. Lucas ("Defendants") for declaratory judgment of patent invalidity  
19 and non-infringement and for violations of the Lanham Act, 15 U.S.C. § 1051, *et seq.*  
20 Dkt. 1. On June 30, 2011, Defendants filed a document entitled "Counterclaim." Dkt.  
21 46.

22 On July 14, 2011, Enpac filed a motion to dismiss Defendants' counterclaim. Dkt.  
23 48. Defendants did not respond.

24 **II. DISCUSSION**

25 First, the Court may consider a party's failure to respond to a motion as an  
26 admission that the motion has merit. Local Rule 7(b)(2). In this case, Defendants have  
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1 failed to respond to Enpac's motion. Therefore, the Court will consider Defendants'  
2 failure as an admission that Enpac's motion has merit.

3 Second, in asserting a counterclaim, a party must provide a short and plain  
4 statement showing that the pleader is entitled to relief. Fed. R. Civ. P. 8. The Supreme  
5 Court has held that a party must plead "enough facts to state a claim that is plausible on  
6 its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim does not satisfy  
7 the pleading requirements by making "naked assertions devoid of further factual  
8 enhancement." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).


9 In this case, Enpac argues that Defendants' counterclaim fails to satisfy any  
10 pleading requirement. Dkt. 48 at 1-4. The Court agrees. Therefore, the Court grants  
11 Enpac's motion.

12 Finally, Enpac requests that the Court set a scheduling conference before the Court  
13 to avoid certain challenges in communicating with Defendants regarding the joint status  
14 report. Dkt. 48 at 4. The Court finds that there is no need to depart from the normal  
15 practice of submitting a joint status report without an in-person scheduling conference. If  
16 a party fails to cooperate in preparing the joint status report, Enpac may file an ex parte  
17 status report detailing the reasons why the parties were unable to cooperate.  
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### 19 III. ORDER

20 Therefore, it is hereby **ORDERED** that Enpac's motion to dismiss counterclaim  
21 (Dkt. 48) is **GRANTED** and Defendants' counterclaim (Dkt. 46) is **DISMISSED**.

22 DATED this 1st day of September, 2011.

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25 BENJAMIN H. SETTLE  
26 United States District Judge  
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