

1 HONORABLE RONALD B. LEIGHTON
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 ADVOCARE INTERNATIONAL, L.P., a
12 Texas limited partnership,

13 Plaintiff,

14 v.

15 RICHARD PAUL SCHECKENBACH, et al.,

16 Defendants.

Case No. C008-5332RBL

ORDER

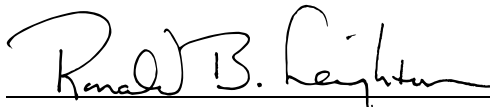
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18 THIS MATTER comes before the Court on Plaintiff's Motion to Dismiss Counterclaim of Defendants
19 Herbasia Corporation, Tai Brown and Kelli Bottolfson-Brown [Dkt. #89]. The Court has reviewed the
20 materials filed for and against said motion and oral argument is not necessary to resolve the issue raised in
21 this motion. For the reasons stated below, plaintiff's motion is **DENIED**. Because responding defendants
22 did not see fit to submit a proposed order denying the motion the Court has crafted its own order denying
23 what turns out to be a rather simple and straight-forward motion.
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25 In their Answer to the Complaint, Defendants Herbasia, Brown and Bottolfson-Brown assert a
26 counterclaim alleging that as to them "the complaint is not well-grounded in fact, it is interposed for an
27 improper purpose, and the 'Fourth Cause of Action' is not warranted by existing law or otherwise." (Answer,
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1 Dkt. #62, para. 73). Plaintiff seeks to have the Court dismiss this Counterclaim as failing to state a claim
2 upon which relief can be granted. Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for
3 dismissal of claims when the plaintiff can prove no set of facts entitling it to judgment on the claims plead.
4 Accepting the facts pled as time, the Court cannot now say that there is no relief available to counterclaim
5 plaintiffs for vexatious litigation that is pursued for an improper purpose. Such litigation may give rise to
6 liability for abuse of the judicial process and other potential claims. Although the burden to establish such
7 claims is quite high, the Court will not dismiss the counterclaim at this time. Counterclaim plaintiffs
8 (Responding Defendants) have put plaintiff on notice that they will pursue the relief available to them should
9 this litigation prove to be pursued maliciously, without factual support and for an improper purpose.
10 Plaintiff's Motion [Dkt. #89] is **DENIED**.
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13 **IT IS SO ORDERED.**

14 Dated this 17th day of April, 2009.
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20 RONALD B. LEIGHTON
21 UNITED STATES DISTRICT JUDGE
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