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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 KCI Restaurant Management LLC, et al.,

No. CV-18-00202-PHX-DGC

10 Plaintiffs,

ORDER

11 v.

12 Theodore M Seldin, et al.,

13 Defendants.
14

15 Defendants Theodore Seldin and many others (“Defendants”) seek Rule 11
16 sanctions against Plaintiffs KCI Restaurant Management, LLC (“KCIR”) and KCI
17 Acquisitions II, LLC. Doc. 57. The motion is fully briefed and no party requests oral
18 argument. Docs. 65,66. The Court will deny the motion.

19 **I. Background.**

20 This case arises from a complex set of relationships and events that produced
21 bankruptcy litigation, a state court lawsuit, a Nebraska arbitration, and this case. The facts
22 are not easily grasped, and the Court will recount only those essential to this ruling.

23 KCIR and its subsidiary managed Defendants’ investment business from 2004 to
24 2013. *See* Doc. 1 ¶¶ 19-24. Plaintiffs terminated the agreement with Defendants in 2013
25 just after collecting \$1,814,511 in management fees. *Id.* ¶¶ 31, 33. The business filed for
26 bankruptcy in 2013, and the trustee filed two complaints against KCIR for return of
27 management fees. *Id.* ¶¶ 35-36. KCIR spent approximately \$640,000 defending and
28 ultimately settling these claims. *Id.* ¶¶ 47,57.

1 Meanwhile, Defendants initiated a Nebraska arbitration against an unspecified
2 party. Defendants argued in the arbitration that they were entitled to two-thirds of a portion
3 of KCIR’s management fees because KCIR’s receipt of the fees was a violation of a
4 corporate opportunity that their position in the company entitled them to share.
5 *Id.* ¶¶ 37-38. The arbitrator agreed and awarded Defendants two-thirds of the \$1,075,007
6 portion they contested. *Id.* ¶ 39.

7 Plaintiffs then sued Defendants for indemnification, contribution, unjust
8 enrichment, and breach of fiduciary duty. *See* Doc. 1. Plaintiffs claimed that if Defendants
9 were entitled to recover this sum in arbitration, then they also were partly responsible for
10 defending against the claims brought by the bankruptcy trustee and should be required to
11 reimburse Plaintiffs for some of the costs Plaintiffs incurred in defending against those
12 claims. *Id.* ¶¶ 40-41. Defendants characterized this assertion as an end-run around the
13 arbitrator’s award. Doc. 23 at 5.

14 The Court dismissed the case for failure to state a claim, finding that Plaintiffs could
15 not seek partial indemnification from Defendants and did not allege facts showing that
16 Defendants were liable to the bankruptcy estate for purposes of contribution, that
17 Defendants were enriched by Plaintiffs’ defense of the bankruptcy claims, or that
18 Defendants owed Plaintiffs a fiduciary duty. Defendants now move for Rule 11 sanctions.

19 **II. Legal Standard.**

20 Courts may impose sanctions “when a filing is frivolous, legally unreasonable, or
21 without factual foundation, or is brought for an improper purpose.” *See* Fed. R. Civ. P.
22 11(c); *Estate of Blue v. County of Los Angeles*, 120 F.3d 982, 985 (9th Cir. 1997). Courts
23 must “exercise extreme caution” in imposing Rule 11 sanctions. *Larez v. Holcomb*, 16
24 F.3d 1513, 1522 (9th Cir. 1994); *see also Operating Eng’rs Pension Trust v. A-C Co.*, 859
25 F.2d 1336, 1344 (9th Cir. 1988) (Rule 11 sanctions are to be reserved for “rare and
26 exceptional” cases). Rule 11 sanctions are imposed at the Court’s discretion. *See Air*
27 *Separation, Inc. v. Underwriters at Lloyd’s of London*, 45 F.3d 288, 291 (9th Cir. 1995)
28 (“Although courts may impose sanctions . . . they are not required to do so.”).

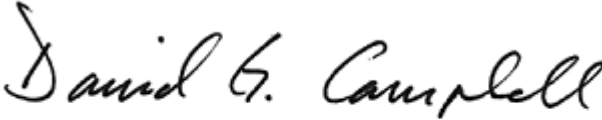
1 **III. Discussion.**

2 Defendants first argue that sanctions are appropriate because KCI's allegations did
3 not satisfy the legal requirements for indemnification, unjust enrichment, contribution, and
4 breach of fiduciary duties, the claims were frivolous under Rule 11. *See Doc. 57* at 13-17.
5 KCI initially pled arguable claims for relief. *See Stewart v. Am. Int'l Oil & Gas Co.*, 845
6 F.2d 196, 201 (9th Cir. 1988). KCI's claims were plausible under the common law, and
7 the Court cannot conclude KCI asserted them without reasonable and competent inquiry
8 even though the Court ultimately determined that KCI's conclusions were erroneous. *See*
9 *Rachel v. Banana Republic, Inc.*, 831 F.2d 1503, 1508 (9th Cir. 1988). The Court will
10 deny Defendants' motion on this ground.

11 Defendants next argue that KCI harassed them with patently frivolous claims for
12 the "improper purpose of nullifying a final, binding, and non-appealable arbitration award
13 that [had] been confirmed as a final judgment." [Doc. 57 at 12]. Plaintiffs' claims followed
14 a period of intense and contentious arbitration and litigation over complex issues. As both
15 Plaintiffs and Defendants acknowledge, Plaintiffs were not parties to the arbitration. *See*
16 *Docs. 57* at 10; 65 at 15. Contrary to Defendants' arguments, it is questionable whether
17 Plaintiffs had the opportunity to bring these claims in earlier proceedings. Further,
18 Defendants arguments rely heavily on the frivolousness of Plaintiffs' claims, but the Court
19 has already determined that Plaintiffs' claims were not frivolous. The Court cannot
20 conclude that Plaintiffs used their claims to harass Defendants and nullify a final arbitration
21 award.

22 **IT IS ORDERED** that Defendants' motion for Rule 11 sanctions (*Doc. 57*) is
23 **denied**.

24 Dated this 6th day of December, 2018.

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28 David G. Campbell
Senior United States District Judge