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

8 ROBERT REGINALD COMENOUT SR.,
9 EDWARD AMOS COMENOUT III, THE
10 ESTATE OF EDWARD AMOS
11 COMENOUT JR., ROBERT REGINALD
12 COMENOUT JR., MARLENE
13 COMENOUT and LEE A. COMENOUT
14 SR.,

12 Plaintiffs,

13 v.

14 J. MARK KELLER, et al.,

15 Defendants.

CASE NO. 3:16-cv-05464-RJB

ORDER DENYING THE STATE
DEFENDANTS' MOTION FOR
SANCTIONS

16 BEFORE THE COURT is the State Defendants' Motion for Sanctions. Dkt. 49. The
17 Court has considered pleadings filed in favor of and against the motion and the remainder of the
18 file herein.

19 The Court recited the procedural posture of the case in its Order on Plaintiffs' Motion for
20 Leave to File Third Amended Complaint (Dkt. 63), which should be incorporated herein.

21 The State Defendants seek sanctions against Plaintiffs for filing the Motion for Leave to
22 File Third Amended Complaint (Dkt. 46). The State Defendants argue that the Third Amended
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1 Complaint relitigates issues already decided in this and other cases, harasses the State
2 Defendants, and fails to correct defects that the State Defendants identified to Plaintiffs by letter.

3 “Filing a complaint in federal court is no trifling undertaking.” *Christian v. Mattel, Inc.*,
4 286 F.3d 1118, 1127 (9th Cir. 2002). Instead, by filing a pleading, an attorney “is certifying” that,
5 to the best of that person’s belief, and formed after a reasonable inquiry:

6 (1) [the pleading] is not being presented for any improper purpose, such as to harass, cause
unnecessary delay, or needlessly increase the cost of litigation;

7 (2) the claims, defenses, and other legal contentions are warranted by existing law or by a
8 nonfrivolous argument for extending, modifying, or reversing existing law or for
establishing new law;

9 (3) the factual contentions have evidentiary support or, if specifically so identified, will
likely have evidentiary support after a reasonable opportunity for further investigation or
10 discovery; and

11 (4) the denials of factual contentions are warranted on the evidence or, if specifically so
identified, are reasonably based on belief or a lack of information.

12 Fed. R. Civ. P. 11(b). When the complaint is the focus of the Rule 11 inquiry, courts must
13 determine, “(1) whether the complaint is legally or factually baseless from an objective
14 perspective, and (2) if the attorney has conducted a reasonable and competent inquiry before
15 signing and filing it.” *Id.* quoting *Buster v. Greisen*, 104 F.3d 1186, 1190 (9th Cir. 1997) (internal
16 quotations omitted).

17 *1. Legally/factually baseless?*

18 The Third Amended Complaint does contain some allegations that lack support under the
19 law. For example, attempting to challenge the constitutionality of Washington’s tax on cigarettes
20 sold by Indian retailers to non-Indian purchasers is without merit, because the issue is well-
21 settled. *Confederated Tribes & Bands of the Yakama Indian Nation v. Gregoire*, 658 F.3d 1078
22 (9th Cir. 2011). Nonetheless, other allegations may be warranted by gray areas in existing law or
23 include nonfrivolous arguments.

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Therefore, the State Defendants' Motion for Sanctions should be denied.

* * *

IT IS SO ORDERED.

Dated this 29th day of March, 2017.

Robert Bryan

ROBERT J. BRYAN
United States District Judge