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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT E. CARUSO and SANDRA L.
FERGUSON,

Plaintiffs,

v.

WASHINGTON STATE BAR
ASSOCIATION, *et al.*,

Defendants.

Case No. C17-00003RSM

ORDER GRANTING MOTION TO
DISMISS

I. INTRODUCTION

This matter comes before the Court on Defendants’ Motion for Attorneys’ Fees and Expenses. Dkt. #22. Defendants seek sanctions against Plaintiffs’ counsel, Stephen K. Eugster. *Id.* Mr. Eugster opposes this Motion on his own behalf. Dkt. #23. For the reasons stated below, the Court GRANTS Defendants’ Motion.

II. BACKGROUND

Prior to filing this case, Plaintiffs’ counsel Mr. Eugster has filed several lawsuits on his own behalf against the WSBA addressing the constitutionality of mandatory bar membership and fees and the validity of the WSBA’s discipline system. *See Eugster v. Wash. State Bar Ass’n*, No. CV 09-357-SMM, 2010 WL 2926237 (E.D. Wash. July 23, 2010) (“Eugster II”) (discipline system); *Eugster v. Wash. State Bar Ass’n*, No. C15-0375JLR, 2015 WL 5175722

1 (W.D. Wash. Sept. 3, 2015) (“Eugster III”) (membership/fees), *aff’d*, No. 15-35743, Dkt. #18-1
2 (9th Cir. Mar. 21, 2017); *Eugster v. Wash. State Bar Ass’n*, No. 15204514-9 (Spok. Cnty.
3 Super. Ct. 2015) (“Eugster IV”) (discipline system); *Eugster v. Littlewood*, No. 2:15-CV-0352-
4 TOR, 2016 WL 3632711 (E.D. Wash. June 29, 2016) (“Eugster V”) (discipline system);
5 *Eugster v. Wash. State Bar Ass’n*, No. 2:16-cv-01765 (W.D. Wash. 2016) (“Eugster VI”)
6 (membership/fees and discipline system). Each of these lawsuits was dismissed at the
7 pleadings stage. *See* Dkt. # 16 at 2-7 (Defendants’ Motion to Dismiss summarizing the
8 outcome of each case).
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10 This case was filed on January 3, 2017, initially as a putative class action on behalf of
11 all WSBA members, naming Plaintiffs Robert E. Caruso and Sandra L. Ferguson as class
12 representatives. *See id.* at 11. On February 21, 2017, Plaintiffs amended their Complaint to
13 abandon all class claims. *See* Dkt. # 4. Plaintiffs’ Amended Complaint described Defendants
14 as: (1) “Washington State Bar Association 1933,” an entity Plaintiffs alleged was “the
15 Washington State Bar Association created by the State Bar Act, Wash. Sess. ch. 94, 1933 and
16 prior to the amendments made to its Bylaws by the WSBA 1933 Board of Governors the
17 afternoon of September 30, 2016;” (2) “Washington State Bar Association 2017,” an entity
18 Plaintiffs alleged was “the Washington State Bar Association created by amendments made to
19 Bylaws of the WSBA 1933 by the WSBA 1933 Board of Governors on September 30, 2016;”
20 and (3-21) various WSBA officials. *Id.* at 1-3.
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24 Plaintiffs’ First Cause of Action was for declaratory judgment and sought, in part, an
25 injunction “enjoining Defendants from compelling Plaintiffs to be a members (sic) of the
26 WSBA 2017 and from compelling Plaintiffs to pay dues to the WSBA 2017.” *Id.* at 32.
27 Plaintiffs’ Second Cause of Action was brought under 42 U.S.C. § 1983 for violation of the
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1 First and Fourteenth Amendments to the U.S. Constitution for being “compelled to be a
2 members (sic) of WSBA 1933 or WSBA 2017.” *Id.* Plaintiffs’ Third Cause of Action was
3 similarly brought under the First and Fourteenth Amendments as “[c]ompulsory dues violate
4 Plaintiffs’ right of freedom of speech, including the freedom not to speak and to not be forced
5 to finance speech...” *Id.* at 33. Plaintiffs’ Fourth Cause of Action was titled “WSBA Discipline
6 System No Longer Exists.” *Id.* at 34-35. Plaintiffs’ Fifth Cause of Action alleged that the
7 WSBA discipline system violates constitutional due process. *Id.* at 35. Plaintiffs’ Sixth Cause
8 of Action alleges that the WSBA discipline system deprives Plaintiffs’ rights “under the
9 doctrine of constitutional scrutiny.” *Id.* at 36. Plaintiffs’ Prayer for Relief essentially requested
10 the Court declare that Plaintiffs, attorneys licensed to practice law in the State of Washington,
11 do not have to be members of the WSBA, do not have to pay WSBA dues, and are not subject
12 to WSBA discipline. *Id.* at 38-39.

15 On March 1, 2017, Plaintiffs filed a Motion for Summary Judgment. Dkt. # 8. On
16 March 3, 2017, Plaintiffs also filed a Motion for Preliminary Injunction, making similar
17 arguments. *See* Dkt. # 15. On March 21, 2017, Defendants filed a Motion to Dismiss, and
18 followed that up with the instant Motion for Attorney Fees on April 27, 2017. Dkts. #16 and
19 #22.

21 On May 11, 2017, the Court granted Defendants’ Motion and dismissed all of Plaintiffs’
22 claims with prejudice. Dkt. #28. In that Order, the Court disagreed with Plaintiffs’ argument
23 that the WSBA was reborn as a new entity on September 30, 2016, finding that “Plaintiffs offer
24 no argument against Defendants’ reasoned analysis, above, and the Court cannot imagine any
25 valid argument.” *Id.* at 5. The Court found that Plaintiffs’ counsel had previously raised the
26 claims that bar membership and dues were unconstitutional and “been sharply rebuked by the
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1 Honorable James L. Robart for ‘mischaracterization of case law’ and making ‘nonsensical’
2 arguments. *Id.* at 6 (citing *Eugster v. Washington State Bar Ass’n*, No. C15-0375JLR, 2015
3 WL 5175722, at *5-6 (W.D. Wash. Sept. 3, 2015), *aff’d*, No. 15-35743, 2017 WL 1055620 (9th
4 Cir. Mar. 21, 2017). The Court was able to dismiss all of Plaintiffs’ claims based on these
5 arguments without further analysis. *See id.* As to Plaintiffs’ remaining claims that Defendants’
6 actions violated procedural due process and constitutional scrutiny, the Court found that
7 “Plaintiffs’ due process and constitutional scrutiny claims fail under the law cited by
8 Defendants,” that “Plaintiffs make no effort to argue otherwise,” and that instead Plaintiffs
9 devoted “nearly all of their brief to addressing tangential issues raised by Defendants.” *Id.* at 8.
10 The Court found that dismissal with prejudice was warranted because “Plaintiffs have given the
11 Court no reason to believe they are capable of alleging facts sufficient under the law, given that
12 Plaintiffs have previously amended their Complaint and given their counsel’s familiarity with
13 the law surrounding this issue.” *Id.*

14 Plaintiffs subsequently appealed the Court’s Order of Dismissal and associated
15 judgment. Dkt. #30. That appeal is pending.

16 **III. DISCUSSION**

17 **A. Legal Standard**

18 The instant Motion seeks sanctions on three grounds: Rule 11, 28 U.S.C. § 1927, and
19 the Court’s inherent power. The Ninth Circuit Court of Appeals has set forth the considerations
20 for Rule 11 sanctions:
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22 An attorney is subject to Rule 11 sanctions, among other reasons, when he
23 presents to the court “claims, defenses, and other legal contentions . . . [not]
24 warranted by existing law or by a nonfrivolous argument for the extension,
25 modification, or reversal of existing law or the establishment of new law[.]”
26 Fed. R. Civ. P. 11(b)(2). When, as here, a “complaint is the primary focus
27 of Rule 11 proceedings, a district court must conduct a two-prong inquiry to
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1 determine (1) whether the complaint is legally or factually baseless from an
2 objective perspective, and (2) if the attorney has conducted a reasonable and
3 competent inquiry before signing and filing it.” *Christian v. Mattel, Inc.*,
4 286 F.3d 1118, 1127 (9th Cir. 2002) (internal quotations and citation
5 omitted). As shorthand for this test, we use the word “frivolous” “to denote
6 a filing that is *both* baseless *and* made without a reasonable and competent
7 inquiry.” *Moore v. Keegan Mgmt. Co (In re Keegan Mgmt. Co., Sec.*
8 *Litig.)*, 78 F.3d 431, 434 (9th Cir. 1996).

9 *Holgate v. Baldwin*, 425 F.3d 671, 675-76 (9th Cir. 2005). A district court is vested with
10 discretion whether or not to enter Rule 11 sanctions. *See Cooter & Gell v. Hartmarx Corp.*, 496
11 U.S. 384, 405, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990). “Rule 11 is an extraordinary remedy,
12 one to be exercised with extreme caution.” *Operating Eng’rs. Pension Trust v. A-C Co.*, 859
13 F.2d 1336, 1345 (9th Cir. 1988).

14 28 U.S.C. § 1927 provides that:

15 Any attorney or other person admitted to conduct cases in any court of the
16 United States or any Territory thereof who so multiplies the proceedings in
17 any case unreasonably and vexatiously may be required by the court to
18 satisfy personally the excess costs, expenses, and attorneys’ fees reasonably
19 incurred because of such conduct.

20 Section 1927 sanctions require a bad faith finding. *See Soules v. Kauaians For Nukolii*
21 *Campaign Comm.*, 849 F.2d 1176, 1185 (9th Cir. 1988). The imposition of fees under Section
22 1927 is appropriate “when an attorney knowingly or recklessly raises a frivolous argument, or
23 argues a [] claim for the purpose of harassing an opponent,” which qualifies as bad faith. *W.*
24 *Coast Theater Corp. v. City of Portland*, 897 F.2d 1519, 1528 (9th Cir. 1990).

25 A federal court’s inherent powers include the power “to fashion an appropriate sanction
26 for conduct which abuses the judicial process,” including the assessment of attorney fees.
27 *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991). A court has the inherent power to assess
28 attorney fees “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive
reasons.” *Id.* at 45-46 (internal quotations omitted).

B. Rule 11 Sanctions

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2 Defendants argue that “[w]hen an attorney advances legally groundless arguments, and
3 has previously advanced the same arguments in other lawsuits without success, Rule 11
4 sanctions are appropriate.” Dkt. #22 at 6 (citing *Knipe v. United States*, 151 F.R.D. 24, 25
5 (N.D.N.Y. 1993), *aff’d*, 19 F.3d 72, 77 (2d Cir. 1994)). In *Knipe*, an attorney filed a complaint
6 challenging the enforcement authority of the Federal Aviation Administration (“FAA”). 151
7 F.R.D. at 25. The court in that case found that plaintiff’s counsel violated Rule 11 because the
8 suit advanced legally baseless arguments already rejected in two previous lawsuits counsel had
9 filed, and appeared to be a “back door attempt to further his personal agenda against the FAA.”
10 *Id.* at 25-26. Defendants argue the situation here is the same, because “the arguments advanced
11 by Eugster here are legally groundless, have been rejected by other courts in Eugster’s past
12 actions, and appear to be a back door attempt to further his personal agenda against the WSBA.”
13 Dkt. #22 at 6. Defendants argue that Mr. Eugster’s conduct constitutes harassment, and that this
14 is a basis for Rule 11 sanctions under Ninth Circuit law. *Id.* at 6-7 (citing *Zaldivar v. City of*
15 *Los Angeles*, 780 F.2d 823, 832 (9th Cir.1986), *abrogated on other grounds*, *Cooter & Gell v.*
16 *Hartmarx Corp.*, 496 U.S. 384, 405 (1990); *Cook v. Peter Kiewit Sons Co.*, 775 F.2d 1030,
17 1032-33, 1036 (9th Cir. 1985)). Defendants argue that “if [Mr. Eugster] is not deterred from
18 continuing to pursue his serial litigation, Eugster could try to recruit other disciplined attorneys
19 in order to advance his frivolous arguments against the WSBA in perpetuity.” *Id.* at 7.
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24 In response, Mr. Eugster argues that Defendants have failed to put forth adequate factual
25 support for their Motion, and that the facts of this case are different than his previous suits
26 because, *inter alia*, “[t]he facts of this case pertain to WSBA 2017” whereas his previous suits
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1 were “brought under WSBA 1933.” Dkt. #23 at 5-6. Mr. Eugster requests Rule 11 sanctions
2 against Defendants for the instant Motion. *Id.* at 3-4.

3 On reply, Defendants argue that Mr. Eugster “incorrectly contests whether the same
4 claims [brought in this case] were rejected in his previous lawsuits,” and note that this Court has
5 already addressed the fact that “both Judge Robart and the Ninth Circuit specifically rejected
6 Eugster’s challenge to compulsory WSBA membership and dues on the merits.” Dkt. #31 at 3
7 (citing Dkt. #28 at 6).

9 Defendants are essentially attacking the Complaint and Amended Complaint filed by
10 Mr. Eugster in this case, so the Court will conduct the *Christian* two-prong inquiry. The Court
11 first finds that Defendants, in relying on the record in this case and Mr. Eugster’s previous
12 lawsuits, have put forth adequate admissible evidence. The Court can easily dismiss Mr.
13 Eugster’s argument that his previous lawsuits were distinct because they were “brought under
14 WSBA 1933,” as the Court has already determined that the distinction between WSBA 1933
15 and WSBA 2017, as set forth by Plaintiffs, is fictitious. Mr. Eugster has continually harassed
16 the WSBA with swiftly-dismissed lawsuits, including this one. For the reasons stated in its
17 May 11, 2017, Order and summarized above, the Court finds that Plaintiffs’ Amended
18 Complaint is legally and factually baseless from an objective perspective. *See* Dkt. #28. The
19 Court had no difficulty identifying the legal errors in Mr. Eugster’s pleading. The Court further
20 finds that Mr. Eugster could not have conducted a reasonable and competent inquiry before
21 signing and filing the Amended Complaint. Mr. Eugster has long been on notice of the flaws in
22 his constitutional claims against WSBA membership and dues after his personal lawsuits were
23 dismissed. Although Mr. Eugster has brought new claims in this case, the presence of the same
24 previously dismissed membership and fees claims in this case was unreasonable and did a
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1 disservice to his clients. Because Mr. Eugster's pleading in this case is both baseless and made
2 without a reasonable and competent inquiry, the term "frivolous" is applicable. *See Moore,*
3 *supra; see also Stewart v. Am. Int'l Oil & Gas Co.*, 845 F.2d 196, 201 (9th Cir. 1988) (frivolity
4 turns on "whether a pleading states an arguable claim" or whether it is "groundless"). Thus
5 under the *Christian* two-prong inquiry, or any other Rule 11 inquiry, Mr. Eugster has violated
6 this rule and sanctions are warranted.
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8 **C. Section 1927 Sanctions**

9 The Court has reviewed the arguments of the parties and finds that, although this case
10 was frivolous and harassing, Mr. Eugster did not so multiply the proceedings to be vexatious.
11 Mr. Eugster filed several but not an obscene amount of motions in this case, and Defendants
12 were able to respond to these motions briefly in their Motion to Dismiss. *See* Dkt. #16 ("Motion
13 to Dismiss and Opposition to Plaintiffs' Motions for Summary Judgment and Preliminary
14 Injunction"). Accordingly, sanctions under 28 U.S.C. § 1927 are not warranted at this time.
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16 **D. Sanctions Under the Court's Inherent Power**

17 It is not clear whether Defendants request these sanctions in the alternative or in addition
18 to sanctions under Rule 11. In any event, the Court declines to award additional sanctions under
19 its inherent power, and finds that an analysis of whether sanctions would otherwise be so
20 warranted is unnecessary given the above.
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22 **E. Mr. Eugster's request for Rule 11 Sanctions**

23 The Court finds that Defendants' arguments in the instant Motion have merit and
24 reiterates that Defendants' arguments to dismiss this case had merit. Mr. Eugster has failed to
25 put forth adequate grounds for Rule 11 sanctions against Defendants.
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IV. CONCLUSION

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2 Having reviewed the relevant briefing, the declarations and exhibits attached thereto,
3 and the remainder of the record, the Court hereby finds and ORDERS:

- 4 1) Defendants' Motion for Attorneys' Fees and Expenses (Dkt. #22) is GRANTED IN
5 PART as stated above. Defendants are awarded attorneys' fees and costs arising
6 from this litigation as a sanction against Plaintiffs' counsel, Stephen K. Eugster,
7 under Federal Rule of Civil Procedure 11.
8
- 9 2) **No later than ten (10) days from the date of this Order**, Defendants shall file a
10 Motion for Attorneys' Fees, noting it for consideration the second Friday after filing
11 and service of the Motion. The Motion shall be limited to six (6) pages and be
12 supported by documentary evidence reflecting the amount of fees and costs sought.
13 Plaintiffs may file a Response no later than the Wednesday before the noting date,
14 addressing only the reasonableness of the fees and costs requested, and limited to six
15 (6) pages. No Reply is permitted.
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19 DATED this 23 day of May, 2017.

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22 RICARDO S. MARTINEZ
23 CHIEF UNITED STATES DISTRICT JUDGE
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