SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 1, Honorable Jacquline Duong, Presiding
Mai Jansson, Courtroom Clerk

191 North First Street, San Jose, CA 95113
Telephone 408.882-2120

To contest the ruling, call (408) 808-6856 Or Email at Department1@scscourt.org before 4:00 P.M.

PROBATE LAW AND MOTION TENTATIVE RULINGS
DATE: November 1, 2024 TIME: 10:00 A.M.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	18PR182796	Gerald C. Fox Trust	Click on LINE 1 or scroll down for attached Tentative Ruling.

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PROBATE LAW AND MOTION TENTATIVE RULINGS

LINE 2	22PR192739	Estate of Francisco Ramiro Perez Juarez	Click on LINE 2 or scroll down for attached Tentative Ruling.
LINE 3			Click on LINE 3or scroll down for attached Tentative Ruling.
LINE 4			
LINE 5			
LINE 6			

Line 1

Case Name: The Gerald C. Fox Trust of August 23, 2011
Case No.: 18PR182796
Hearing date, time, and department: November 1, 2024 at 10:00 a.m. in Department 1

INTRODUCTION

This case has a long and complicated procedural history. However, the petition at issue is Petitioner Richard B. Fox ("Petitioner")'s verified petition to determine the invalidity of the trust ("the petition"). The petition sought a court order determining that the Gerald C. Fox Trust of August 23, 2011, as amended, is invalid as a result of fraud, mistake, impossibility, undue influence, and/or lack of capacity. The petition contended that Bill Fox ("Bill"), father of the decedent Gerald Fox ("Gerald") and Petitioner, and David Fox, Gerald and Petitioner's brother tricked Gerald into leaving his assets in trust to the Gerald C. Fox Foundation ("the Foundation"), a Minnesota non-profit. According to the petition, Gerald had limited cognitive capacity since birth.

On July 16, 2020, Respondents Charles Fox ("Charles") and Allison Greene ("Allison") are the directors of the Foundation and beneficiaries under the original terms of the trust. The Foundation, Charles, and Allison (collectively, "Respondents") filed a motion for sanctions under Code of Civil Procedure section 128.7[1] requesting that the court strike the petition and award monetary sanctions.

In 2020, in response to a demurrer filed by Respondents, the court stayed the proceedings pending the outcome of the appeal of a statement of decision on Respondents' February 2018 petition, which was then pending before the First District Court of Appeal, *Gerald C. Fox Foundation, et al. v. Richard v. Fox*, A165821.[2] In the same order, the court continued the demurrer and motion for sanctions to a date after the appeal had been decided. After the appeal had concluded, the court placed the demurrer and motion for sanctions back on calendar. Via written order filed June 14, 2020, the court sustained the demurrer without leave to amend as Petitioner conceded that, in light of the outcome of the appeal in docket A165821, the petition had no merit. The court also indicated that it would grant sanctions pursuant to section 128.7 but reserved ruling on the amount of sanctions, requesting additional briefing and information regarding the amount of sanctions to be imposed.

On June 28, 2024, Respondents filed their memorandum of points and authorities in support of the amount of sanctions. On July 31, 2024, Petitioner filed an opposition and Respondents filed a reply on August 16, 2024. On September 3, 2024, the court requested

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[1] All further undesignated statutory references are to the Code of Civil Procedure.

[2] The appeal was transferred from the Sixth District Court of Appeal (No. H048212) to the First District Court of Appeal.

additional briefing from the parties requesting that Respondents discuss the issues raised in Petitioner's July 31, 2024 briefing.

On September 20, 2024, Respondents filed their supplemental briefing. Petitioner filed his court-ordered brief on October 4, 2024. On October 3, 2024, Respondents filed a notice of bankruptcy filing, indicating that Petitioner's counsel had filed for bankruptcy and the automatic bankruptcy stay was then in effect. Accordingly, Respondents represented that they are now seeking sanctions solely against Petitioner himself and not his counsel.

DISCUSSION

I. Effect of the Bankruptcy Filing

As mentioned above, Respondents have notified the court that Petitioner's counsel has filed for bankruptcy, that the automatic bankruptcy stay is currently in effect, and that they are now seeking sanctions solely from Petitioner himself. This limits the court's authority to award sanctions under section 128.7. Section 128.7, subdivision (c)(1) provides, "Monetary sanctions may not be awarded against a represented party for a violation of paragraph (2) of subdivision (b)."[3]

Respondents sought sanctions pursuant to section 128.7, subdivisions (b)(1) and (b)(2) in their initial motion.[4] The court, in issuing its order indicating it was inclined to award sanctions[5], did not explicitly state whether it found the conduct sanctionable under subdivision

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[3] Section 128.7, subdivision (b)(2) provides, "By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met: . . .(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

[4] Respondents also mentioned section 128.7, subdivision (b)(3) in their initial memorandum of points and authorities in support of their motion. But, the notice of motion referred only to subdivision (b)(1) and (b)(2). Further, subdivision (b)(3) refers to claims made without evidentiary support and Respondents made no argument regarding a lack of evidentiary support in their motion. Accordingly, the court finds that section 128.7, subdivision (b)(3) provides no basis to order sanctions in this instant case.

[5] The parties disagree as to whether the court already granted the motion for sanctions and reserved ruling on the amount exclusively. However, the fact that Petitioner's counsel filed for bankruptcy and Respondents are now seeking sanctions exclusively against Petitioner himself is a material change in circumstances affecting the court's authority to award sanctions under section 128.7, subdivision (b)(2). Nonetheless, the court rejects any argument that the decision not to seek sanctions against Petitioner's counsel makes the motion different from the one previously served, therefore requiring a new safe harbor provision. The initial motion filed

(b)(1) or (b)(2). However, conduct violating section 128.7, subdivision (b)(2) may not form the basis of an award of sanctions against Petitioner himself. However, bad faith, harassing conduct or conduct intended to cause delay under section 128.7, subdivision (b)(1) is properly charged against both the attorney and the client. (*Laborde v. Aronson* (2001) 92 Cal.App.4th 459, 467, disapproved on another ground in *Musaelian v. Adams* (2009) 45 Cal.4th 512, 520.) Accordingly, the court must consider whether Petitioner himself may be sanctioned on the ground that his filing of the petition violated section 128.7, subdivision (b)(1).

II. The Court's Prior Ruling

A. Procedural Background

In its order addressing the motion for sanctions, filed September 5, 2024, the court provided the following summary of the procedural background of the case:

"On August 23, 2011, Gerald executed the Gerald C. Fox Trust ('the Trust'). On October 4, 2017, Gerald executed the Second Amendment to the Trust. Bill died on March 16, 2017. Gerald died on October 10, 2017.

"On February 8, 2018, the Foundation and Jay Johnson, a successor trustee, filed a Petition to Determine Invalidity of Purported Amendment to Trust challenging the Second Amendment to the Trust. On February 28, 2018, Respondents filed an Amended Petition to Determine Invalidity of Purported Amendment to Trust, requesting the Court to: (1) determine the Second Amendment to the Trust was invalid due to capacity and undue influence; (2) enjoin Petitioner from taking any actions as purported trustee of the Trust; (3) order Petitioner to inventory all assets he, his attorneys, or agents obtained from the Trust and to provide an accounting; (4) remove Petitioner as trustee of the Trust and appoint an independent trustee as successor trustee; (5) determine that Petitioner had committed elder financial abuse under Welfare and Institutions Code section 15610.30; and (6) award compensatory and punitive damages and costs of suit, including reasonable attorneys' fees.

"On May 29, 2018, Petitioner filed a Verified Response to Respondents' Amended Petition in which he argued that the petition did not adequately allege that Gerald lacked capacity to execute the Second Amendment to the Trust or that Petitioner had exerted undue influence over Gerald. He also argued that the Foundation was merely a conduit to transfer wealth from Gerald to David and to the family business. He further argued that if the Second Amendment was invalid due to undue influence, the Trust itself was also; that he (Petitioner) should remain the trustee of the Trust, that the Foundation lacked standing to prosecute the petition because its sole director was Petitioner.

"Also on May 29, 2018, Petitioner filed a verified petition ('Petitioner's initial petition') in which he alleged that the Trust held funds in a bank account and that Jay Johnson, a successor trustee under the terms of the original trust and an accountant for Bill and Gerald,

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and served in 2020 sought sanctions against both Petitioner and his counsel. Therefore, Petitioner had notice that sanctions were being sought against him and

had written checks to himself from that account without Gerald's knowledge. Petitioner sought to recover those allegedly misappropriated funds for the Trust. He argued that Johnson converted the funds, that Johnson breached his fiduciary duty to Gerald, that Johnson committed financial abuse of a dependent adult under Welfare and Institutions Code section 15610.30, and that Johnson violated Penal Code section 496 by concealing and withholding property stolen from Gerald. The petition indicated that Petitioner brought it in his capacity as trustee of the Trust.

"On June 25, 2019, the Honorable Julie Emede issued an order re: default judgment. The order found Johnson liable for damages in the amount of $l,196,304 under all of the theories alleged in Petitioner's initial petition other than under Penal Code section 496 and concluded that the amount should be doubled to $2,392,608 under Probate Code section 859. The court held that Johnson was disqualified from serving as trustee and found that the Trust was the prevailing party. The order expressly indicated that it did not resolve the issues of whether the bank account from which the funds were taken was an account that was part of the Trust or a personal account of Gerald's and whether Petitioner was the trustee. On August 21, 2019, a judgment was issued in favor of the Trust and against Jay Johnson in the amount of $2,392,608.

"On September 10, 2019, Petitioner filed a second verified petition, in which he sought to recover for the Trust or Gerald's estate certain assets that he claimed had been misappropriated by various persons, including Jay Johnson.

"On September 30, 2019, Petitioner admitted in a stipulation, entered into before trial, that the Second Amendment to the Trust was invalid. He also resigned as trustee. On October 3, 2019, the court accepted Petitioner's resignation as trustee without prejudice to Petitioners pursuing their claims against him as trustee. By order dated October 7, 2019, the court appointed Bank of the West to be successor trustee of the Trust.

"On October 9, 2019, Petitioner filed a motion for judgment on the pleadings. In it, he alleged, inter alia, that the Trust was invalid because Gerald lacked capacity to execute it in 2011, that the Trust was invalid due to the nonexistence of the Foundation and impossibility of performance, and that the Foundation no longer existed and could not be a beneficiary of the trust and, therefore, lacked standing in this action.

"On February 13, 2020, the Honorable Thomas Kuhnle issued a 45-page judgment and statement of decision addressing Respondents' 2018 amended petition. In it, the court found that (1) Petitioner's contention that Gerald entered into the Trust agreement by reason of fraud or mistake was not supported by admissible evidence; (2) Petitioner is barred from contending the 2011 Trust is invalid under the doctrines of judicial estoppel and contractual estoppel; (3) Gerald had capacity to execute the Trust in 2011; and (4) Petitioner's contention that the Foundation ceased to exist was unsupported.

On March 30, 2020, Petitioner moved for a new trial arguing that Respondents lacked standing in this case because the Foundation no longer existed and that the Trust was invalid

due to the undue influence of Bill. On May 12, 2020, the court denied the motion for a new trial. On June 8, 2020, Petitioner filed a notice of appeal challenging the February 13, 2020 judgment and statement of decision. That case was ultimately assigned docket number A165821.

"On May 21, 2020, Petitioner filed the petition that is the subject of the demurrer and motion for sanctions ('the petition'). The petition contends that Bill and David tricked Gerald into leaving his assets in trust to the Foundation, which he contends no longer exists due to failure to comply with Minnesota law. He argued that the trust was invalid due to fraud, mistake, impossibility, undue influence, or lack of capacity based on Bill and David's alleged fraud and undue influence in convincing Gerald to accept a complicated estate plan that included leaving assets in trust for the Foundation. Petitioner filed the new petition as an individual and not as trustee of the Trust.

"On June 22, 2020, Respondents filed their demurrer and on July 16, 2020, they filed their motion for sanctions. As part of the demurrer, in the alternative, Respondents asked the court to stay the proceedings pending the outcome of the appeal in A165821. Petitioner opposed the demurrer and motion and Respondents filed replies. In October 2020, the court, the Honorable Julie Emede presiding, ordered the proceedings stayed, pursuant to Respondents' alternative request for a stay, pending the outcome of the appeal in A165821.

"On January 25, 2024, Petitioner moved to dismiss the petition. However, dismissal was not entered by the clerk because the request was not on the proper judicial council form. On February 13, 2024, Respondents filed a response to Petitioner's request to dismiss the petition. On March 18, 2024, Petitioner again attempted to dismiss the petition, this time on the correct form. But, the clerk again rejected the request because Respondents had not signed the form.

"On April 22, 2024, Petitioner filed a memorandum of points and authorities and declaration in opposition to Respondents' motion for sanctions and in support of Petitioner's request for sanctions against Respondents. On April 26, 2024, Respondents submitted a memorandum of points and authorities and declaration in support of their motion for sanctions and demurrer and in opposition to Petitioner's request for sanctions. But, these documents were rejected by the Clerk's Office because they did not contain the date of the hearing. Respondents thereafter refiled the documents on June 10, 2024. On May 1, 2024, Petitioner filed a reply.

"On June 12, 2024, the demurrer and motion for sanctions came on for hearing. The court sustained the demurrer and indicated that it intended to award sanctions pursuant to section 128.7 but it reserved ruling on the amount of sanctions."

(Order, filed September 15, 2024, pp. 2:23-6:10.)

B. Basis for the Court's Initial Sanctions Ruling

In its order, filed June 14, 2024, sustaining Respondents' demurrer and addressing their request for sanctions, the court stated the following:

Respondents contend that Petitioner had no legal basis for his petition and that he filed it for the purposes of harassing Respondents and to obtain trust assets to which he is not entitled to. They contend that he has violated section 128.7, subdivisions (b)(1) and (b)(2). They ask that the court strike the petition and that it award them their attorney fees. At the outset, the court notes that the request to strike the petition is moot in light of the court's ruling on the demurrer. The court will go on to address the request for attorney fees.

"By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met: [¶] (1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. [¶] (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." (§ 128.7, subds. (b)(1) & (2).)

"A claim is factually frivolous if it is 'not well grounded in fact' and is legally frivolous if it is 'not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.' [Citation.] In either case, to obtain sanctions, the moving party must show the party's conduct in asserting the claim was objectively unreasonable. [Citation.] A claim is objectively unreasonable if 'any reasonable attorney would agree that [it] is totally and completely without merit.' [Citations.]" (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 189.) "Filing a new complaint based on the same facts to evade a ruling made in a previous litigation constitutes sanctionable conduct under section 128.7. [Citation.]" (*Id.* at p. 191.)

"When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this section and explain the basis for the sanction imposed." (§ 128.7, subd. (e).)
"Monetary sanctions may not be awarded against a represented party for a violation of paragraph (2) of subdivision (b)." (§ 128.7, subd. (d)(1).)

Respondents repeat their allegations, raised in connection with the demurrer, that Petitioner's claims are barred by the statute of limitations and the principles of judicial and contractual estoppel.

i. Statute of Limitations

"A statute of limitations defense may be raised by demurrer [citation]." (*Doyle v. Fenster* (1996) 47 Cal.App.4th 1701, 1707.) The statute of limitations may be asserted on demurrer, when the grounds for the defense are disclosed on the face of the complaint or from matters judicially noticed. (See *Vaca v. Wachovia Mortgage Corp.* (2011) 198 Cal.App.4th 737, 746; *Iverson, Yoakum, Papiano & Hatch v. Berwald* (1999) 76 Cal.App.4th 990, 995.)

Evidentiary facts found in exhibits attached to a complaint can be considered on demurrer. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.)

" 'A demurrer on the ground of the bar of the statute of limitations will not lie where the action may be, but is not necessarily barred.' [Citations.] It must appear clearly and affirmatively that, upon the face of the complaint, the right of action is necessarily barred. [Citations.] This will not be the case unless the complaint alleges every fact which the defendant would be required to prove if he were to plead the bar of the applicable statute of limitation as an affirmative defense. [Citation.]" (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 881.)

"A general demurrer based on the statute of limitations is only permissible where the dates alleged in the complaint show that the action is barred by the statute of limitations. [Citation.] The running of the statute must appear 'clearly and affirmatively' from the dates alleged. It is not sufficient that the complaint might be barred. [Citation.] If the dates establishing the running of the statute of limitations do not clearly appear in the complaint, there is no ground for general demurrer. The proper remedy 'is to ascertain the factual basis of the contention through discovery and, if necessary, file a motion for summary judgment . . . .' [Citation.]" (*Roman v. County of Los Angele*s (2000) 85 Cal.App.4th 316, 324-325.)

The parties agree that Probate Code sections 16061.7 and 16061.8 govern the statute of limitations for the filing of the new petition. Probate Code section 16061.7, subdivision (a) provides that a trustee must serve notice of certain enumerated events to beneficiaries, heirs, and other parties. The enumerated events include when a revocable trust becomes irrevocable due to the death of the settlor (Prob. Code, §16061.7, subd. (a)(1)) and when there is a change in trustee (Prob. Code, §16061.7, subd. (a)(2)). "If the notification by the trustee is served because a revocable trust or any portion of it has become irrevocable because of the death of one or more settlors of the trust, . . . the notification by the trustee shall also include a warning, set out in a separate paragraph in not less than 10-point boldface type, or a reasonable equivalent thereof, that states as follows: [¶] 'You may not bring an action to contest the trust more than 120 days from the date this notification by the trustee is served upon you or 60 days from the date on which a copy of the terms of the trust is delivered to you during that 120-day period, whichever is later.' " (Prob. Code, § 16061.7, subd. (h).)

Probate Code section 16061.8 provides, in its entirety, "No person upon whom the notification by the trustee is served pursuant to this chapter, whether the notice is served on him or her within or after the time period set forth in subdivision (f) of Section 16061.7, may bring an action to contest the trust more than 120 days from the date the notification by the trustee is served upon him or her, or 60 days from the date on which a copy of the terms of the trust is delivered pursuant to Section 1215 to him or her during that 120-day period, whichever is later."

Here, the petition does not allege that it is timely filed. But, a filing stamp appears on the face of the petition indicating it was filed on May 21, 2020. Additionally, a Probate Code section 16061.7 notice appears attached to the petition as an exhibit. The attached notice

indicates that it was sent on October 30, 2017, shortly after Gerald's death. Thus, Respondents contend that the new petition was not filed within the 120-day statute of limitations period.

Petitioner admits that he received the October 30, 2017 notice and does not challenge its validity. But, he argues that he received an additional Probate Code section 16061.7 notice, containing the Probate Code section 16061.7, subdivision (h) advisement, after Bank of the West was appointed as trustee. He asserts that the notice was provided at a time when the trust was substantially changed due to his resignation as trustee and due to the invalidation of the Second Amendment. Therefore, he contends that the statute of limitations began anew on December 27, 2019, the date Bank of the West served the notice of change in trustee.

Petitioner cites only *Harustak v. Wilkins* (2000) 84 Cal.App.4th 208 (*Harustak*), wherein, he argues a Probate Code section 16061.7, subdivision (h) advisement was contained in a notification sent on "change in trust status" by death of second settlor where an amendment had changed beneficiary and successor trustee." In that case, the settlors were husband and wife and the trust instrument provided that the trust would become irrevocable upon the death of either spouse. (*Id.* at p. 211.) After the death of the surviving spouse, the trustee sent out a Probate Code section 16061.7 notice containing the subdivision (h) advisement. (*Ibid.*) There is no evidence that the petitioner in that case had received a valid notice when the first settlor died, rendering the trust irrevocable. In fact, as Respondents point out, when the first spouse died, the surviving spouse became the sole trustee and attempted to amend the trust, which may suggest that she did not send out the required notice when the first spouse died and the trust became irrevocable.

Harustak dealt only with the sufficiency of the notice itself. The court held that the notice did not comply with the terms of then section 16061.7, subdivision (g) because the 120 day advisement was not bolded and did not stand out enough from the rest of the text to be the reasonable equivalent. (*Harustak, supra,* 84 Cal. App.4th at pp. 216, 219.) It did not hold that the 120-day statute of limitations will restart upon each time a Probate Code section 16061.7 notice containing a subdivision (h) advisement is sent.

Petitioner's argument that the 120-day period restarted upon his receipt of the December 27, 2019 notice is without merit. Although the notice sent by Bank of the West contained the Probate Code section 16061.7, subdivision (h) advisement, it also indicates that it was brought under Probate Code section 16061.7, subdivision (a)(2), which is the subdivision requiring notice when there is a change in trustee.

The 120-day deadline to file a trust contest contained in Probate Code section 16061.8 is, by its terms, triggered only by a notice served under subdivision (a)(1) of Probate Code section 16061.7, which provides, "When a revocable trust or any portion thereof becomes irrevocable because of the death of one or more of the settlors of the trust, or because, by the express terms of the trust, the trust becomes irrevocable within one year of the death of a settlor because of a contingency related to the death of one or more of the settlors of the trust." Thus, a new 120-day timeframe is not triggered by the service of a notice of change in trustee. The mere fact that Bank of the West sent out the notice of change in trustee with the Probate

Code section 16061.7, subdivision (h) advisement did not renew that statute of limitations period as Petitioner claims. Accordingly, the court finds that the petition was barred by the statute of limitations at the time it was filed.

ii. Estoppel

While Petitioner initially asserted that principles of judicial estoppel and do not bar his petition, he admits that Judge Kuhnle's decision and judgment have preclusive effect now that the judgment has been affirmed on appeal. Petitioner contends that he was entitled to pursue his petition until the Court of Appeal affirmed Judge Kuhnle's decision on Respondents' petition. However, Petitioner filed his petition that is the subject of the motion for sanctions *after* Judge Kuhnle issued his statement of decision and Judge Kuhnle concluded that the petition was barred by judicial estoppel at the time. Specifically, Judge Kuhnle determined that Petitioner had taken the position that the trust was valid when he filed his initial petition in 2018 seeking to recover money for the trust. But, he later stipulated that the trust was invalid. All of this occurred prior to the filing of the petition now at issue. Further, as discussed above, the petition was barred by the statute of limitations at the time it was filed. Accordingly, sanctions are warranted."

(Order re Demurrer and Motion for Sanctions, filed June 14, 2024, p. 10:20-15:12, outer quotation marks omitted.)

III. Section 128.7, Subdivision (b)(1)

For a sanctions motion under Code of Civil Procedure section 128.7, the determination of violation is made under an objective standard. (*Bockrath v. Aldrich Chem. Co., Inc.* (1999) 21 Cal.4th 71, 82.) "Filing a new complaint based on the same facts to evade a ruling made in a previous litigation constitutes sanctionable conduct under section 128.7." (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 191, citing *Pollock v. University of Southern California* (2003) 112 Cal.App.4th 1416, 1431-1432.) Here, Petitioner contends that he filed the challenged petition in order to "preserve" the issues that had already been ruled on by Judge Kuhnle and were challenged on appeal. However, he does not explain why the appellate process itself was not sufficient to preserve the issues. In other words, if he had been successful on appeal, Judge Kuhnle's order would have been reversed and the parties would have been returned to their previous positions. It is not clear why an additional petition would need to be filed, causing further resources to be expended and additional expense.

Additionally, despite being on notice that the petition should be dismissed in 2020 when the sanctions motion was filed after the 21-day safe harbor was given, Petitioner doubled down and opposed the demurrer and motion for sanctions rather than withdrawing the petition. (*Banks v. Hathaway, Perrett, Webster, Powers & Chrisman* (2002) 97 Cal.App.4th 949, 953 [reinstating sanctions award where "Van Trees timely served the motion for sanctions and waited until the safe harbor period passed. Counsel for Banks was on notice that the action was frivolous and should be dismissed. Instead, he requested an extension, filed a first amended complaint, opposed the demurrer, and moved for relief from default and new trial after the trial

court sustained the demurrer without leave to amend. The trial court found that the action was 'completely unjustified and a shining example of a violation of 128.7.' "].)

Further, the court concludes that the petition was frivolous for the reasons discussed in its prior order. The court notes that, although section 128.7, subdivision (b)(2) cannot provide a basis for sanctions against a represented party, like Petitioner, it has been held that "a nonfrivolous complaint cannot be presented for an improper purpose under section 128.7[.]" (*Ponce v. Wells Fargo Bank* (2018) 21 Cal.App.5th 253, 265.) Accordingly, it is necessary to determine that the petition lacked merit.

Petitioner argues that his argument that the statute of limitations does not bar his petition challenging the trust was not frivolous because there are no cases directly on point. But, Petitioner's argument on this point was not based in law. As the court explained in its order filed June 14, 2024, Petitioner argued that a notice of change in trustee provided a new statute of limitations period in which to challenge the validity of the trust. Petitioner admits that no court has so held and the arguments makes little sense. Petitioner had already received a notice of the 120-day period in which to contest the trust.

Petitioner also contends that claims preclusion based on Judge Kuhlne's order did not bar the issues raised in the petition at the time the sanctions motion was filed because Petitioner's appeal was pending. However, even assuming that was correct, Petitioner has not explained why he would need to file an additional petition to preserve the issues raised on appeal. Instead, if Petitioner had been successful on appeal, the order would have been reversed and the issues could have been decided on the pleadings previously filed with the court. And, Judge Kuhnle found that the doctrine of judicial estoppel barred Petitioner from arguing the invalidity of the trust as he had already championed its validity previously. Thus, judicial estoppel barred Petitioner from bringing the challenged petition even if Judge Kuhnle's order was still on appeal at the time the challenged petition was filed.

Petitioner asserts that sanctioning him would chill zealous advocacy. However, that argument makes little sense in context, now that Respondents are expressly seeking sanctions solely from Petitioner himself and not from his counsel.

Finally, Petitioner argues that the sanctions motion the court heard is not the same motion that was served on him. In *Hart v. Avetoom* (2002) 95 Cal.App.4th 410, 414, the Court of Appeal held that the trial court erred in awarding sanctions under section 128.7 where the motion served on the opposing party was not the same motion that is filed and heard by the court. There, "the motion filed in November 1998 was not the same motion served in December 1997. The November 1998 version contained additional declarations and supplemental points and authorities not present in the original version." (*Ibid*.) Here, Petitioner does not appear to dispute that the initial sanctions motion filed with the court was the same motion filed with the court in 2020. However, in his supplemental opposition filed July 31, 2024, he argued that Respondents filed additional briefs on February 13, 2024 and April 26, 2024. On February 13, 2024, Respondents filed a document addressing Petitioner's attempt to dismiss the challenged petition. The document did not address the sanctions motion and was not considered by the court in making its ruling.

On April 26, 2024, Respondents submitted a memorandum of points and authorities and declaration in support of their motion for sanctions and demurrer and in opposition to Petitioner's request for sanctions. But, these documents were rejected by the Clerk's Office because they did not contain the date of the hearing. Respondents thereafter refiled the documents on June 10, 2024. Those documents addressed Petitioner's argument, already rejected by the court, that Respondent's attempt to have the court hear the merits of the demurrer and motion for sanctions were an improper, untimely request for reconsideration of the court's order staying the proceedings. They did not provide additional arguments or evidence that the court has considered in support of the request for sanctions. The June 10, 2024 filings informed the court that the appeal in A165821 had been completed so the stay could be lifted.

Petitioner also appears to argue that the supplemental briefing ordered by the court supplements the motion, such that it is no longer the same motion that was initially served. While this argument may appear to have merit at first glance, the court notes that the supplemental briefing it requested in its June 14, 2024 order was ordered to allow Petitioner to respond to Respondent's evidence as to the amount of attorney fees incurred. On June 28, 2024, Respondents filed a memorandum of points and authorities addressing the reasonableness of the attorney fees incurred. The filings did not address the sanctionable conduct or the merits of the motion. Petitioner's court ordered supplemental briefing filed July 31, 2024, which was meant to also address the reasonableness of the amount of fees incurred, failed entirely to address that issue and instead, for the most part, reiterated arguments already made in his initial opposition. After receipt of that briefing, the court again ordered supplemental briefing for the express purpose of fully considering all arguments for and against the decision to impose sanctions. Respondents addressed the arguments Petitioner raised in his July 31, 2024 supplemental briefing. On September 2, 2024, Respondents provided their briefing as ordered by the court. They did not supplement the motion with additional arguments or evidence. Instead, they responded to the arguments raised by Petitioner as ordered by the court.

To the extent Petitioner argues that his counsel's filing for bankruptcy and Respondents' decision to seek sanctions against Petitioner exclusively causes the motion to be different from the motion initially served, the court rejects this argument as well. As mentioned above, the initial motion gave notice that Respondents were seeking sanctions from both Petitioner and his attorney. Although one of the statutory bases for an award of sanctions is no longer available as discussed above, the sanctionable conduct is and has been since the initial motion, the filing of the challenged petition despite the fact that the court had already found them to be without merit for multiple reasons and when there was no need to preserve the issues as the court's order ruling against Petitioner had been appealed.

IV. Amount of Sanctions

Respondents initially requested $15,000 for their attorney fees incurred in drafting and filing the demurrer and request for sanctions. The motion and its supporting documents did not provide a breakdown of how the fees were incurred, nor did it provide the hourly rates of the

attorney(s) involved in drafting and filing those documents. In reply, Respondents requested a total of $47,218.50 and provided a breakdown of how the fees were incurred in the declaration of their counsel. Because Petitioner did not have the opportunity to respond to the amount of the attorney fees, the court requested supplemental briefing from Petitioner regarding the amount and reasonableness of Respondents requested attorney fees. But, Petitioner did not make any argument as to the amount of sanctions in the court ordered supplemental briefing. In their June 28, 2024 briefing regarding the reasonableness of the amount of sanctions, Respondents request $46,373.00 in attorney fees.

Respondents have provided the declaration of their counsel Joseph Cassioppi, in which he indicates that Respondents are seeking fees for three separate attorneys at three separate hourly rates. Respondents provide a chart indicating the experience level and hourly rate of each attorney and comparing those hourly rates to the Laffey Matrix rates. They explain that Cassioppi bills at $485 per hour, which is well below the Laffey Matrix rate range of $759-$878 for an attorney of 11 to 19 years' experience. They also state that attorney Julian Mack, who has more than 20 years of experience, bills at $470, well below the Laffey Matrix rate range of $899-$1057 per hour. They also indicate that attorney Jade Jorgenson bills at $380 per hour, below the Laffey Matrix rate range $458-$777 per hour for an attorney with six to 10 years of experience. The court finds the hourly rates to be reasonable.

Respondents assert that the attorneys spent 54.9 hours in connection with the demurrer and 51.1 hours in connection with the motion for sanctions in total. They have provided billing records attached to the Declaration of Joseph Cassioppi, filed June 28, 2024 and the Declaration of Julian Mack filed June 28, 2024. Those records are redacted to only show those entries related to the demurrer and motion for sanctions.

Respondents contend that their work in connection with the demurrer and motion for sanctions took longer than it normally would because "Petitioner has aggressively opposed every factual and legal issue with extensive briefing and argument at every possible opportunity." (Declaration of Joseph Cassioppi, filed June 28, 2024, ¶ 19.) However, there was significant duplication in the issues raised in connection with the demurrer and motion for sanctions. The court finds that the amount of fees requested must be reduced by $21,360.[6] Accordingly, the court orders Petitioner to pay $25,013 to Respondents' counsel.

CONCLUSION

The motion for sanctions is GRANTED pursuant to section 128.7, subdivision (b)(1). Petitioner is ordered to pay Respondents' counsel $25,013. Again, the court notes that Respondents have determined not to seek sanctions against Petitioner's counsel at this time. Accordingly, this order applies to Petitioner only.

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[6] In reaching this number, the court used the lodestar method, determining that a reasonable amount of time spent for all attorneys to work on the demurrer and the motion for sanctions would be 58 hours. It then reduced the amount of hours worked by each attorney by 16 hours to take into account the reasonable hourly rates of each counsel.

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Case Name: Estate of Francisco Ramiro Perez Juarez

Case No.: 22PR192739

Lis Perez ("Petitioner") initiated this action by filing a petition for letters of special administration for the estate of Decedent Francisco Ramiro Perez Juarez ("Decedent"), Petitioner's father whom she contends died intestate. Karla Karina Gama ("Respondent"), Decedent's partner, objected to Petitioner's petition and filed a petition to probate a will purportedly executed by Decedent in Mexico (the "Mexican Will") shortly before his death. Petitioner now moves to reopen discovery pursuant to Code of Civil Procedure section 2024.050.

I. BACKGROUND

Petitioner retained Mr. Eugene Flemate ("Flemate"), "a seasoned attorney with over 50 years of practice," on May 16, 2022. (MPA, p. 1:24-25.) On January 5, 2024, Mr. Flemate served Respondent with requests for admissions, form interrogatories, special interrogatories, and requests for production. (Declaration of Robert V. Garcia in Support of Opposition to Motion for Order to Reopen Discovery ("Garcia Decl."), ¶ 3.) On February 19, 2024, Respondent timely responded to these discovery responses. (Id. at ¶ 4.) On March 29, 2024, Mr. Flemate served Respondent with his client's Disclosure of Expert Witness Declaration. (Id. at ¶ 6.) On March 8, 2024, Mr. Flemate served a notice of deposition on Respondent and conducted a roughly five-hour deposition of Respondent on April 2, 2024. (Id. at ¶¶ 5, 7.) On May 10, 2024, Mr. Flemate filed and served on Respondent a "Notice to Appear at Trial in Lieu of Subpoena and Request for Production of Documents." (Id. at ¶ 8.) On May 22, 2024, the parties held a settlement conference. (Id. at ¶ 9.)

Mr. Flemate stated in a motion in limine filed on May 31, 2024, wherein Mr. Flemate sought a continuance of trial and submitted a motion to withdraw, that his "mental and physical decline over the past month were sudden and unforeseeable. Indeed, Eugene Flemate, himself, and those around him, believed he would be able to conduct trial as late as a month ago." (Garcia Decl., ¶ 11, Ex. B at p. 3:7-9.) Petitioner, Mr. Flemate, and Mr. Flemate's son filed declarations in support of this motion to withdraw, all making similar statements as to the timing of Flemate's mental and physical decline. (See Opposition to Motion for Order for Leave to Reopen Discovery ("Opposition"), pp. 2:26-3:26, citing Garcia Decl., Exs. C at pp. 1:25-2:1 ["Throughout his representation, I was generally pleased with his work. . . . I did not have any concern about his capacity until recently, when he called to my attention his declining mental and physical conditions . . . [a]round the time of the

Settlement Conference, he advised that he believed that he no longer had the ability to conduct the trial"], D at pp. 1:28-2:1 ["I have recently realized that my mental and physical condition has declined rapidly in the past month . . ."], E at p. 2:24-27 ["I did not have any concerns about his mental capacity as he seemed to have a sharp legal mind and was still able to communicate effectively. However, about a week and a half ago, I began to notice his mental acuity was taking a turn for the worse . . ."].)

On May 31, 2024, Petitioner filed a motion in limine requesting the court continue the trial based on the absence of evidence. (See, e.g., Garcia Decl., Ex. F.) Petitioner stated that Petitioner and "her attorney Eugene Flemate, have proceeded to this point of this litigation with the belief that the courts of Mexico would come to a decision regarding the validity of the 'Mexican Will' that was submitted to the Santa Clara County Superior Court and offered for probate, and is the primary subject and piece of evidence in this trial." (Id. at p. 2:15-18.) Petitioner and "her attorneys both here and in Mexico, believed that the Mexican Court would come to a decision quickly that the Mexican Will was invalid, and that this decision would be lodged with the Santa Clara County Superior Court prior to this trial." (Id. at p. 3:1-3.)

On June 3, 2024, the court granted Mr. Flemate's motion to withdraw as counsel for Petitioner due to Mr. Flemate's declining health. (Declaration of Ryan A. Ramseyer in Support of Motion for Leave to Complete Discovery, ¶ 2.)

II. DISCUSSION

a. General Legal Standard

The court may re-open discovery and allow for further discovery proceedings on the motion of any party. (Code Civ. Proc., § 2024.050, subd. (a).) In exercising its discretion to grant or deny a motion, the court should take into consideration any matter relevant to the leave requested, including the following factors: (1) the necessity and the reasons for the discovery; (2) the diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons the discovery was not completed or the discovery motion was not heard earlier; (3) any likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party; and (4) the length of time that has elapsed between any date previously set, and the date presently set, for the trial of the action. (Code Civ. Proc., § 2024.050, subd. (b).)

b. The Necessity and Reasons for Discovery

Petitioner argues that the court should re-open discovery because Mr. Flemate's "declining health prevented him from completing the necessary discovery before his

withdrawal. As a result, [Petitioner's] new counsel lacks crucial information needed to adequately prepare for trial." (Memorandum of Points and Authorities in Support of Motion to Re-Open Discovery ("MPA"), p. 3:14-20.)

Respondent responds that reopening discovery is not necessary because Petitioner and her attorneys chose the amount and extent of discovery to demand before the cut-off date, propounding written discovery, deposing Respondent, and serving a disclosure of expert witness upon Respondent. (Opposition, pp. 4:25-5:14.) Furthermore, Respondent contends that "[w]ithout knowing the necessity and reasons for the discovery, it is difficult to fathom the relevance and whether such discovery would have any bearing on this case. [Petitioner's]

motion does not include a sample of what is sought, and how the information would be vital to this action." (Id. at p. 5:17-19.)

On reply, Petitioner states that specific discovery is necessary to "depose percipient witnesses who have not yet been deposed," "obtain additional documentary evidence regarding the creation and validity of the purported Mexican will," "complete expert discovery regarding Mexican law and notarial practices," and "conduct follow-up discovery based on information obtained through the ongoing Mexican proceedings." (Reply in Support of Motion to Reopen Discovery ("Reply"), p. 6:1-12.)

The court finds that Petitioner provides a reasonable explanation, on reply, that additional discovery is necessary. Petitioner appears to require additional discovery regarding the Mexican will and related litigation in Mexico and to depose percipient witnesses. To that end, Petitioner seeks to obtain additional documentary evidence regarding the creation of the Mexican will and complete expert discovery related to the Mexican will.

c. The Diligence of Party Seeking Discovery

Petitioner argues she diligently sought discovery. According to Petitioner, upon retaining new counsel, "they promptly assessed the status of discovery and recognized the need for additional discovery. They raised this issue at the earliest opportunity during the trial setting conference in August 2024. The failure to complete discovery earlier was due to circumstances beyond Ms. Perez's control – namely, the health issues of her former counsel." (MPA, p. 3:24-28.) Respondent responds with two points. First, Respondent argues that Petitioner and her attorneys "strategically decided to forgo performing further discovery because they were gambling on the outcome of proceedings in Mexico." (Opposition, p. 6:6-7, citing Cottini v. Enloe Medical Center (2014) 226 Cal.App.4th 401 (Cottini).) Second, Respondent argues that Mr. Flemate had "two years to conduct discovery" and Mr.

Flemate's "decline occurred after the discovery cut-off date" and "about a month before the trial date." (Id. at p. 7:7-9.)

In Cottini, the plaintiff appealed the trial court's decision to deny his motion to reopen discovery, continue the trial, and allow late submission of expert witness information after plaintiff failed to disclose exchange witness information and pursue expert witness discovery. (Cottini, supra, 226 Cal.App.4th at pp. 405-406.) Rather than engaging in expert witness disclosure and discovery, the plaintiff pursued a motion to disqualify defendant's counsel, a motion that the trial court ultimately denied. (Ibid.) In affirming the trial court's decision denying the motion to reopen discovery, the Court of Appeal found "[plaintiff's] attorneys made a strategic decision to forgo expert witness discovery in favor of pursuing a meritless disqualification motion. Diligence would have required [plaintiff] to disclose his expert witnesses while [the motion to disqualify] was pending. At the very least, he should have done so after the trial court denied the motion, when [defendant] disclosed its experts. . . . Gambling on the outcome of a renewed disqualification motion and appeal of the trial court's denial of the motion is not a good reason to fail to complete discovery during the statutory period for its completion." (Id. at p. 421.)

Petitioner attempts to distinguish Cottini from the facts at hand by arguing that in Cottini, "counsel made a strategic choice to forgo discovery in favor of pursuing an entirely meritless disqualification motion. Here, by contrast, former counsel anticipated the conclusion of proceedings in Mexico that would be dispositive of key issues in this case, that is, the validity of the Mexican will." (Reply, p. 3:10-14.) According to Petitioner, "[p]ursuing parallel proceedings in Mexico was an entirely reasonable legal strategy given that the validity of the Mexican will is a central issue in this case. The fact that procedural complications arose in the Mexican proceedings does not transform a reasonable legal strategy into 'gambling.'" (Id. at p. 3:5-9.)

Furthermore, Petitioner argues that "Flemate's failure to complete discovery on behalf of [Petitioner] was not a tactical choice at all but rather the result of his declining health and capacity." (Reply, p. 4:6-7.) Petitioner directs the court to a declaration submitted by Mr. Flemate's son in support of Petitioner's motion to continue the trial date and Flemate's motion to withdraw, wherein Mr. Flemate's son states that "[i]n the last year, I have noticed that Eugene Flemate's energy levels have been decreasing steadily, and that his ability to work normal business hours has been negatively affected. He tends to get tired earlier and earlier in the day, and I have also noticed that he has had trouble completing tasks and meeting deadlines this past year." (Id. at p. 4:9-14, citing Declaration of Aaron Flemate, p. 2:7-10.) Relatedly, Petitioner directs the court to Mr. Flemate's statement that "when I reached 76 years of age, I began to note the following changes in my work, rest and

sleep schedule. I could no longer rely on my body to permit me to work extended hours." (Id. at p. 2:10-13, citing Declaration of Eugene Flemate, p. 2.) Petitioner argues that "[t]hese statements demonstrate that while Mr. Flemate's condition may have become acute after the discovery cutoff, his capacity to efficiently handle his caseload and conduct thorough discovery was compromised during the discovery period." (Id. at p. 2:18-21.)

The court finds that Petitioner showed little diligence in conducting discovery in this matter. Petitioner retained Mr. Flemate as counsel on May 16, 2022. Over a year-and-a-half later, Petitioner propounded discovery. On January 5, 2024, Mr. Flemate propounded written discovery on Respondent. On March 29, 2024, Mr. Flemate served Respondent with a disclosure of expert witness. On April 2, 2024, Mr. Flemate took Respondent's deposition. On May 10, 2024, Mr. Flemate filed and served on Karina a notice to appear at trial. This appears to be the extent of discovery Petitioner propounded upon Respondent, as neither party points to any other discovery Petitioner propounded upon Respondent. Petitioner cannot viably point to Mr. Flemate's illness as an excuse for not propounding more. While the court acknowledges that Mr. Flemate appears to have experienced physical and mental difficulties the year prior to withdrawing, Mr. Flemate himself makes clear that his "mental and physical decline over the past month were sudden and unforeseeable. Indeed, Eugene Flemate, himself, and those around him, believed he would be able to conduct trial as late as a month ago." (Garcia Decl., ¶ 11, Ex. B at p. 3:7-9, emphasis added.)

The court finds the circumstances here more analogous to Cottini than not. It appears that Petitioner's failure to seek discovery related to the Mexican will, discovery that she now seeks, was a strategic decision. (See, e.g., Garcia Decl., Ex. F at p. 2:15-18 [Petitioner and "her attorney Eugene Flemate, have proceeded to this point of this litigation with the belief that the

courts of Mexico would come to a decision regarding the validity of the 'Mexican Will' that was submitted to the Santa Clara County Superior Court and offered for probate, and is the primary subject and piece of evidence in this trial."].) The only argument Petitioner provides otherwise is Mr. Flemate's health, but the court does not find this argument persuasive. Mr. Flemate was seemingly in good enough health to propound other discovery in this matter, so it is unclear to the court why he could not also pursue discovery related to the Mexican will, especially given that at the time Mr. Flemate sought to withdraw in May 2024, Mr. Flemate "recently realized that [his] mental and physical condition has declined rapidly in the past month, and even more in the past two weeks" (id., Ex. D at pp. 1:28-2:1, emphasis added) and Mr. Flemate's son "did not have any concerns about [Mr. Flemate's] mental capacity as he seemed to have a sharp legal mind and was able to communicate effectively." (Id., Ex. E at p. 2:20-25.)

Despite the similarities with Cottini regarding the seemingly strategic decision not to pursue discovery, the court does acknowledge that in Cottini counsel did not seek to withdraw based on medical concerns, like here, and the court in Cottini, unlike here, had not already granted a trial continuance when plaintiff sought leave to reopen discovery. The court will discuss the importance of these distinctions below.

d. The Likelihood of Interference with Trial

Petitioner argues that "reopening discovery at this time will not interfere with the trial date set for June 2, 2025" as there "is ample time to conduct necessary discovery without delaying the trial. Furthermore, given that all parties will have equal opportunity to conduct additional discovery, no party will suffer undue prejudice." (MPA, p. 4:1-6.)

Respondent argues that "'[t]he purpose of imposing a time limit on discovery is to expedite and facilitate trial preparation and to prevent delay. Without a cutoff date, the parties could tie up each other and the trial court in discovery and discovery disputes right up to the eve of trial or beyond. Furthermore, . . . to be effective the cutoff date must be firm or some litigants will manipulate the proceeding to avoid the cut-off date." (Opposition, p. 8:5-10, quoting Beverly Hospital, et. al v. Superior Court (1994) 19 Cal.App.4th 1289, 1295.) According to Respondent, Petitioner "is attempting . . . to manipulate the proceedings to avoid [the discovery] cut-off date" and Petitioner and her counsel "strategically chose not to perform further discovery gambling on the outcome of Mexican court proceedings." (Id. at p. 8:10-13.) Respondent contends that "[r]eopening discovery would be unfair to Respondent who would have to spend time and resources when the case should have been tried on June 3, 2024." (Id. at p. 8:14-16.)

On reply, Petitioner argues that Respondent "does not claim that there would be any substantial prejudice to her if discovery were reopened" and "would not suffer any identifiable prejudice as a result of reopening discovery in this case." (Reply, p. 5:16-17.) In contrast, Petitioner argues that "denying the motion would substantially prejudice [Petitioner] by preventing her new counsel from adequately preparing her case." (Id. at p. 5:18-20.)

The court finds Petitioner's argument persuasive as to the third factor under Code of Civil Procedure section 2024.050. The trial date for this matter is set for June 2, 2025. That date is distant enough that there should be ample time to conduct further discovery without prejudicing

either party or affecting the trial date. Moreover, Respondent does not provide a viable reason as to why reopening discovery will prejudice her. As Petitioner points out, Respondent claims that reopening discovery would be "unfair" (not prejudicial)

because she was prepared to try the case on June 3, 2024 and will need to expend "time and resources" in addressing any further discovery.

e. The Length of Time Between Any Date Previously Set and Trial

Respondent states that this "case started in 2022 and initially the Court set trial for June 3, 2024. Now the trial is set for June of 2025. While there is time between the two trial dates, there is still no excuse for failing to complete the discovery before the cut-off date." (Opposition, p. 8:19-21, emphasis added.) Similar to the analysis of the third factor under Code of Civil Procedure section 2024.050, this factor weighs in favor of Petitioner – there is a significant period of time between the initial trial date of June 3, 2024 and June 2, 2025. (See Code Civ. Proc., § 2024.050, subd. (b).)

Ultimately, the court finds that while Petitioner did not diligently pursue discovery, the other factors outlined in Code of Civil Procedure section 2024.050 weigh in Petitioner's favor. As noted, while the court in Cottini found "[plaintiff's] attorneys made a strategic decision to forgo expert witness discovery" and "[g]ambling on the outcome of a renewed disqualification motion and appeal of the trial court's denial of the motion is not a good reason to fail to complete discovery (Cottini, supra, 226 Cal.App.4th at p. 421), the court in Cottini had not already granted a motion to withdraw and continuance of the trial date due to an attorney's health. "The death or serious illness of a trial attorney or a party 'should, under normal circumstances, be considered good cause for granting the continuance of a trial date[.]' (Cal. Stds. Jud. Admin., § 9.) The same circumstances should generally constitute good cause to reopen discovery after a trial date has been continued. (Code Civ. Proc., § 2024, subd. (e).)" (Hernandez v. Superior Court (2004) 115 Cal.App.4th 1242, 1247-1248, emphasis added.) Given this, and the amount of time before trial commences, the relative lack of prejudice Respondent has shown, and Petitioner's purported need for discovery related to the Mexican will, the court GRANTS Petitioner's motion.

III. Conclusion

The court GRANTS Petitioner's motion to reopen discovery pursuant to Code of Civil Procedure 2024.050.

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