PARTIES/ATTORNEYS

Plaintiff	Antonio Zaranda Salinas	Self-Represented
Defendants	Juana Velazquez Moreno Iran Yadira Zaranda Velazquez Michelle Stephanie Zaranda Velazquez	Emilie de la Motte Carmel & Naccasha LLP

TENTATIVE RULING

For the reasons stated below, the motions are denied. The motion for sanctions against the Bailey Law Firm was untimely as it was not served before the attorneys withdrew from the case, and they therefore were unable to withdraw or correct the sanctionable conduct alleged. The motion for sanctions against Twitchell & Rice was timely, but is denied as the defendants failed to show the amended complaint was objectively unreasonable. The motion for sanctions against plaintiff fails because the court finds that conflicts in the evidence do not necessarily mean there was a lack of factual support for the positions asserted in the pleadings.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)

MEMORANDUM

This case involves alleged elder abuse of Jose Ramiro Saranda Alvarez (decedent) asserted by plaintiff Antonio Zaranda Salinas against his sister-in-law, defendant Juana Velazquez Moreno, and her daughters, Iran and Michelle.[1] Defendants assert the pleadings filed by plaintiff lacked evidentiary support in violation of Code of Civil Procedure[2] section 128.7 and request sanctions in the amount of $109,463.11.

Procedural History

This action was initiated by complaint filed on January 19, 2024, alleging that decedent was the owner of property located at 615 W. Alvin Ave. in Santa

[1] For ease of reference, the court refers to the parties by their first names. No disrespect is intended.
[2] All future references are to the Code of Civil Procedure unless otherwise specified.

Maria; that on October 16, 2020, defendants caused decedent to unknowingly sign a Grant Deed conveying his interest in the property to himself and defendants as joint tenants (Complaint, ¶ 23); that on February 17, 2022, they caused decedent to unknowingly convey his joint tenancy interest to Iran by Gift Deed (Complaint, ¶ 39); that defendants also financially abused decedent by using his funds to pay the property's mortgage and related expenses and withdrawing funds from his bank account to gamble at the casino (Complaint, ¶ 27); that in addition to financial abuse, defendants engaged in physical abuse and neglect by failing to take care of decedent when he contracted COVID (Complaint, ¶ 36, 94), isolating decedent from plaintiff and the rest of his family (Complaint, ¶ 95), and housing decedent in an uninhabitable detached garage (Complaint, ¶¶ 35, 96), all in violation of the Elder Abuse Act: and that APS was called to the property on two separate occasions as a result (Complaint, ¶ 98.). The initial complaint was filed by attorney Blanca Mejia of Twitchell & Rice and alleged thirteen causes of action.[3]

On May 28, 2024, attorney Mejia filed an amended complaint that contained the same factual allegations and causes of action but omitted defendant Armando Saranda Salinas from the complaint. This amended complaint was challenged by demurrer on August 7, 2024. Defendants also filed a motion for sanctions pursuant to sections 128.5, asserting the action was in bad faith, and 128.7, asserting the factual contentions lacked evidentiary support. Opposition to the demurrer was filed on September 5, 2024, and opposition to the sanctions motion was filed on September 6, 2024.

In response to the motion for sanctions, attorney Mejia submitted a declaration indicating that she had attempted to contact attorney de la Motte "to discuss a conflict that had arose in the matter." (Mejia Decl. filed 9/6/24, ¶ 13.) Attorney Martinez submitted a declaration stating: "The Law Office of Twitchell and Rice, LLP and the Law Office of Michael Hardy have merged and upon that merger a conflict of interest was discovered. This conflict was immediately communicated to Attorney de la Motte." (Martinez Decl., filed 9/6/24, ¶ 4.) Accordingly, at the September 18, 2024, hearing, the court indicated it was "tentatively inclined to strike the oppositions to demurrer and attorney fees at this time based on the underlying issues with the conflict of representation." The matter was continued to October 30, 2024, to allow plaintiff to retain substitute counsel. (September 18, 2024, Minute Order.)

[3] (1) Intentional Misrepresentation; (2) Negligent Misrepresentation; (3) Fraud – Concealment; (4) Constructive Fraud; (5) Breach Of Fiduciary Duties; (6) Elder Abuse (Financial, Physical, Neglect, Abandonment, & Isolation); (7) Conspiracy; (8) Survival Action; (9) Intentional Infliction of Emotional Distress; (10) Negligent Infliction of Emotional Distress; (11) Quiet Title; (12) Cancellation of Written Instruments; and (13) Constructive Trust.

On October 29, 2024, attorney Jonas Bailey substituted in as counsel for plaintiff. The court continued the matter to December 4, 2024. At that hearing, the court struck the opposition to the demurrer filed on September 5, 2024, as well as the declaration of Antonio Zaranda Salinas filed on the same date; set a new hearing date on demurrer on January 8, 2025, at 8:30 a.m.; and ordered submission of a new opposition and reply pursuant to the statutory briefing schedule. On January 8, 2025, the court sustained the demurrer with leave to amend and denied the motion for sanctions without prejudice to its renewal with appropriate evidence.

On February 7, 2025, attorney Bailey filed a second amended complaint on behalf of plaintiff in which it was alleged that Juana and defendants used the funds from decedent's bank account to pay the majority of household expenses or gamble; engaged in a scheme to give the appearance that defendants were paying their fair share of expenses (SAC, ¶ 19); maintained decedent in unhabitable conditions in a cold garage with dog and chicken feces on the floor (SAC, ¶ 20); caused decedent to unknowingly sign a grant deed to himself and defendants as joint tenants (SAC ¶ 21); failed to seek adequate medical are for decedent for COVID, leading to his hospitalization (SAC, ¶ 23); failed to provide adequate medical care after his discharge from the hospital (SAC, ¶ 24); provided negligent care causing Adult Protective Services to visit the property on at least two separate occasions to check on decedent's welfare (SAC, ¶ 25); and caused decedent to sign a Gift Deed unknowingly conveying his joint tenancy interest in the property to Iran (SAC, ¶ 26).

Defendants' attorney De La Motte states she met and conferred extensively with attorney Bailey regarding deficiencies in this complaint. She followed up with him on April 7, 2025. He never responded. (De La Motte Decl., filed 4/18/25, ¶ 9.) On April 14, 2025, attorney Bailey substituted out of the action, leaving plaintiff self-represented. Defendants demurred to this complaint on April 18, 2025. The court sustained the demurrer without leave to amend on July 9, 2025.[4]

On June 13, 2025, defendants filed motions for sanctions against plaintiff, attorneys Blanca Mejia and Vince Martinez of Twitchell & Rice, and attorneys Jonas Bailey and Jamie Erskine of The Bailey Law Firm. Oppositions and replies have been filed. All papers have been read and considered. Although the motions

[4] An order sustaining a demurrer without leave to amend does not bar an award of § 128.7 sanctions *unless the order is reduced to a judgment* before the sanctions motion is served and filed. (*Banks v. Hathaway, Perrett, Webster, Powers & Chrisman* (2002) 97 Cal.App.4th 949, 955.) Here, the motion was served on June 13, 2025, before the court's initial hearing June 18, 2025, hearing on the demurrer and before the court's July 9, 2025, ruling on the demurrer. Judgment has not been entered as of August 19, 2025. The ruling is not a bar to consideration of the sanctions motion.

were separately filed, the court will discuss overlapping issues together, where sensible.

Sanctions Pursuant to Section 128.7

By presenting a pleading to the court, an attorney or unrepresented party is certifying that to the best of the person's knowledge, formed after an inquiry reasonable under the circumstances, all of the following conditions are met: (1) that it is not presented for any "improper purpose"; (2) that the claims and legal contentions "are warranted by existing law"; and (3) that "the allegations and other factual contentions" as well as "denials of factual contentions have evidentiary support." (§ 128.7, subd. (b)(1)-(4); see also *Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 167 ("Under both Code of Civil Procedure section 128.7 and [FRCP] rule 11, there are basically three types of submitted papers that warrant sanctions: factually frivolous (not well grounded in fact); legally frivolous (not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law); and papers interposed for an improper purpose."). "Pleadings" includes the complaint. (§ 420.) Violation of Section 128.7's certification requirement subjects the party and the party's attorney to sanctions. (§ 128.7(c), (d).) This certification creates an affirmative duty of investigation for a party and his counsel as to both law and fact and thus deters frivolous actions and costly meritless maneuvers. (*Business Guides, Inc. v. Chromatic Communications Enter., Inc.* (1991) 498 U.S. 533, 550 [interpreting Federal Rule 11].[5])

"To obtain sanctions, the moving party must show the party's conduct in asserting the claim was objectively unreasonable. A claim is objectively unreasonable if any reasonable attorney would agree that [it] is totally and completely without merit." (*Peake v. Underwood* (2014) 227 Cal.App.4th 428, 440 [cleaned up]; see also *Ponce v. Wells Fargo Bank* (2018) 21 Cal.App.5th 253, 260–261.) Because an objective standard controls, section 128.7 "imposes a lower threshold for sanctions" than section 128.5.[6] (*Levy v. Blum* (2001) 92 Cal.App.4th 625, 639.)

Whether a pleading is sanctionable must be based on an assessment of the knowledge "that reasonably could have been acquired at the time the pleading was filed," as well as the "type of claim and the difficulty of acquiring sufficient information." (*Townsend v. Holman Consulting Corp.* (9th Cir. 1990) 929 F2d 1358,

[5] "The Legislature enacted section 128.7 based on rule 11 of the Federal Rules of Civil Procedure (28 U.S.C.), as amended in 1993 [(rule 11)]. [Citations.] Therefore, federal case law construing rule 11 is persuasive authority on the meaning of section 128.7." (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 190, 198 Cal.Rptr.3d 127; see also *Optimal Markets, Inc. v. Salant* (2013) 221 Cal.App.4th 912, 921, 164 Cal.Rptr.3d 901 (*Optimal Markets*) [federal cases construing rule 11 are instructive for purposes of interpreting § 128.7, which is modeled on rule 11].)

[6] Section 128.5 authorizes sanctions for actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay.

1364 (interpreting FRCP 11); *Intelligent SCM, LLC v. Qannu PTY Ltd.* (C.D. Cal., 2015) 2015 WL 13916820, at *25.) Moreover, the court may consider whether the attorney had to rely on a client for information as to the facts underlying the pleading, motion or other paper or whether the attorney depended on forwarding counsel or another member of the bar. (See *Business Guides, Inc., supra,* 498 US at 550 [interpreting FRCP 11].)

A litigant's obligations with respect to the contents of papers are not measured solely as of the time the papers are filed with the court. The same certification applies when the litigant "advocates" claims or defenses previously pleaded. (See § 128.7, subd. (b) [sanctions authorized for "later advocating" a pleading].) "Thus, sanctions may be awarded where an attorney or unrepresented party argues positions contained in earlier-filed papers after learning such positions are without evidentiary support or legal merit. E.g., an attorney at a pretrial conference orally argues ("presents" to the court) the merits of a claim or defense previously pleaded; whether the argument is objectively reasonable is measured at the time it is made rather than when the pleading was filed." (Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group 2025) ¶ 9:1161.)

The evidentiary burden to escape sanctions under § 128.7 is "light." Counsel only need to have "made a reasonable inquiry into the facts and entertained a good faith belief in the merits of the claim" and "need not amass even enough evidence to create a triable issue of fact" as in summary judgment proceedings or show counsel could overcome a demurrer. (*Kumar v. Ramsey* (2021) 71 Cal.App.5th 1110, 1126.) But even though an action may not be frivolous when it is filed, it may become so if later-acquired evidence refutes the findings of a prefiling investigation and the attorney continues to file papers supporting the client's claims. Thus, a plaintiff's attorney cannot "just cling tenaciously to the investigation he had done at the outset of the litigation and bury his head in the sand." Instead, "to satisfy [the] obligation [] to conduct a reasonable inquiry to determine if his [or her] client's claim was well-grounded in fact," the attorney must "take into account [the adverse party's] evidence...." (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 190 citing *Childs v. State Farm Mut. Auto Ins. Co.* (5th Cir. 1994) 29 F.3d 1018, 1025 [interpreting Rule 11].)

Childs v. State Farm Mut. Auto Ins. Co. (5th Cir. 1994) 29 F.3d 1018 illustrates the duty of plaintiff's counsel when presented with evidence gathered post-filing. In that case, plaintiff alleged that he was involved in a hit-and-run accident. He retained counsel to sue State Farm, which denied coverage. At the outset, attorney Waltzer conducted a sufficient inquiry to satisfy Rule 11: he had interviewed his client; inspected the vehicle; visited the accident site; interviewed a fireman from the scene; interviewed the reporting officer; obtained the police report; and reviewed the medical records. This inquiry supported his client's claim that a hit-and-run accident had occurred. (*Childs, supra,* 29 F.3d at 1024-1025.) During

discovery, State Farm amassed evidence that the alleged accident had been staged, including information that Childs and his associates Taylor and Jenkins had been involved in numerous phantom vehicle accidents before which they had purchased multiple policies of disability insurance; in order to secure the thirteen disability policies purchased prior to the instant accident, Childs had made several misrepresentations or omissions on the application sheets to camouflage the number of disability policies he carried; and the testimony of the investigating officer and State Farm's three expert witnesses seriously challenged whether the accident could have occurred as Childs claimed. (*Id.*) In light of this evidence, attorney Waltzer did little more than ask his clients if they were frauds. He didn't conduct discovery to test State Farm's theories, nor did he hire his own experts. (*Id.*) The court concluded that while Childs' claim was initially supported, "in light of the impressive evidence of fraud presented by State Farm, Waltzer could not, without a more substantial investigation, blithely continue to sign pleadings thereby certifying to the court that to the best of his knowledge, information, and belief, Childs' claim was not fraudulent." (*Id.* at 1026—affirming sanctions in the amount of $30,000.)

Section 128.7 should be utilized only in "the rare and exceptional case where the action is clearly frivolous, legally unreasonable or without legal foundation, or brought for an improper purpose." (*Kumar v. Ramsey* (2021) 71 Cal.App.5th 1110, 1121; *Operating Engineers Pension Trust v. A-C Co.* (9th Cir. 1988) 859 F.2d 1336, 1344.) "Because our adversary system requires that attorneys and litigants be provided substantial breathing room to develop and assert factual and legal arguments, [section 128.7] sanctions should not be routinely or easily awarded even for a claim that is arguably frivolous" and instead "should be 'made with restraint.'" (*Peake*, at p. 448.) Indeed, even if a plaintiff could not successfully defend against either demurrer or summary judgment, that alone is insufficient to support the sanction of dismissal. (*Ibid.*)

Timeliness and Impact of Withdrawal

Filing a motion for sanctions under section 128.7 is a two-step process. First, the party must serve a notice of motion for sanctions on the offending party at least 21 days before filing the motion with the court. (§ 128.7(c)(1).) Second, if the offending party does not withdraw the pleading or otherwise correct the sanctionable conduct, then the motion may be filed, and the court may determine whether sanctions are appropriate. (*Id.*)

Here, both law firms argue that the motions must fail because, at the time the safe harbor notice was provided, they were no longer attorney of record. In other words, they essentially argue they were incapable of satisfying the purpose of the safe harbor, which is to withdraw the challenged pleading.

An attorney's withdrawal as counsel does not automatically shield them from sanctions. "The fact that [an attorney] was allowed to withdraw as counsel ... does not protect him from sanctions based on a filing that he made before that withdrawal. (*Holgate v. Baldwin* (9th Cir. 2005) 425 F.3d 671, 677; see also *Bader v. Itel Corp. (In re Itel Sec. Litig.)* (9th Cir. 1986) 791 F.2d 672, 675 (observing that case law provides "absolutely no hint ... that a lawyer may escape sanctions for misconduct simply by withdrawing from a case before opposing counsel applies for sanctions.") "The signing requirement in Rule 11 makes clear that any attorney who, at any time, certified to the court that a pleading complies with Rule 11 is subject to the rule, even if the attorney later withdraws from the case." (*Holgate* at 677.) However, notice of the motion must be served before the withdrawal occurs. An award of sanctions must be reversed when the challenging party failed to comply with the safe harbor provisions, even when the underlying filing is frivolous. (*Holgate* at 678.)

Holgate demonstrates how this works. On February 2, 2002, attorney Levinson filed a complaint that was legally frivolous. On March 18, 2022, defendant Baldwin served Levinson with a letter and a copy of the motion he intended to file if the plaintiffs did not remove him as a defendant or cure the deficiencies in the legal claims against him. Baldwin then waited the mandated 21 days before filing this motion for sanctions with the district court. At the time of filing, Levinson was still acting as counsel for the Holgates and he had not withdrawn or otherwise amended the complaint in response to Baldwin's letter. On August 22, 2002, the district court denied Baldwin's initial motion for sanctions without prejudice and allowed Levinson to withdraw as counsel but retained jurisdiction over Levinson for future Rule 11 motions. On March 25, 2003, Baldwin re-filed the motion. Levinson objected, but the court held Levinson received all the process due to him when Baldwin initially satisfied the safe harbor requirements of Rule 11. "There was no need for Baldwin to satisfy a second safe harbor period when he re-filed his Rule 11 motion in 2003. During the entire safe harbor period in 2002, Levinson was still acting as the Holgates' counsel and therefore had ample ability and opportunity to avoid Rule 11 sanctions by withdrawing or otherwise correcting the offending paper." (*Holgate, supra,* at 678.)

On August 19, 2002, the Newell defendants filed a notice of joinder in Baldwin's motion for sanctions. They did not serve a separate notice commencing a safe

harbor period in advance of the joinder. Three days after receiving this notice, Levinson withdrew as counsel for the Holgates and the motion for sanctions was denied without prejudice. On April 4, 2003, the Newell defendants filed a second motion with the district court requesting Rule 11 sanctions against Levinson. The court deemed the earlier joinder as the date the safe harbor period commenced, noting that Levinson had three days to withdraw or otherwise correct the pleading. Because Levinson had prior notice of the frivolousness of the complaint and notice of a second forthcoming motion for sanctions, we conclude that the district court did not abuse its discretion by awarding sanctions to the Newell defendants.

However, defendant Community Bank filed its motion for Rule 11 sanctions on May 15 and 16, 2003, and served a copy on Levinson, respectively. Levinson argues that Community Bank failed to satisfy the safe harbor provision. The *Holgate* court agreed and held a sanctions motion challenging the complaint that was filed over a year earlier was untimely. (*Id.* at 679.) It observed: "In addition, by the time Community Bank served Levinson with its motion for sanctions, on February 3, 2003, over five months had passed since Levinson's withdrawal as [ ] attorney. At this point, [he] essentially had no power to correct the offending paper or to counsel the [plaintiffs] to withdraw it." (*Id.*)

With these parameters in mind, the court turns to the motions at hand.

1. Attorneys Mejia and Martinez of Twitchell & Rice

Similar to the *Holgate* matter, defendants gave notice of their motion challenging the amended complaint on July 5, 2024. After waiting the mandated 21 days, the motion was filed on August 1, 2024.[7] During the entire safe harbor period (July 5, 2024 through July 26, 2024), Twitchell and Rice was still acting as plaintiffs' counsel and, as in *Holgate*, had the ability to avoid sanctions by withdrawing or otherwise correcting the challenged pleading. Twitchell & Rice did not substitute out of the case until October 29, 2024. Due process has been satisfied.

2. Attorneys Bailey and Erskine of The Bailey Law Firm

The Bailey Law Firm substituted out of the case on April 14, 2025. The only motion challenging the second amended complaint was served on May 16, 2025, more than 30 days *after* the Bailey Law Firm substituted out of the case. At the point the Bailey Law Firm was served, it was no longer attorney of record and no longer had the ability to correct the offending paper or counsel plaintiff to withdraw

[7] As in *Holgate*, the court denied that motion without prejudice to its renewal.

it. While the delay in bringing the motion was not as great as that in *Holgate*, it remains the case that the Bailey Law Firm was no longer in a position to advise the plaintiffs. Under *Holgate*, this motion is untimely.

Defendants argue in their Reply that courts have discretion to impose sanctions even after withdrawal. No citation has been provided for this argument. The court has not been able to independently confirm that such authority exists. In *Holgate*, the court found sufficient the fact that the attorney was on notice of a forthcoming motion by the joinder filed by the Newells to the Baldwin motion before the attorney substituted out. No such official notice is found in this case. Nor is there reason to presume the Bailey Law Firm's knowledge of the prior motion for sanctions was sufficient notice. Finally, there is no case law that suggests oral notice is sufficient. Defendants' argument thus fails. (*Quantum Cooking Concepts, Inc. v. LV Assocs., Inc.* (2011) 197 Cal. App. 4th 927, 934—"Rule 3.1113 rests on a policy-based allocation of resources, preventing the trial court from being cast as a tacit advocate for the moving party's theories by freeing it from any obligation to comb the record and the law for factual and legal support that a party has failed to identify or provide.")

The 128.7 sanctions motion against the Bailey Law Firm is untimely and as such, it is denied.

Evidence

In support of this motion, defendants submit declarations from Iran, Michele, and Juana. They each identify and deny specific allegations in the pleading,[8] as well as deliver inflammatory information about plaintiff.[9]

The declarations are immaterial, as they require the court to make credibility determinations as to the declarants and the facts offered. The court need not make credibility determinations when considering a motion for sanctions based on the assertion that a pleading lacks factual support. Instead, the court applies an objective standard to assess whether the claims are frivolous and whether the attorney or party who signed the pleading conducted a reasonable inquiry into the factual and legal basis of the claims. This standard focuses on the reasonableness of

[8] As one example, declarations submitted by Iran, Michele, and Juana all state the declarant never controlled all aspects of decedent's life nor did the declarant conceal or misrepresent the deeds signed in 2020 and 2022. (Iran Decl., ¶ 9-10; Michele Decl., ¶¶ 6-7; Juana Decl., ¶¶ 8-9.)

[9] Juana states: "I have seen my brother-in-law abuse drugs and alcohol since 1979 when I came into the family. All the years I've known him, he has always had a problem with alcohol." (Juana Decl., ¶ 5; see also Iran Decl., ¶ 5; Michele Decl., ¶ 4.) Iran states: "My uncle has a reputation for conning people. For example, I am aware he committed bigamy and married another woman so he could take advantage of her medical insurance benefits and then left her with the bills." (Iran Decl., ¶ 4; see also Michele Decl., ¶ 4.) The declarations were met with objections.

the inquiry and the evidentiary basis for the claims, rather than subjective assessments of credibility.

Moreover, whether a pleading is sanctionable must be based on an assessment of the knowledge that reasonably could have been acquired "*at the time the pleading was filed*." (See *Townsend, supra,* 929 F2d at 1364 (interpreting FRCP 11).) Thus, declarations submitted by defendants to specifically deny the factual allegations made in the pleadings are not useful in determining attorney Mejia or Martinez's knowledge at the time the amended pleading was filed. A motion that the pleading lacked evidentiary support is not intended to prove that the claim is factually false. The relevant inquiry is what the attorneys knew at the time the pleading was filed and whether a reasonable inquiry occurred. Thus, the court will not assess this evidence in evaluating the motion as to Twitchell & Rice. Nor will the court consider the evidence when evaluating the motion as to plaintiff.

Application: Twitchell & Rice

1. Sanctions under Section 128.7 are Denied

The motion as to Twitchell & Rice challenges the amended complaint as well as the lis pendens which relies on the pendency of the amended complaint, notice of which was filed with this court on January 25, 2024. The amended complaint focuses on two broad assertions: duping decedent out of his property by deception and failing to provide adequate care to the decedent.

Defendants assert that because the complaint contained many deficiencies, they provided plaintiff's attorneys with numerous documents purporting to prove the frivolity of the claims. (de la Motte Decl. at ¶¶ 4-9, Exs. A-L.)[10] In response, attorney Mejia states: "I can attest that I met with Decedent on more than one occasion and based on that I can confirm that when drafting the Complaint and First Amended Verified Complaint I found nothing that contradicted Decedent's representations." (Mejia Decl., ¶ 7.)

On May 8, 2024, attorney de la Motte emailed attorney Mejia a compendium of evidence that included a letter from decedent's primary treating doctor dated January 31, 2022, concluding that "[t]he patient is capable of making his own legal and medical decisions. He is able to understand, retain the information long enough to make a decision, use or weigh the information to make a decision using reasoning, and communicate his decisions regarding the information." (de la Motte

[10] The court will focus only on those documents that are relevant to the factual allegations in the pleadings.

Decl., Exh. G.)[11] In addition, the evidence included records from attorney Michael Hardy indicating that he prepared the February 2022 Gift Deed. (de la Motte Decl., Exh. F.) Presumably, defendants intended that attorney Mejia (and this court) would infer that Mr. Hardy would not have prepared the 2022 Gift Deed had he concluded undue influence was present. It also included decedent's will, which "proved Decedent intended give Plaintiff nothing by way of an inheritance." (de la Motte Decl., ¶ 6c.) Moreover, on May 10, 2024, de la Motte sent another email to Mejia attaching two bank statements from Juana Moreno that were entirely redacted except for a payment on October 17, 2022 in the amount of $983.67 to Nationstar, and a payment on October 1, 2018 in the amount of 888.04 to Nationstar. (de la Motte Decl., Exh. I-K.)

On May 28, 2024, having received this documentation, attorney Mejia filed an amended complaint. According to de la Motte, the above evidence shows the amended complaint is frivolous.

It's clear that evidence must be considered in determining the merits of the motion. (*Childs*, *supra.*) The relevant standard is whether any reasonable attorney would agree that the claims are totally and completely without merit. After a review of the relevant evidentiary submissions, it is the court's opinion that this evidence fails to meet that standard. Initially, the court notes that an attorney may normally rely on information obtained from the client *as to which the client has first-hand knowledge*. In other words, an attorney is not required to pass judgment on the credibility of the client under threat of a monetary sanction. ((Weil & Brown, *Cal. Prac. Guide: Civ. Proc. Before Trial* (The Rutter Group 2025) ¶ 9:1164.) Here, attorney Mejia attests to having discussions with decedent himself. This is evidence of a reasonable investigation so long as the statements are not implausible or hearsay. (See *Childs, supra,* 29 F3d at 1026.)

It appears the documentary evidence was intended to undermine the claim that the Grant Deed and/or Gift Deed were obtained by fraud. This evidence suggests at most that decedent ***may*** have had capacity in early 2022, when he signed the Gift Deed. It does not undermine the allegations that decedent was otherwise dependent on defendants for his financial and physical needs or that he was unable to read and thus dependent on others—here, defendants—to advise him what he was signing. It provides little to no guidance on the decedent's capacity in

[11] The issue of capacity is complex. For a recent discussion, see *Algo-Heyres v. Oxnard Manor LP* (2023) 88 Cal.App.5th 1064, 1071, from our own court of appeal, which observed: "[T]he determination of a person's mental capacity is fact specific, and the level of required mental capacity changes depending on the issue at hand ... with marital capacity requiring the least amount of capacity, followed by testamentary capacity, and on the high end of the scale is the mental capacity required to enter contracts. More complicated decisions and transactions ... require greater mental function ... ."

2020, when he signed the Grant Deed, except by inference that at all times prior to 2022, decedent had sufficient capacity, an inference the court does not intend to make. Simply put, this evidence does not rise to the level of the evidence submitted in *Childs*.

Nor does it undermine the allegations that defendants were decedent's primary care givers or that during the period in which they acted as such, they did not discharge their duties in good faith and/or committed elder abuse. Contradictory evidence does not, by itself, create lack of factual support in the allegations offered. (See *Baker v. Adelman* (11th Cir. 1998) 158 F3d 516, 524—"Although sanctions are warranted when the claimant exhibits a 'deliberate indifference to obvious facts,' they are not warranted when the claimant's evidence is merely weak but appears sufficient, after a reasonable inquiry, to support a claim under existing law." ; *Almeida v. Bennet Auto Supply, Inc.* (2020) 335 F.R.D. 463 [same].)

As for the factual allegations that defendants gained access to decedent's bank account to pay for the mortgage (thus committing financial elder abuse), evidence of two bank statements showing payments from Juana's account to Nationstar is not a compelling record because it does not show the source of the funds for the payment—or to put it more bluntly, it does not exclude the possibility that the funds from Juana's account were sourced from decedent's account. An attorney need not conduct a forensic analysis prior to filing a complaint or an amended complaint—particularly where, as here, the necessary facts to prove or disprove the asserted theories are largely in the hands of the defendants. Here, a reasonable attorney would not be convinced the amended complaint was totally and completely without merit.

There is a colorable argument that the evidence shows a lack of factual support for the allegation the fraud perpetrated in obtaining decedent's signatures on the Grant Deed and Gift Deed was the cause of plaintiff losing his inheritance, thus forming the damages of the first – fourth causes of action, and the 12th cause of action for cancellation of instruments. (Amended Complaint, ¶¶ 49, 59, 68, 77, 126.)[12] The import of this allegation is that had decedent's estate been probated, plaintiff would have been entitled to a portion of the estate, either as an heir or beneficiary. Defendants produced decedent's will, executed July 8, 2016, with the May 8 email to attorney Mejia, which omits plaintiff as a beneficiary. Attorney

[12] Many of the remaining causes of action appear to be asserted on decedent's behalf (e.g., breach of fiduciary duties, elder abuse, quiet title, and cancellation of written instruments). The causes of action for intentional and negligent infliction of emotional distress appeared to have been alleged on behalf of plaintiff in his individual capacity and the decedent. As such, these causes of action survived demurrer and could form the basis for damages independent from those obtained on behalf of decedent.

Mejia thus knew that decedent had a will, and that the will omitted plaintiff. She nevertheless filed a pleading that conflicts with that evidence.

However, even if this claim is arguably frivolous, our adversary system requires that attorneys and litigants be provided substantial breathing room to develop and assert factual and legal arguments. Here, the action was in its relative infancy when the May 8 email was sent, having just been filed on January 19, 2024, as compared to *Childs,* where the case had proceeded through trial. No discovery had been conducted, and as such, none of the documentary evidence had been verified. Plaintiff could have developed evidence to contest the authenticity or continued viability of the will or filed an amended complaint asserting damages unrelated to the recovery of this property. Attorneys Mejia and Martinez, of course, were unable to do so because they substituted out of the case. For these reasons, the court finds this is not the "rare and exceptional case" for imposition of sanctions.

The motion for sanctions under section 128.7 is denied.

2. Bad Faith Sanctions are Denied

Defendants assert that Twitchell and Rice submitted numerous filings on plaintiff's behalf while they had a known conflict of interest resulting from the purchase of or merger with the practice of attorney Michael Hardy, who prepared the Gift Deed and a subsequent Affidavit of Death for filing with the county. As such, attorney Hardy is a witness. Defendants argue these actions were in violation of the California Rules of Professional Conduct and thus the court may exercise its inherent power to impose sanctions. In support, they cite *Peake v. Underwood* (2014) 227 Cal.App.4th 428.

In *Peake,* the court concluded that the record before it presented an appropriate case for sanctions because: (1) under well-settled law Peake's substantive claims were clearly without merit; (2) plaintiffs did not present any colorable legal or factual argument to the trial court supporting an extension of existing law to establish liability in this case; (3) before and during the safe harbor period, counsel set forth the specific factual and legal grounds supporting his position that Peake's claims were without merit; and (4) plaintiffs engaged in conduct supporting the conclusion that they did not reasonably believe the claims had any merit.

As to the last point, the *Peake* court observed: "With respect to the final point, when establishing a claim is factually or legally without merit under Code of Civil Procedure section 128.7, it is not necessary to show the party acted with an

improper motive or subjective bad faith. But the fact that a party does not actually believe in the merits of his or her claim is relevant to the issue whether sanctions are warranted in the particular case. Peake's conduct demonstrated she (and/or her attorney) did not in fact consider her claims to have any valid basis." (*Peake,* at 449.) Contrary to defendants' assertion, *Peake* does not support the proposition that the court can exercise its inherent powers to sanction bad faith behavior alone, without a finding of sanctionable conduct under section 128.7.[13] In fact, absent statutory authority, trial courts have no inherent power to award attorney fees as sanctions for alleged misconduct. (*Bauguess v. Paine* (1978) 22 Cal.3d 626, 638–639; *Interstate Specialty Marketing, Inc. v. ICRA Sapphire, Inc*. (2013) 217 Cal.App.4th 708, 717—"section 128.5, was enacted "in response" to *Bauguess,* which gave power to the courts to impose sanctions for frivolous actions or intentional delaying tactics.)

The motion is denied to the extent it requests the court to sanction counsel for its alleged bad faith behavior under its inherent authority.[14]

3. Opposing Sanction Request

"If warranted," the court may award the *prevailing party* its reasonable expenses and attorney fees "incurred in *presenting or opposing the motion*." (§ 128.7(c)(1) (emphasis added); see *Eichenbaum v. Alon* (2003) 106 Cal.App.4th 967, 977—fee awards under § 128.7(c) limited to fees on the sanction motion itself.) Here, Twitchell & Rice request the fees of attorneys Mejia and Martinez incurred in opposing this motion in the amount of $4,860.00. (See Mejia Decl., ¶ 8; Martinez Decl., ¶ 10.)

An award of fees incurred in *opposing* an unsuccessful § 128.7 sanctions motion is not "warranted" unless the motion was frivolous, unfounded, filed for an improper purpose or otherwise unreasonable. (*Musaelian v. Adams* (2011) 197 Cal.App.4th 1251, 1258—attorney fee award for opposing § 128.7 motion not warranted because motion was not frivolous.) There is no argument here that the motion is frivolous, unfounded, filed for an improper purpose, or otherwise unreasonable and the court declines to make such a finding in any event.

The request is denied.

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[13] The asserted violations of the Rules of Professional Conduct do not fit within the categories of a section 128.7 certification violation.

[14] To the extent the request is intended as a request for sanctions under section 128.5, it violates the rule requiring that a 128.7 motion be made separately from any other motion or request to the court. (§ 128.7, subd. (c)(1); see *Martorana v. Marlin & Saltzman* (2009) 175 Cal.App.4th 685, 699—including request for sanctions in demurrer did not satisfy § 128.7 subd. (c)(1).)

Analysis: Plaintiff

The only remaining conduct to consider is whether plaintiff, as an unrepresented party, violated section 128.7 when he failed to withdraw the second amended complaint after service of the May 16, 2025 notice of the motion. Plaintiff appeared at the June 18, 2025 hearing and the July 9, 2025 hearing to oppose the demurrer and the motions seeking discovery orders. He did not withdraw the pleading. The court denies the motion for sanctions under section 128.7. Although plaintiff did not oppose this motion, the amended complaint was verified, meaning there is evidence in the record as to plaintiff's position on these factual issues. The court finds that the conflicts in the evidence do not necessarily mean there was a lack of factual support for the positions asserted in the pleadings. The motion is denied.