

**Invitation to Comment**

Title	Civil Forms: Attachment Forms, Financial Abuse of Elder or Dependent Adults (revise forms AT-105, AT-115, AT-120, AT-125, AT-130, and AT-140)
Summary	Welfare and Institutions Code section 15657.01 authorizes issuance of attachments in actions alleging financial abuse of an elder or dependent adult. The statute mandates that an application for such a writ include reference to the Welfare and Institutions Code section and that the provisions of the Code of Civil Procedure not inconsistent with Welfare and Institutions Code section 15657.01 apply. Under this proposal, the Judicial Council attachment forms would be revised to include references to the Welfare and Institutions Code section so that the forms may be used for writs of attachment under that statute.
Source	Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair
Staff	Anne M. Ronan, Attorney, 415-865-8933, anne.ronan@jud.ca.gov.

**Discussion** The attachment provisions of the Code of Civil Procedure are set out in title 6.5 (beginning at Code of Civil Procedure, section 481.010) of chapter 2, Civil Actions. The provisions include procedures for applying for, opposing, and enforcing attachments and specifications of what kinds of property may be attached. The current Judicial Council attachment forms provide a means to comply with the detailed provisions of the attachment statutes.

Welfare and Institutions Code, section 15657.01 expressly authorizes attachments in actions for damages for financial abuse of an elder or dependent adult and provides that the attachment statutes apply to the extent that they are not inconsistent with the new elder abuse attachment law, except for Code of Civil Procedure section 483.010.<sup>1</sup> Welfare and Institutions Code, section 15657.01 requires that any application for an attachment made under the elder abuse statute expressly include reference to that statute. Under this proposal, the current attachment forms would be revised so that they may be used by plaintiffs basing their claims on

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<sup>1</sup> That statute authorizes attachments only in contract claims for a fixed or ascertainable amount over \$500, not secured or with security worth less than the amount of the claim, and, if against a natural person, arising from a commercial transaction. Those conditions apply, however, only when not otherwise provided by statute. (Code Civ. Proc., § 483.010(a).)

the Welfare and Institutions Code, as well as by those acting under the Code of Civil Procedure. The proposed revisions are as follows.

First, the assertion on the application form and several of the orders that the attachment sought is based on a claim upon which an attachment may issue under Code of Civil Procedure section 483.010 has been revised to add a reference to Welfare and Institutions Code section 15657.01 as an alternative basis for the claim. Check boxes have been added so that the party or court can indicate which provision applies.

Second, new subpart 6b has been added to item 6 in the application (form AT-105) to parallel current item 6, in which a plaintiff must confirm that a claim against a defendant who is a natural person meets the requirements for an attachment under Code of Civil Procedure 483.010 (based on conduct arising from a commercial transaction not involving goods or services for personal use). Because an attachment in an elder abuse case need not meet the requirements of section 483.010, a new subpart (item 6b) has been added to the form by which a plaintiff may assert that a claim against a defendant who is a natural person is based on conduct that comprises financial abuse of an elder or dependent adult.

Third, the *Notice of Application and Hearing* (form AT-115) has been revised to include references to the Welfare and Institutions Code. A check box concerning which code section the application is brought under has been added to item 4, references to the Welfare and Institutions Code have been added to item 5, and a new subpart has been added to item 6h(2), in which the defendant is told how the amount to be secured by an attachment is determined.

Specific comments are requested on the value of revising the attachment forms to include attachments for financial elder abuse in light of the lack of detail in the Welfare and Institutions Code as to what amount may be secured by an attachment under that provision. It is unclear, for example, what information should be included in item 6h(2) on form AT-115 about how the amount to be secured by an attachment under this statute is to be determined, whether it is (1) the ascertainable value of wrongfully converted real or personal property (see Welf. & Inst. Code § 15610.30, defining financial abuse), (2) all compensable losses suffered as a result of the financial abuse that is alleged in the complaint under Welfare and Institutions Code, section 15657.5 (see § 15657.01, stating an attachment may be issued in any action for damages under section 15657.5), or (3) some other amount. The Welfare and Institutions Code attachment statute is also silent concerning whether there are any limitations as to

what property may be attached, whether only wrongfully converted property or other property worth up to the total lien amount. Comments are sought on whether the forms, as revised, would be useful or appropriate in light of the ambiguity about the amount of lien and type of property on which Welfare and Institutions Code section 15657.01 authorizes attachment.

Attachments

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>  TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	<b>FOR COURT USE ONLY</b>  <h1 style="margin: 0;">DRAFT</h1>  <h2 style="margin: 0;">v3</h2> <h2 style="margin: 0;">03/16/09</h2>  <h1 style="margin: 0;">NOT APPROVED BY JUDICIAL COUNCIL</h1>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF:  DEFENDANT:	
<b>APPLICATION FOR</b> <input type="checkbox"/> <b>RIGHT TO ATTACH ORDER</b> <input type="checkbox"/> <b>TEMPORARY PROTECTIVE ORDER</b> <input type="checkbox"/> <b>ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT</b> <input type="checkbox"/> <b>ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT</b> <input type="checkbox"/> <b>After Hearing</b> <input type="checkbox"/> <b>Ex Parte</b> <input type="checkbox"/> <b>Against Property of Nonresident</b>	CASE NUMBER:

1. Plaintiff *(name):*

- applies  after hearing  ex parte for
- a.  a right to attach order and writ of attachment.
  - b.  an additional writ of attachment.
  - c.  a temporary protective order.
  - d.  an order directing the defendant to transfer to the levying officer possession of
    - (1)  property in defendant's possession.
    - (2)  documentary evidence in defendant's possession of title to property.
    - (3)  documentary evidence in defendant's possession of debt owed to defendant.

2. Defendant *(name):*

- a.  is a natural person who
  - (1)  resides in California.
  - (2)  does not reside in California.
- b.  is a corporation
  - (1)  qualified to do business in California.
  - (2)  not qualified to do business in California.
- c.  is a California partnership or other unincorporated association.
- d.  is a foreign partnership that
  - (1)  has filed a designation under Corporations Code section 15800.
  - (2)  has not filed a designation under Corporations Code section 15800.
- e.  is other *(specify):*

3. Attachment is sought to secure recovery on a claim upon which attachment may issue under *(check one):*

- Code of Civil Procedure section 483.010     Welfare and Institutions Code section 15657.01.

4. Attachment is not sought for a purpose other than the recovery on a claim upon which the attachment is based.

5. Plaintiff has no information or belief that the claim is discharged or the prosecution of the action is stayed in a proceeding under Title 11 of the United States Code (Bankruptcy).

(Continued on reverse)

SHORT TITLE	CASE NUMBER:
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6. a.  Plaintiff's claim or claims arise out of conduct by the defendant who is a natural person of a trade, business, or profession. The claim or claims are not based on the sale or lease of property, a license to use property, the furnishing of services, or the loan of money where any of the foregoing was used by the defendant primarily for personal, family, or household purposes.
- b.  Plaintiff's claim or claims arise out of conduct of a natural person or an entity who has taken, secreted, appropriated, obtained or retained, or assisted in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use, with intent to defraud, or by using undue influence.
7. The facts showing plaintiff is entitled to a judgment on the claim on which the attachment is based are set forth with particularity in the
- a.  verified complaint.
- b.  attached affidavit or declaration.
- c.  following facts (*specify*):
8. The amount to be secured by the attachment is: \$
- a.  which includes estimated costs of: \$
- b.  which includes estimated allowable attorney fees of: \$
9. Plaintiff is informed and believes that the following property sought to be attached for which a method of levy is provided is subject to attachment:
- a.  Any property of a defendant who is **not** a natural person.
- b.  Any property of a nonresident defendant.
- c.  Property of a defendant who is a natural person that is subject to attachment under Code of Civil Procedure section 487.010 (*specify*):
- d.  Property covered by a bulk sales notice with respect to a bulk transfer by defendant on the proceeds of the sale of such property (*describe*):
- e.  Plaintiff's pro rata share of proceeds from an escrow in which defendant's liquor license is sold (*specify license number*):
10. Plaintiff is informed and believes that the property sought to be attached is not exempt from attachment.
11.  The court issued a Right to Attach Order on (*date*):  
(*Attach a copy.*)
12.  Nonresident defendant has not filed a general appearance.

(Continued on page 3)

SHORT TITLE:	CASE NUMBER:
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13. a. Plaintiff  alleges on ex parte application for order for writ of attachment  
 is informed and believes on application for temporary protective order  
that plaintiff will suffer great or irreparable injury if the order is not issued before the matter can be heard on notice because
- (1)  it may be inferred that there is a danger that the property sought to be attached will be
    - (a)  concealed.
    - (b)  substantially impaired in value.
    - (c)  made unavailable to levy by other than concealment or impairment in value.
  - (2)  defendant has failed to pay the debt underlying the requested attachment and is insolvent as defined in Code of Civil Procedure section 485.010(b)(2).
  - (3)  a bulk sales notice was recorded and published pursuant to Division 6 of the Commercial Code with respect to a bulk transfer by the defendant.
  - (4)  an escrow has been opened under the provisions of Business and Professions Code section 24074 with respect to the sale by the defendant.
  - (5)  other circumstances (*specify*):

b. The statements in item 14a are established by  the attached affidavit or declaration  
 the following facts (*specify*):

14.  Plaintiff requests the following relief by temporary protective order (*specify*):

15. Plaintiff
- a.  has filed an undertaking in the amount of: \$
  - b.  has not filed an undertaking.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME OF PLAINTIFF OR PLAINTIFF'S ATTORNEY)



\_\_\_\_\_  
(SIGNATURE OF PLAINTIFF OR PLAINTIFF'S ATTORNEY)

**DECLARATION**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF DECLARANT)

16. Number of pages attached: \_\_\_\_\_



SHORT TITLE	CASE NUMBER:
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6. d. If you claim that all or some portion of the property described in plaintiff's application is exempt from attachment, you must no later than five court days prior to this hearing

- (1)  include your claim of exemption in your notice of opposition filed and served pursuant to Code of Civil Procedure section 484.060 or file and serve a separate claim of exemption with respect to the property as provided in Code of Civil Procedure section 484.070.
- (2)  file with the court and serve on plaintiff a claim of exemption with respect to the property as provided in Code of Civil Procedure section 484.350.

If you fail to make a claim of exemption with respect to personal property, or make a claim of exemption with respect to real or personal property, but fail to prove that the property is exempt, any further claim of exemption with respect to the property will be barred unless you show a change in circumstances occurring after expiration of the time for claiming exemptions.

e. Claims of exemption resulting from a change of circumstances, whether after denial of a previous claim or expiration of the time for claiming exemptions, may be asserted as provided in Code of Civil Procedure section 482.100.

f. You may obtain a determination at the hearing whether property not described in the application is exempt from attachment. Your failure to claim that property not described in the application is exempt from attachment will not preclude you from making a claim of exemption with respect to the property at a later time.

g. You may also obtain a determination at the hearing whether the amount sought to be secured by the attachment shall be reduced by

- (1) the amount of any money judgment in your favor and against plaintiff that remains unsatisfied and enforceable,
- (2) the amount of any indebtedness of the plaintiff that you have claimed in a cross-complaint filed in the action if your claim is one upon which an attachment could be issued,
- (3) the amount of any claim asserted by you as a defense in the answer pursuant to Code of Civil Procedure section 431.70 if the claim is one upon which an attachment could be issued had an action been brought on the claim when it was not barred by the statute of limitations, or
- (4) the value of any security interest in your property held by plaintiff to secure the indebtedness claimed by plaintiff, together with the amount by which the value of the security interest has decreased due to the act of the plaintiff or a prior holder of the security interest.

h. The amount to be secured by an attachment is determined pursuant to the following statutes:

- (1) **Code of Civil Procedure section 482.110.** A writ of attachment may include an estimate of the costs and allowable attorney fees.
- (2) (a)  **Code of Civil Procedure section 483.010.** An attachment may issue on a claim for \$500 or more based on a contract, express or implied, exclusive of attorney fees, costs, and interests. If the claim was originally secured by an interest in real property (e.g., a mortgage or trust deed), an attachment may issue only if the security has become valueless or decreased in value to less than the amount owing on the claim, through no fault of plaintiff or the security holder (if different from plaintiff).
- (b)  **Welfare and Institutions Code section 15657.01.** An attachment may issue on a claim based on the taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use, with intent to defraud, or by undue influence.
- (3) **Code of Civil Procedure section 483.015.** The amount to be attached includes the amount of the indebtedness claimed by plaintiff, plus estimated costs and allowable attorney fees, reduced by the sum of the following:
  - (a) the amount of any unsatisfied money judgment held by defendant against plaintiff;
  - (b) the amount of any indebtedness of plaintiff claimed by defendant in a cross-complaint filed in the action (if a writ of attachment could issue on the claim);
  - (c) the amount of any cross-demand for money owed by plaintiff to defendant that is barred by the statute of limitations (but assertable as a Code of Civil Procedure section 431.70 defense) if the debt was one upon which a writ of attachment could have been issued before the statute of limitations ran; and
  - (d) the amount of any security interest held by plaintiff in defendant's property, together with any decrease in the value of the underlying security caused by plaintiff or a prior security holder.

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SHORT TITLE:	CASE NUMBER:
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- 6 h. (4) **Code of Civil Procedure section 483.020.** An attachment ordered in an unlawful detainer proceeding may include:
- (a) the amount of rent past due when the complaint is filed;
  - (b) an additional amount for the estimated rent due from the date the complaint was filed until the estimated date of judgment or delivery of possession to plaintiff; plus
  - (c) estimated costs and attorney fees.

Any prepaid rent or lease deposits held by plaintiff are disregarded in calculating the amount of attachment. However, the amount of attachment will be reduced by the amounts described in Code of Civil Procedure section 483.015 (above).

- i. Either you or your attorney or both of you may be present at the hearing.
- j. YOU MAY SEEK THE ADVICE OF AN ATTORNEY AS TO ANY MATTER CONNECTED WITH PLAINTIFF'S APPLICATION. THE ATTORNEY SHOULD BE CONSULTED PROMPTLY SO THAT THE ATTORNEY MAY ASSIST YOU BEFORE THE TIMES FOR FILING YOUR OPPOSITION AND CLAIMS OF EXEMPTION, AND FOR THE HEARING.

Date:

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(TYPE OR PRINT NAME OF PLAINTIFF OR PLAINTIFF'S ATTORNEY)




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(SIGNATURE OF PLAINTIFF OR PLAINTIFF'S ATTORNEY)

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  TELEPHONE NO.: _____ FAX NO. ( <i>Optional</i> ): _____ E-MAIL ADDRESS ( <i>Optional</i> ): _____ ATTORNEY FOR ( <i>Name</i> ): _____	<b>FOR COURT USE ONLY</b>  <b>DRAFT</b>  <b>v2</b> <b>03/16/09</b>  <b>NOT APPROVED</b> <b>BY JUDICIAL</b> <b>COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF:  DEFENDANT:	
<input type="checkbox"/> <b>RIGHT TO ATTACH ORDER AND ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT AFTER HEARING</b> <input type="checkbox"/> <b>ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT AFTER HEARING</b>	CASE NUMBER:

1. a. The application of plaintiff (*name*):

for  a right to attach order and order for issuance of writ of attachment  
 an order for issuance of additional writ of attachment

against the property of defendant (*name*):

came on for hearing as follows:

(1) Judge (*name*):

(2) Hearing date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.:  Div.:  Rm.:

b. The following persons were present at the hearing:

(1)  Plaintiff (*name*):

(3)  Plaintiff's attorney (*name*):

(2)  Defendant (*name*):

(4)  Defendant's attorney (*name*):

**FINDINGS**

2. THE COURT FINDS

a. Defendant (*specify name*):

is a  natural person  partnership

unincorporated association  corporation  other (*specify*):

b. The claim upon which the application is based is one upon which an attachment may be issued.

c. Plaintiff has established the probable validity of the claim upon which the attachment is based.

d. The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.

e. The amount to be secured by the attachment is greater than zero.

f.  Defendant failed to prove that all the property described in plaintiff's application is exempt from attachment.

g.  The following property of defendant, described in plaintiffs application

(1)  is exempt from attachment (*specify*):

(2)  is not exempt from attachment (*specify*):

h.  The following property, not described in plaintiffs application, claimed by defendant to be exempt

(1)  is exempt from attachment (*specify*):

(2)  is not exempt from attachment (*specify*):

i.  An undertaking in the amount of: \$ \_\_\_\_\_ is required before a writ shall issue, and plaintiff  
 has  has not filed an undertaking in that amount.

j. A Right to Attach Order was issued on (*date*): \_\_\_\_\_ pursuant to

Code of Civil Procedure section 484.090 (on hearing)  Code of Civil Procedure section 485.220 (ex parte)

k.  Other (*specify*):

(Continued on reverse)

SHORT TITLE:  	CASE NUMBER:  
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**ORDER**

**3. THE COURT ORDERS**

- a. Plaintiff has a right to attach property of defendant (*name*):  
in the amount of: \$
- b.  The property described in items 2g(1) and 2h(1) of the findings is exempt and shall not be attached.
- c. The clerk shall issue  a writ of attachment  an additional writ of attachment in the amount stated in item 3a  forthwith  upon the filing of an undertaking in the amount of: \$
  - (1)  for any property of a defendant who is **not** a natural person for which a method of levy is provided.
  - (2)  for the property of a defendant who is a natural person that is subject to attachment under Code of Civil Procedure section 487.010 described as follows (*specify*):

(3)  for the property covered by a bulk sales notice with respect to a bulk transfer by defendant or the proceeds of sale of such property, described as follows (*specify*):

(4)  for plaintiff's pro rata share of proceeds from an escrow in which defendant's liquor license is sold. The license number is (*specify*):

- d.  Defendant shall transfer to the levying officer possession of
  - (1)  any documentary evidence in defendant's possession of title to any property described in item 3c;
  - (2)  any documentary evidence in defendant's possession of debt owed to defendant described in item 3c;
  - (3)  the following property in defendant's possession (*specify*):

**NOTICE TO DEFENDANT: FAILURE TO COMPLY WITH THIS ORDER MAY SUBJECT YOU TO ARREST AND PUNISHMENT FOR CONTEMPT OF COURT.**

e.  Other (*specify*):

f. Total number of boxes checked in item 3: \_\_\_\_\_



\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF JUDICIAL OFFICER)

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  TELEPHONE NO.: _____ FAX NO. ( <i>Optional</i> ): _____ E-MAIL ADDRESS ( <i>Optional</i> ): _____ ATTORNEY FOR ( <i>Name</i> ): _____	FOR COURT USE ONLY  <b>DRAFT</b>  <b>v5</b> <b>03/20/09</b>  <b>NOT APPROVED</b> <b>BY JUDICIAL</b> <b>COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF:  DEFENDANT:	
<b>EX PARTE</b> <input type="checkbox"/> <b>RIGHT TO ATTACH ORDER AND ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT (RESIDENT)</b> <input type="checkbox"/> <b>ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT (RESIDENT)</b>	CASE NUMBER:

1. The application and supporting declaration or affidavit of plaintiff (*name*):  
 for an ex parte  right to attach order and order for issuance of writ of attachment  order for issuance of an additional writ of attachment  has been considered by the court.

**FINDINGS**

2. THE COURT FINDS

- a. Defendant (*specify name*): \_\_\_\_\_ is a  natural person  
 partnership  unincorporated association  corporation  other (*specify*): \_\_\_\_\_
- b. The claim upon which the application is based is one upon which an attachment may be issued under  
 Code of Civil Procedure section 483.010  Welfare and Institutions Code section 15657.01.
- c. Plaintiff has established the probable validity of the claim upon which the attachment is based.
- d. The attachment is not sought for a purpose other than the recovery on the claim upon which the application is based.
- e. The amount to be secured by the attachment is greater than zero.
- f. The affidavit or declaration accompanying the application shows that the property sought to be attached, or the portions thereof to be specified in the writ, are not exempt from attachment.
- g. The portion of the property sought to be attached described in item 3b is not exempt from attachment.
- h. An undertaking in the amount of: \$ \_\_\_\_\_ is required before a writ shall issue, and plaintiff  has  has not filed an undertaking in that amount.
- i. Great or irreparable injury will result to the plaintiff if issuance of the order is delayed until the matter can be heard on notice, based on the following:
  - (1)  There is a danger that the property sought to be attached would be
    - (a)  concealed. (b)  substantially impaired in value.
    - (c)  made unavailable to levy by other than concealment or impairment in value.
  - (2)  Defendant has failed to pay the debt underlying the requested attachment and is insolvent as defined in Code of Civil Procedure section 485.010(b)(2), as set forth in the affidavit or declaration filed in support of this application, which specifies the defendant's known undisputed debts and the basis for plaintiff's determination that the defendant's debts are undisputed.
  - (3)  A bulk sales notice was recorded and published pursuant to Division 6 of the Commercial Code with respect to a bulk transfer by the defendant.
  - (4)  An escrow has been opened pursuant to the provisions of Business and Professions Code section 24074 with respect to the sale by the defendant of a liquor license. The liquor license number is: \_\_\_\_\_
  - (5)  Other circumstances (*specify*): \_\_\_\_\_
- j.  A Right to Attach Order was issued on (*date*): \_\_\_\_\_ pursuant to  
 Code of Civil Procedure section 484.090 (on notice)  Code of Civil Procedure section 485.220 (ex parte)
- k.  Other (*specify*): \_\_\_\_\_

(Continued on reverse)

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SHORT TITLE:	CASE NUMBER:
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**ORDER**

**3. THE COURT ORDERS**

a. Plaintiff has a right to attach property of defendant (*name*):  
in the amount of: \$

b. The clerk shall issue  a writ of attachment  an additional writ of attachment in the amount stated in item 3a  
 forthwith  upon the filing of an undertaking in the amount of: \$

(1)  for the property covered by a bulk sales notice with respect to a bulk transfer by defendant or the proceeds of the sale of such property, described as follows (*specify*):

(2)  for plaintiff's pro rata share of proceeds from an escrow in which defendant's liquor license is sold. The license number is (*specify*):

(3)  for any property of a defendant who is **not** a natural person for which a method of levy is provided

(4)  for property of a defendant who is a natural person subject to attachment under Code of Civil Procedure section 487.010 (*specify*):

c.  Defendant shall transfer to the levying officer possession of

(1)  any documentary evidence in defendant's possession of title to any property described in item 3b.

(2)  any documentary evidence in defendant's possession of debt owed to defendant described in item 3b.

(3)  the following property in defendant's possession (*specify*):

**NOTICE TO DEFENDANT: FAILURE TO COMPLY WITH THIS ORDER MAY SUBJECT YOU TO ARREST AND PUNISHMENT FOR CONTEMPT OF COURT.**

d.  Other (*specify*):

e. Total number of boxes checked in item 3: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF JUDICIAL OFFICER)

ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  <hr/> <p style="text-align: center;">TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____</p> <p>E-MAIL ADDRESS (<i>Optional</i>): _____</p> <p>ATTORNEY FOR (<i>Name</i>): _____</p>	FOR COURT USE ONLY  <h2 style="margin: 0;">DRAFT</h2>  <h3 style="margin: 0;">v2</h3> <h3 style="margin: 0;">03/16/09</h3>  <h2 style="margin: 0;">NOT APPROVED</h2> <h2 style="margin: 0;">BY JUDICIAL</h2> <h2 style="margin: 0;">COUNCIL</h2>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF:  DEFENDANT:	
<b>EX PARTE</b> <input type="checkbox"/> <b>RIGHT TO ATTACH ORDER AND ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT (NONRESIDENT)</b> <input type="checkbox"/> <b>ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT (NONRESIDENT)</b>	CASE NUMBER:

1. The application and supporting declaration or affidavit of plaintiff (*name*):  
 for an ex parte
- right to attach order and order for issuance of writ of attachment  
 order for issuance of an additional writ of attachment
- has been considered by the court.

**FINDINGS**

2. THE COURT FINDS

- a. Defendant (*name*):
- (1)  is a natural person who does not reside in California.  
 (2)  is a foreign corporation which has not qualified to do business in California.  
 (3)  is a foreign partnership which has not filed a designation under Corporations Code section 15800.
- b. The claim upon which the application is based is one upon which an attachment may be issued under  
 Code of Civil Procedure section 483.010  Welfare and Institutions Code section 15657.01.
- c. Plaintiff has established the probable validity of the claim upon which the attachment is based.
- d. The attachment is not sought for a purpose other than the recovery on a claim upon which the attachment is based.
- e. The amount to be secured by the attachment is greater than zero.
- f. The affidavit or declaration accompanying the application shows that the property sought to be attached, or the portion thereof described in item 3b, is subject to attachment under Code of Civil Procedure section 492.040.
- g. An undertaking in the amount of: \$ \_\_\_\_\_ is required before a writ shall issue, and plaintiff  
 has  has not filed an undertaking in that amount.
- h. A Right to Attach Order was issued pursuant to Code of Civil Procedure section 492.030 on  
 (*date*):
- i. Other (*specify*):

(Continued on reverse)

SHORT TITLE: _____	CASE NUMBER: _____
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**ORDER**

**3. THE COURT ORDERS**

- a. Plaintiff has a right to attach property of the nonresident defendant named in item 2a in the amount of: \$
- b. The clerk shall issue  a writ of attachment  an additional writ of attachment in the amount stated in item 3a  forthwith  upon the filing of an undertaking in the amount of: \$ against the following property of defendant:

- c.  Defendant shall transfer to the levying officer possession of
- (1)  any documentary evidence in defendant's possession of title to any property described in item 3b.
  - (2)  any documentary evidence in defendant's possession of debt owed to defendant described in item 3b.
  - (3)  the following property in defendant's possession (*specify*):

**NOTICE TO DEFENDANT: FAILURE TO COMPLY WITH THIS ORDER MAY SUBJECT YOU TO ARREST AND PUNISHMENT FOR CONTEMPT OF COURT.**

- d.  Other (*specify*):

e. Total number of boxes checked in item 3: \_\_\_\_\_

Date:

\_\_\_\_\_  
(TYPE OR PRINT NAME)



\_\_\_\_\_  
(SIGNATURE OF JUDICIAL OFFICER)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY  <b>DRAFT</b>  <b>v3</b> <b>04/16/09</b>  <b>NOT APPROVED</b> <b>BY JUDICIAL</b> <b>COUNCIL</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF:  DEFENDANT:	
<b>TEMPORARY PROTECTIVE ORDER</b>	CASE NUMBER: _____

1. The court has considered the application of plaintiff for
  - a.  a right to attach order, order for issuance of writ of attachment pursuant to Chapter 4 (beginning with Code Civ. Proc., § 484.010), and a temporary protective order.
  - b.  an ex parte right to attach order and order for issuance of writ of attachment under Chapter 5 (beginning with Code Civ. Proc., § 485.010).

**FINDINGS**

2. THE COURT FINDS
  - a. Defendant is a  natural person  partnership  unincorporated association  corporation  other (specify):
  - b. The amount sought to be secured by the attachment under the application for the right to attach is: \$
  - c. The claim upon which the application for attachment is based is one upon which an attachment may be issued under  Code of Civil Procedure section 483.010  Welfare and Institutions Code section 15657.01.
  - d. Plaintiff has established the probable validity of the claim upon which the application for the attachment is based.
  - e. The order is not sought for a purpose other than the recovery upon the claim on which the application for the attachment is based.
  - f. Great or irreparable injury will result to the plaintiff if this order is not issued, based on the following:
    - (1)  There is a danger that the property sought to be attached would be
      - (a)  concealed
      - (b)  substantially impaired in value.
      - (c)  made unavailable to levy by other than concealment or substantial impairment in value.
    - (2)  Defendant has failed to pay the debt underlying the requested attachment and is insolvent as defined in Code of Civil Procedure section 485.010(b)(2).
    - (3)  A bulk sales notice was recorded and published pursuant to Division 6 (beginning with section 6101) of the Commercial Code with respect to a bulk transfer by the defendant.
    - (4)  An escrow has been opened pursuant to the provisions of Business and Professions Code section 24074 with respect to the sale by the defendant of a liquor license. The liquor license number is:
    - (5)  Other circumstances:
  - g.  The requirements of Code of Civil Procedure section 485.220 are satisfied, but a temporary protective order should issue instead of an ex parte right to attach order and order for issuance of writ of attachment.
  - h. Plaintiff must file an undertaking in the amount of: \$ \_\_\_\_\_ before a temporary protective order shall issue, and plaintiff has filed an undertaking in that amount.
  - i. The property subject to the following order is:

(Continued on reverse)



SHORT TITLE:  _____	CASE NUMBER:  _____
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2. j.  The following property of defendant is inventory or farm products held for sale and may be transferred in the ordinary course of business (*specify*):
- k.  Other (*specify*):

**ORDER**

3. THE COURT ORDERS

- a. Defendant shall not transfer, directly or indirectly, any interest in the property described in item 2i of the findings.
- b.  Defendant shall not dispose of the proceeds of any transfer of inventory or farm products held for sale except under the following restrictions:
- c.  Other (*specify*):
- d. This order shall expire at the earliest of the following times:
- (1) when plaintiff levies upon specific property described in this order,
  - (2) after (*date*): \_\_\_\_\_, or
  - (3) 40 days after the issuance of this order.

4. Number of pages attached: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_

(TYPE OR PRINT NAME) (SIGNATURE OF JUDICIAL OFFICER)

**NOTICE TO DEFENDANT:** An undertaking has been filed with the court by plaintiff. You may object to the undertaking.

a. You may issue any number of checks against any of your accounts in a financial institution in this state in any amount for the following purposes:

- (1) Payment of any payroll expense (including fringe benefits and taxes and premiums for workers' compensation and unemployment insurance) falling due in the ordinary course of business prior to the levy of a writ of attachment.
- (2) Payment for goods thereafter delivered to you C.O.D. for use in your trade, business, or profession.
- (3) Payment of taxes if payment is necessary to avoid penalties which will accrue if there is any further delay in payment.
- (4) Payment of reasonable legal fees and reasonable costs and expenses required for your representation in the action.

b. In addition, you may issue any number of checks for any purpose so long as the total amount of such checks does not exceed the greater of the following:

- (1) The amount by which the total amount on deposit exceeds the sum of the amount sought to be secured by the attachment and the amounts permitted to be paid pursuant to this notice.
- (2) One thousand dollars (\$1,000).

c. If the property is farm products held for sale or is inventory, the temporary protective order may not prohibit you from transferring the property in the ordinary course of business, but may impose appropriate restrictions on the disposition of the proceeds from such transfer.

[SEAL]

**CLERK'S CERTIFICATE**

I certify that the foregoing is a correct copy of the original on file in my office.

Date: \_\_\_\_\_

Clerk, by \_\_\_\_\_, Deputy

## Item SPR09-14 Response Form

**Title:** **Civil Forms: Attachment Forms, Financial Abuse of Elder or Dependent Adults** (revise forms AT-105, AT-115, AT-120, AT-125, AT-130, and AT-140)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/>

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Ms. Camilla Kieliger  
Judicial Council, 455 Golden Gate Avenue  
San Francisco, CA 94102

**Fax:** (415) 865-7664, Attn: Camilla Kieliger

**DEADLINE FOR COMMENT:** 5:00 p.m., Wednesday, June 17, 2009

*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*