

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Dennis M. Perluss, Chair
Anne M. Ronan, Attorney, Committee Counsel, 415-865-8933,
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DATE: September 3, 2009

SUBJECT: Attachments: Financial Abuse of Elder or Dependent Adults (revise forms AT-105, AT-115, AT-120, AT-125, AT-130, and AT-140 (Action Required))

Issue Statement

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.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council revise, effective July 1, 2010, the following mandatory forms to include references to attachments under Welfare and Institutions Code section 15657.01:

1. *Application for Right to Attach Order, Temporary Protective Order, etc.* (form AT-105);
2. *Notice of Application and Hearing for Right to Attach Order and Writ of Attachment* (form AT-115);
3. *Right to Attach Order After Hearing and Order for Issuance of Writ of Attachment* (form AT-120);

4. *Ex Parte Right to Attach Order and Order for Issuance of Writ of Attachment (Resident)* (form AT-125);
5. *Ex Parte Right to Attach Order and Order for Issuance of Writ of Attachment (Nonresident)* (form AT-130); and
6. *Temporary Protective Order* (form AT-140).

Copies of the proposed forms are attached at pages 6–19.

Rationale for Recommendation

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 the kinds of property that may be attached. The current Judicial Council attachment forms provide a means to comply with the detailed provisions of these attachment statutes.

Welfare and Institutions Code section 15657.01 expressly authorizes attachments in actions for damages for financial abuse of an elder or a dependent adult and provides that the general civil 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 483.010.¹ 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 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, in the application (form AT-105), a new subitem 6b has been added to item 6 to parallel the current item 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

¹ That statute authorizes attachments only in contract claims for a fixed or an 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).)

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, the new subitem allows a plaintiff to assert that a claim against a defendant who is a natural person is based on conduct that constitutes 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 to specify under which code section the application is brought has been added to item 4, references to the Welfare and Institutions Code have been added to item 5, and a new subitem has been added to item 6h(2), in which item the defendant is told how the amount to be secured by an attachment is determined.

Alternatives Considered

The committee considered whether to propose the form revisions at all in light of the lack of completeness of the statutory provisions concerning attachments in elder abuse cases. In particular, Welfare and Institutions Code section 15657.01 lacks provisions regarding the amount of lien that may be secured or the type of property that may be attached. This omission from the statute causes some ambiguity in the proposed forms. For example, Code of Civil Procedure section 484.050 expressly requires that the notice of application and hearing (the form that provides information to the defendant concerning the potential attachment) include information about how the amount of lien is to be determined—i.e., pursuant to Code of Civil Procedure sections 482.110, 483.010, 483.015, and 483.020—and include summaries of those provisions. (The statutory provisions are described on the *Notice of Application and Hearing* (form AT-115) at item 6h.) To the extent those provisions are inconsistent with the Welfare and Institutions Code provisions they do not apply to an elder abuse attachment. But the Welfare and Institutions Code section is silent on the manner in which a court is to determine the amount that may be secured by an attachment under that code provision, stating only that “an attachment may be issued in any action for damages pursuant to section 15657.5.”² There are no Welfare and Institutions Code provisions to identify in item 6h that describe to a defendant in an elder abuse case how the amount of lien will be determined.

The Welfare and Institutions Code also does not specify whether only the wrongfully converted property that is the basis of the financial abuse claim may be

² That code section provides that where a defendant is found liable for financial abuse, the court shall award attorney’s fees and costs as well as compensatory damages and may award punitive damages under certain circumstances. (Welf. and Inst. Code, § 15657.5.) Hence there is a question as to whether the amount of lien authorized is (1) the ascertainable value of wrongfully converted real or personal property (see Welf. & Inst. Code, § 15610.30, defining financial abuse) or (2) all compensable losses suffered as a result of the financial abuse that is alleged in the complaint under section 15657.5.

attached or whether any property belonging to a defendant up to the value of the wrongfully converted property (or up to the value of all compensable damages) may be attached.

The committee concluded that the revisions to the forms are appropriate in spite of the lack of completeness of the elder abuse attachment provisions. The alternative would require parties seeking attachments under the Welfare and Institutions Code to individually draft attachment pleadings. The committee determined that the lack of form pleadings in this legally complex area would be burdensome to both parties and the court.

Comments From Interested Parties

The proposal was circulated for public comment during the spring 2009 comment period. Comments were received from six commentators: the State Bar's Committee on Administration of Justice, the Orange County Bar Association, and four courts, the Superior Courts of Los Angeles, Orange, Riverside, and San Diego Counties. All generally agreed with the proposal. A chart summarizing all the comments with the committee's responses is attached at pages 20 and 21.

The committee requested specific comments on the value of revising the forms to include attachments for financial elder abuse in light of the lack of detail in the Welfare and Institutions Code regarding the amount that may be secured by an attachment under those provisions and the type of property that may be attached. Both the State Bar's Committee on Administration of Justice and Superior Court of Riverside County responded that they consider the revisions appropriate. No other comments expressly addressed this point.

Two courts requested some minor modifications to the forms: adding a date line at the end of form AT-120 and correcting a reference on form AT-105. The committee has made the requested modifications.

In addition, the Superior Court of Orange County proposed that the forms be further modified, or that separate Elder Abuse versions be created, to include instructions for self-represented litigants attempting to secure attachments under the Welfare and Institutions Code. This recommendation is beyond the scope of the circulated proposal. Further, the committee questions the efficacy of plain language instructions in this instance in light of the complexity of the procedures and the current ambiguity of the law in this area. The committee will place this proposal on its annual agenda for consideration after the forms have been in effect for a year so that the committee can evaluate whether an instruction sheet is appropriate.

Implementation Requirements and Costs

There will be some minor costs in making the revised forms available to the public. In addition, courts with computerized case management systems will need to program the revised order forms into the system. There are no other implementation requirements over and above those inherent in the provisions of the Welfare and Institutions Code.

Attachments

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
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
APPLICATION FOR <input type="checkbox"/> RIGHT TO ATTACH ORDER <input type="checkbox"/> TEMPORARY PROTECTIVE ORDER <input type="checkbox"/> ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT <input type="checkbox"/> ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT <input type="checkbox"/> After Hearing <input type="checkbox"/> Ex Parte <input type="checkbox"/> Against Property of Nonresident	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).

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 who or an entity that 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 up 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.

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 will 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 have been 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 has 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.

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 the calculation of the amount of attachment. However, the amount of attachment will be reduced by the amounts described in Code of Civil Procedure section 483.015 (see *item 6h(3) 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 ON 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 AT THE HEARING.

Date:

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



(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>): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
<input type="checkbox"/> RIGHT TO ATTACH ORDER AND ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT AFTER HEARING <input type="checkbox"/> ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT AFTER HEARING	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 plaintiff's application

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

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

h. The following property, not described in plaintiff's application, claimed by defendant to be
~~(1) exempt~~ 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*): _____

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: _____

Date:

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
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
EX PARTE <input type="checkbox"/> RIGHT TO ATTACH ORDER AND ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT (RESIDENT) <input type="checkbox"/> ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT (RESIDENT)	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 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, and that 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*): _____

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 state 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:

(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> E-MAIL ADDRESS (<i>Optional</i>): ATTORNEY FOR (<i>Name</i>):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
EX PARTE <input type="checkbox"/> RIGHT TO ATTACH ORDER AND ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT (NONRESIDENT) <input type="checkbox"/> ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT (NONRESIDENT)	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*):

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: _____
_____ (JUDICIAL OFFICER)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <hr/> <p style="text-align: center;">TELEPHONE NO.: FAX NO. (Optional):</p> <p>E-MAIL ADDRESS (Optional):</p> <p>ATTORNEY FOR (Name):</p>	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF: DEFENDANT:	
TEMPORARY PROTECTIVE ORDER	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 up on which the application for the attachment is based.
 - f. Great or irreparable injury to the plaintiff will result 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 will issue, and plaintiff has filed an undertaking in that amount.
 - i. The property subject to the following order is:

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 will expire at the earliest of the following times:
- (1) When plaintiff levies upon specific property described in this
- ~~(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

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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)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association by Michael G. Yoder President Newport Beach	A	No additional comments.	No response is necessary.
2.	Committee on Administration of Justice of State Bar of California by Saul Bercovitch Legislative Counsel San Francisco	A	CAJ supports this proposal. Comments are specifically sought on whether references to Welfare and Institutions Code Section 15657.01 are wise on the civil attachment forms. CAJ believes that the addition of references to that Code section is consistent with the statute, and supports the proposed change.	The committee notes the response to the specific question as to whether the forms are appropriate.
3.	Superior Court of Los Angeles County	A	No additional comments.	No response is necessary.
4.	Superior Court of Orange County by Meri Fischer Family Law Analyst	AM	<p>The Judicial Council attachment forms reflected above should be revised to include instructions for securing Writs of Attachment pursuant to Welf. & Inst. Code section 15657.01; or, in the alternative, separate forms should be created and included in the Elder Abuse (EA) forms series for easier comprehension for elder or dependant adults.</p> <p>Form AT-105 page 3 of 3, #13.b refers to “#14.a”; there is no #14.a on the form.</p> <p>Form AT-120 page 2 of 2, a line for the date is required at the bottom of the page.</p>	<p>This recommendation is beyond the scope of the circulated proposal, but will be considered by the committee in the future.</p> <p>The committee has corrected the reference on the form.</p> <p>The committee has modified the form in response to this comment.</p>

SPR09-14

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)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
5.	Superior Court of Riverside County by Carrie Snuggs Regional Operations Director	A	Agree with changes in the form even though there is some ambiguity in terms of the amount and type of property, litigants can include attachments.	The committee notes the response to the specific question as to whether the forms are appropriate.
6.	Superior Court of San Diego County by Michael M. Roddy Executive Officer	AM	Form AT-120 – The line for the date the order was signed, on page 2 by the Judicial Officer’s signature, was removed. The date line should be reinserted.	The committee has modified the form in response to this comment.