Tentative Rulings for February 19, 2026
Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

20CECG01342 ***Cen-Cal Refrigeration, Inc. v. Maple Venture, LLC et al.*** **is continued to Wednesday, April 8, 2026, 3:30 p.m. in Department 503.**

25CECG00764 ***BMO Bank N.A. v. Malkit Kalkat*** **is continued to Wednesday, April 8, 2026, at 3:30 p.m. in Department 503.**

25CECG04630 ***Yuvraj Chhina v. Mercedes-Benz USA, LLC*** **is continued to Thursday, April 9, 2026, at 3:30 p.m. in Department 503.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(20) **Tentative Ruling**

Re: ***Moseley v. City of Fresno***
Superior Court Case No. 22CECG02902

Hearing Date: February 19, 2026 (Dept. 503)

Motion: By City of Fresno Tax Costs of Plaintiff

Tentative Ruling:

To grant in part and tax costs claimed by plaintiff in the sum of $12,827.14.

Explanation:

After obtaining a jury verdict at trial, plaintiff filed a memorandum of costs seeking the following:

Filing and Motion Fees: $2,158.22
Jury Fees: $1,093.22
Deposition Costs: $16,341.42
Service of Process: $318.30
Court Reporter Fees: $208.25
Models, Enlargements, and Photocopies of Exhibits: $1,552.44
The total amount requested is $27,927.77.

Under Code of Civil Procedure section 1032, subdivision (b), "a prevailing party is entitled as a matter of right to recover costs in any proceeding." It is undisputed that plaintiff is the prevailing party. Defendant City of Fresno moves to tax certain costs.

The losing party may dispute any or all of the items in the prevailing party's costs memorandum by a motion to strike or tax costs. (See Cal. Rules of Court, Rule 3.1700(b).)

If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they were not reasonable or necessary. On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs. (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774.)

Defendant contends that plaintiff should only recover $435 in filing and motion fees; $11,876.42 in deposition costs; $318.30 in service of process costs; $35 in ordinary witness fees; and a reasonable (but unspecified) amount related to the cost of models, enlargements, and photocopies of exhibits.

Item 1 – Filing and Motion Fees

Plaintiff incurred $645 in actual filing and motion fees, but seeks to recover $2,158.22, documented in 21 invoices filed with the opposition. Electronic filing fees not ordered by the court are not listed as allowable costs under Code of Civil Procedure

section 1033.5. Plaintiff cites to no authority for recovery of these fees, other than section 1033.5, subdivision (c)(2), pursuant to which "[a]n item not specifically allowable under subdivision (a) nor prohibited under subdivision (b) may nevertheless be recoverable in the discretion of the court if 'reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation.'" (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774.) Here, the court finds that the additional fees ("Court EFM Fee" and "Concierge E-Filing Fee") were incurred for convenience rather than necessity.

Of the fees plaintiff seeks to recover is a $150 charge for advance jury fees, which is already sought under Item No. 2. Accordingly, the $150 is not recoverable as a filing fee.

The court will permit recovery of the $435 filing fee and $60 filing fee for plaintiff's Motion for an Order to Disqualify/Mistrial, despite defendant's contention that the latter was not necessary. Accordingly, $495 in filing and motion fees will be allowed, and costs will be taxed in the sum of $1,663.22.

Item 4 – Deposition Costs

Plaintiff seeks $16,341.42 in deposition costs, which includes costs for the following expert depositions: $1,200 for John Finkenberg, M.D.; $3,125 for Isaac Ikram, P.E.; and $100 for Joseph Tating. "[F]ees of experts employed by one party are not allowable as costs." (*Posey v. State of California* (1986) 180 Cal.App.3d 836, 841.) The opposition concedes that these deposition costs are not allowable. According, the deposition costs are taxed by $4,425.

Item 5 – Service of Process

Plaintiff may recover the amount actually incurred in effecting service of process by a registered process server. (Code Civ. Proc., § 1033.5, subd. (a)(4)(B).) The opposition does not dispute that the $155.92 claimed for service on American Ambulance is not recoverable, and the motion to tax is granted in that amount.

Item 8 – Ordinary Witness Fees

Plaintiff seeks to recover $6,000 in ordinary witness fees in connection with the testimony of Kevin Lester, M.D., despite ordinary witness fees being capped at $35 per day plus mileage. (Gov. Code, § 68093.) The opposition contends that Dr. Lester was an expert witness, and therefore the $35 fee is not applicable. Code of Civil Procedure section 10335, subdivision (a)(8), allows recover of expert witness fees when authorized by law or contract. Expert witness fees are recoverable where a party rejects a Code of Civil Procedure section 998 settlement offer and then fails to obtain a more favorable judgment. (*Fish v. Guevara* (1993) 12 Cal.App.4th 142, 148.) Because plaintiff does not show that this occurred, Dr. Lester's witness fee is limited to the statutory $35 fee pursuant to Code of Civil Procedure section 1033.5 and Government Code section 68093. The motion to tax is therefore granted in the sum of $5,965.

Item 13 – Models, Enlargements, and Photocopies of Exhibits

Plaintiff seeks to recover $1,552.44 in costs related to models, enlargements, and photocopies of exhibits, which defendant contends is excessive. Costs must be reasonable in amount. (Code Civ. Proc., § 1033.5, subd. (c)(3).) While it has been held that "fees are not authorized for exhibits not used at trial" (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 775), it has also been held that "such costs are recoverable in the trial court's discretion under section 1033.5(c)(4)" (*Segal v. ASICS America Corp.* (2022) 12 Cal.5th 651, 668).

Defendant does not show that the unused exhibits were not materials whose non-use was foreseeable. In this case the court will allow the costs of copies and production of exhibits, even those ultimately not used at trial. However, the court will not allow the $618 delivery fee (Oppo. Exh. C), which is avoidable and excessive.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 2/17/2026 .
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Umpqua Bank v. Sran Family Orchards, Inc.***
Superior Court Case No. 25CECG00844

Hearing Date: February 19, 2026 (Dept. 503)

Motion: 1) Valley Pride Ag's Motion for Stay of Distributions;
2) Receiver's Motion for Determination of Producer Liens and Approval for Payment Thereon
2) TSB Ag's Motion for Leave to Sue the Receiver

Tentative Ruling:

To deny Valley Pride Ag's motion for a stay of distributions, without prejudice.

To deny the Receiver's Motion for Determination of Producer Liens and Payment Thereon, without prejudice.

To deny TSB Ag's Motion for Leave to Sue the Receiver, without prejudice.

Explanation:

STAY

Code of Civil Procedure section 916 articulates that the perfecting of an appeal stays proceedings "upon the judgment or order appealed from … but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order." (Code Civ. Proc., § 916, subd. (a).) Here, Valley Pride Ag has filed an appeal as to this Court's denial of its motion to intervene.

Denial of a motion to intervene is effectively a final judgment, subject to immediate appeal. (*Britt v. East Side Hardware Co*. (1914) 25 Cal.App. 231, 232.) However, an order denying a motion to intervene "is self-executing, and an appeal from such an order does not stay its execution, because there is nothing to stay." (*Lindsay Strathmore Irr. Dist. v. Superior Court of Tulare County* (1932) 121 Cal.App. 606, 611.)

Notably, the request here is to stay is as to distributions, not as to the order denying intervention. The Court denies the request to stay distributions, without prejudice. Should Valley Pride Ag seek and obtain an order staying this matter in the appellate court, it should file notice of the same.

DETERMINATION OF AMOUNT OF PRODUCER LIENS AND APPROVAL FOR PAYMENT THEREON

On June 6, 2025, the Court appointed a receiver in this matter, ordering, "The Receiver shall have the right to [sic] file an application with this Court for the sale of the Bank Collateral, or any portion thereof, on such terms as the Court may authorize."

(Order, June 6, 2025, ¶ 27.) On August 8, 2025, the Court granted an ex parte application allowing for the sale of Shared Crop Collateral in an arm's length transaction. (Order, August 8, 2025.) On August 14, 2025, the Receiver sold almonds, in bulk, to Valley Pride Ag for $2,500,000.

The Receiver argues that each claimant waived their statutory producer lien in their respective Pooling Agreements. The Receiver relies on the following language: "GROWER agrees to transfer title to the almonds to SFO upon delivery, free and clear of all encumbrances." (De Camara Decl., ¶ 3 and Exh. A-F.) The Court disagrees that this language amounts to a waiver of an automatic producer lien. Rather, the Court interprets this language as meaning free and clear of third-party liens, not a waiver of the statutory lien that attaches to farm products at the time of their delivery. (Food & Agric. Code, § 55631.)

The Receiver also argues that possession changed therefore terminating existing producer liens. (*In re Churchill Nut Co.* (N.D. Cal. 2000) 251 B.R. 143,150.) First, he argues that Sran Family Orchards no longer possessed the almond inventory at issue because more than 95 percent had been sold prior to the receivership. He argues these sales terminated the possession by Sran Family Orchards. Thus, the monies owed for the purchase of the almonds by Defendants would not be subject to a producer lien once the almonds were sold. The Court disagrees with the Receiver in this regard.

A producer's lien is "a preferred lien prior in dignity to all other liens, claims, or encumbrances" except for wage and salary claims. (Food & Agric. Code, § 55633.) The purposes of the Food and Agricultural Code are to promote and protect the agricultural industry as well as public health and safety. (*Frazier Nuts, Inc. v. American Ag Credit* (2006) 141 Cal.App.4th 1263, 1277.)

The court in *Frazier Nuts, Inc. v. American Ag Credit, supra*, 141 Cal.App.4th at pp. 1273-1274 describes the legislative history behind the producer lien. The court notes, "Based on this legislative history, we conclude that the main objective of the 1979 amendments was to see that producers would be paid for their product. Consistent with this objective, the legislative history identifies only one use for proceeds generated by the sale of farm product subject to a producer's lien—the payment of producers who hold the lien." (*Ibid*.) There, the court found a secured lender failed to provide sufficient authority for finding that proceeds generated by a sale of farm products subject to a producer lien would be collateral available to lenders with security interests. (*Id*. at p. 1274.) The court noted it was clear that the legislature "intended that ''producers shall be assured full payment for their farm products.'" (*Id*. at p. 1278, quoting *McKee v. Bell-Carter Olive Co*. (1986) 186 Cal.App.3d 1230, 1237.) The court in *Frazier* found that treating a claim to proceeds as a producer's lien promoted the purpose of the producer's lien statute. (*Ibid*.) As such, proceeds of sales remain subject to the producer lien.

Food and Agriculture Code section 55645 provides "All claims in relation to payment shall have equal standing and payment shall be prorated if necessary among the claimants." The Receiver asserts he analyzed the ratio of any claimant's crop to the total crop variety for a particular year and used that percentage ratio in the Receiver's sale of the remaining crop. This does not account for the proceeds of almonds sold by

Defendants prior to the receivership. As discussed above, the receivership estate is responsible for proceeds from sales prior to the receivership.

Additionally, the Receiver's claims regarding the amounts of inventory pre and post receivership are not sufficiently evidenced. The Receiver claims the inventory was commingled, but provides no evidence of this, while some of the claimants have presented documentation suggesting their inventory was kept separate. Also, the grower statements provided in the Receiver's declaration lack foundation. These appear to demonstrate how the Receiver calculated each claimant's share, but there is insufficient information about how the Receiver arrived at the numbers used for such calculations.

The Court is not persuaded as to Receiver's arguments that the claimants waived their statutory producers' liens. Neither is the Court persuaded that sale of the almonds altered the status of the statutory producers liens. Additionally, the Receiver has not sufficiently shown his work on how he arrived at the amounts of inventory sold pre and post receivership, whether inventory was comingled, or whether the proposed distribution is fair and reasonable. Thus, the Court denies Receiver's motion.

LEAVE TO SUE RECEIVER

Court-appointed receivers may only be sued by seeking leave of the court. (*Ostrowski v. Miller* (1964) 226 Cal.App.2d 79, 84.) This is so that receivers are protected from unnecessary litigation. (*Ibid*.) Courts may refuse to deny leave to sue a receiver where intervention in the receivership suit can fully address the relief requested. (*Ibid*.) Where intervention would not provide all relief a claimant would be entitled to, then the court would be abusing its discretion by denying leave to sue. (*Id*. at p. 85.)

Here, TSB Ag was previously granted the right to intervene and filed its Complaint in Intervention September 29, 2025. The Complaint in Intervention seeks enforcement of producer's liens, a judicial declaration that TSB Ag's lien is valid, enforceable, and prior in dignity to all other claims, an order directing the Receiver to turn over $1,188,858 in proceeds from the sale of its 2023 almond crop, and other relief the Court deems just and proper. (Complaint in Intervention, September 29, 2025, Prayer.) This appears to form the basis of TSB Ag's arguments in favor of allowing it leave to sue the Receiver. As such, it appears that the leave sought would be duplicative of the already granted intervention. Thus, the Court denies the motion for leave to sue the Receiver.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 2/17/26.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Esqueda v. Maan***
Case No. 25CECG00954

Hearing Date: February 19, 2026 (Dept. 503)

Motion: Defendant's Demurrer and Motion to Strike Portions of First Amended Complaint

Tentative Ruling:

To overrule the demurrer to the third and fifth causes of action. To sustain the demurrer to the fourth cause of action. To deny leave to amend as to the fourth cause of action.

To grant the motion to strike the references to Civil Code section 51 and 1021.4 from the first amended complaint. To deny leave to amend with regard to the references to section 51. To grant leave to amend with regard to the reference to section 1021.4.

Plaintiff shall serve and file her second amended complaint within ten days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

Meet and Confer: Defense counsel states that he met and conferred with plaintiff's counsel by phone, but that the efforts to meet and confer failed, so he has filed the demurrer and motion to strike. Plaintiff's counsel contends that defense counsel did not adequately meet and confer, however, because he offered to amend the complaint and defendant filed the demurrer and motion to strike before he could file the amended complaint.

However, even if the court accepts that plaintiff offered to amend the complaint and that defendant filed the demurrer and motion to strike before he could do so, failure to adequately meet and confer is not a valid reason to overrule a demurrer or deny a motion to strike. (Code Civ. Proc., §§ 430.41, subd. (a)(4); 435.5, subd. (a)(4).) Thus, the fact that the plaintiff offered to amend the complaint does not mean that the court should overrule the demurrer or deny the motion to strike. Instead, the court intends to hear the merits of the demurrer and motion to strike.

Demurrer: To the extent that defendant demurs to the prayer for relief, a demurrer does not lie as to only part of a cause of action or a prayer for relief. (*Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1047.) If defendant wishes to challenge a prayer for relief or part of a cause of action, he should bring a motion to strike instead. Therefore, the court intends to overrule the demurrer to the prayer for relief.

Next, the court will overrule the demurrer to the third cause of action for negligence. Defendant contends that the third cause of action is uncertain because it

alleges that defendant intentionally assaulted plaintiff, but she also alleges that defendant was negligent, which confusingly mixes intentional and unintentional torts in one cause of action. However, plaintiffs are allowed to allege inconsistent alternative theories of liability based on the same general set of facts. (*Adams v. Paul* (1995) 11 Cal.4th 583, 593.) Here, plaintiff appears to be pleading that defendant's conduct constituted either an intentional assault and battery, or in the alternative negligence. Therefore, the court intends to find that the third cause of action is adequately alleged, and it will overrule the demurrer to that cause of action.

Defendant has also demurred to the fourth cause of action on the ground that it fails to state claim because negligent infliction of emotional distress is not a separate cause of action and is simply the tort of negligence that causes emotional distress, and thus the fourth cause of action is duplicative of the third cause of action.

"'[The] *negligent* causing of emotional distress is not an independent tort but the tort of *negligence* ....' 'The traditional elements of duty, breach of duty, causation, and damages apply.'" (*Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.* (1989) 48 Cal.3d 583, 588–589, citations omitted, italics in original.) "[I]t is settled in California that in ordinary negligence actions for physical injury, recovery for emotional distress caused by that injury is available as an item of parasitic damages." (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 981, citations omitted.)

In the present case, plaintiff has alleged that defendant violated his legal duty toward her, injured her, and caused her severe emotional distress that required medical attention. (FAC, ¶¶ 26-28.) However, she has already alleged a separate cause of action for negligence based on the same facts. (FAC, ¶¶ 22-25.) The fourth cause of action adds nothing to the third cause of action other than the allegation that plaintiff suffered emotional distress as a result of defendant's conduct. Since she can already recover her emotional distress damages as part of the third cause of action, the fourth cause of action is redundant of the third cause of action and the court intends to sustain the demurrer to the fourth cause of action for failure to state a claim, without leave to amend.

Next, defendant demurs to the fifth cause of action for violation of the Ralph Act. Defendant contends that the fifth cause of action is uncertain because it alleges violations of both Civil Code sections 51 and 51.7, the Unruh Civil Rights Act and the Ralph Civil Rights Act. Defendant contends that he is not a "business establishment", so he cannot be liable under the Unruh Act. Also, defendant notes that the prayer for damages refers to the Tom Bane Civil Rights Act, but alleges no facts to support a claim under the Bane Act. Furthermore, he contends that plaintiff has not alleged any facts to show that defendant's conduct was motivated by race or gender discrimination, and it is not clear whether plaintiff is alleging gender discrimination, racial discrimination, or national origin discrimination. Therefore, defendant concludes that the fifth cause of action is uncertain and fails to state a claim under any of the cited statutes.

In her opposition, plaintiff concedes that the reference to Civil Code section 51 is "extraneous", and she offers to withdraw the surplus language. However, she contends that she has alleged sufficient facts to state a claim under the Ralph Act, Civil Code section 51.7, as she has alleged that defendant committed violent acts against her based on her race, gender, and/or national origin. She claims that these allegations are

sufficient to state a claim under the Ralph Act, so the court should overrule the demurrer to the fifth cause of action.

"Section 51.7 [the Ralph Act] broadly provides that all persons have the right to be free from violence and intimidation by threat of violence based on, among other things, race, religion, ancestry, national origin, political affiliation, sex, or position in a labor dispute. The rights protected by section 51.7 may be enforced by a private action for damages. (See § 52, subd. (b).)" (*Stamps v. Superior Court* (2006) 136 Cal.App.4th 1441, 1445.)

Here, the fifth cause of action somewhat confusingly cites to both Civil Code sections 51 and 51.7. However, plaintiff then clearly alleges that she is alleging a claim under Civil Code section 51.7, the Ralph Act. (FAC, ¶ 31.) She alleges that she was assaulted and battered by defendant, and that defendant committed violent acts against her that were motivated by her gender. (*Ibid*.) Therefore, she has alleged enough facts to state a claim under section 51.7. While she has not alleged any specific facts showing that the defendant's conduct was motivated by her gender, it would be nearly impossible for her to allege any detailed facts at this stage of the litigation, given that there is no way for her to know defendant's state of mind and what motivated the attack without conducting discovery. Also, while she references the Unruh Act and Bane Act in the rest of the complaint, including the prayer for damages, these references do not make the cause of action defective or uncertain, as plaintiff's primary allegations make it clear that she seeks to state a claim under the Ralph Act. Therefore, the court intends to overrule the demurrer to the fifth cause of action.

Motion to Strike: Defendant moves to strike the references to Civil Code section 51 and 1021.4 from the first amended complaint. Defendant contends that the reference to section 51 is improper, as he is not a "business establishment" under the Unruh Act. He also claims that he has not been convicted of a felony, so section 1021.4 does not apply to him.

In her opposition, plaintiff concedes that the reference to Civil Code section 51 is improper, as she is not alleging a claim under the Unruh Act. Therefore, the court intends to grant the motion to strike the references to section 51 and the Unruh Act from paragraph 37 of the first amended complaint, as well as the prayer for relief, numbers 4 and 5.

In addition, the court will grant the motion to strike the reference to Civil Code section 1021.4 from the FAC. Under section 1021.4, "In an action for damages against a defendant based upon that defendant's commission of a felony offense *for which that defendant has been convicted*, the court may, upon motion, award reasonable attorney's fees to a prevailing plaintiff against the defendant who has been convicted of the felony." (Italics added.)

Here, plaintiff has alleged facts showing that defendant committed an assault and battery that caused her bodily harm, and that she had to seek medical attention for her injuries. (FAC, ¶¶ 11-14.) However, she does not allege that defendant was charged with and convicted of a felony as a result of his attack on her. Thus, plaintiff has not alleged any facts to support her request for attorney's fees under Civil Code section 1021.4. As a result, the court intends to grant the motion to strike the reference to section 1021.4 from the first amended complaint. The court will grant leave to amend, however,

as it is possible that plaintiff may be able to allege that defendant has been convicted of a felony in connection with the incident.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 2/17/2026.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Andrew de Camara v. Valley Pride AG Company, Inc.***
Superior Court Case No. 25CECG03989

Hearing Date: February 19, 2026 (Dept. 503)

Motion: Application for Writ of Attachment

Tentative Ruling:

To deny, without prejudice. (Code Civ. Proc., § 484.090.)

Explanation:

Plaintiff Andrew de Camara ("Plaintiff" or "Receiver") applies for a Right to Attach Order and Order for Issuance of Writ of Attachment against Defendant Valley Pride AG Company, Inc. ("Defendant") in the amount of $4,448,708.95.

Attachment law is subject to strict construction; unless specifically provided for by law, no attachment procedure may be ordered by the court. (*Pac. Decisions Sciences Corp. v. Superior Court* (2004) 121 Cal.App.4th 1100, 1106.) Attachment may issue only where there is a sufficient showing that (1) the claim upon which the attachment is based is one upon which attachment may be issued; (2) the plaintiff has established a probable validity of the claim upon which the attachment is based; (3) the attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based; and (4) the amount to be secured by the attachment is greater than zero. (Code Civ. Proc. § 484.090, subd. (a).)

The application must be supported by an affidavit showing that the plaintiff on the facts presented would be entitled to a judgment on the claim upon which the attachment is based. (Code Civ. Proc. § 484.030.) The affidavits must contain evidentiary facts, set forth with particularity, and based on actual personal knowledge with all documentary evidence properly identified and authenticated. (Code Civ. Proc. § 482.040; *Hobbs v. Weiss* (1999) 73 Cal.App.4th 76, 79-80.) A verified complaint, if it states evidentiary facts, may be used in lieu of or in addition to an affidavit. (Code Civ. Proc. § 482.040.)

1. <u>The Claim Upon Which the Attachment is Based Must be One Upon Which Attachment May Be Issued</u>

An attachment may be issued only in an action based on a claim for money. The money claim must be for a "fixed or readily ascertainable amount," not less than $500.00, exclusive of costs, interests, and attorney's fees. (Code Civ. Proc. § 483.010 subd. (a).) The money damages sought in the action must be measurable by reference to the contract itself. (*Gill v. DeSanz* (1975) 52 Cal.App.3d 457, 466.)

" 'It is a well-recognized rule of law in this state that an attachment will lie upon a cause of action for damages for a breach of contract where the damages are readily ascertainable by reference to the contract and the basis of the computation of damages appears to be reasonable and definite. [Citations.] The fact that the damages are unliquidated is not determinative. [Citations.] But the contract sued on must furnish a standard by which the amount due may be clearly ascertained and there must exist a basis upon which the damages can be determined by proof.' " (*Lewis v. Steifel* (1950) 98 Cal.App.2d 648, 650, quoting *Force v. Hart* (1928) 205 Cal. 670, 673.)

Here, there is reason to question whether attachment is available because the amount allegedly due is not measurable by reference to the contract(s) sued upon. In the Verified Complaint, which may be used in addition to Plaintiff's affidavit, the "contracts" upon which the total amount owed is calculated are set forth in paragraph 9. Plaintiff lists six purchase contracts and details the amounts allegedly owed under each contract. The contracts themselves are attached to the Verified Complaint as Exhibit 3, confirming the amounts set out in the Complaint.

When totaled, the amounts referenced in the contracts do not equate to the amount sought by the Plaintiff/Receiver. The discrepancy in amounts is significant. There is no explanation provided for how the "total amount owed" of $4,448,708.95 sought by Plaintiff was calculated. These money damages sought are not a fixed or readily attainable amount that is measurable by reference to the contract itself.

2. Probable Validity of the Claim Upon Which the Attachment is Based

A claim has "probable validity" if it is more likely than not that the plaintiff will obtain a judgment on that claim. (Code Civ. Proc. § 481.190.) In determining the probable validity of a claim, the court must consider the relative merits of the positions of the parties and make a determination of the probable outcome of the litigation. (*Loeb & Loeb v. Beverly Glen Music, Inc.* (1985) 166 Cal.App.3d 1110, 1120.)

Plaintiff has failed to meet his burden to demonstrate this element for issuance of a writ of attachment. The claim upon which the attachment is based is Plaintiff's first cause of action for breach of contract. Here, the single affidavit provided by Plaintiff and the Verified Complaint are insufficient to demonstrate the probable validity of Plaintiff's claim. Plaintiff fails to address Defendant's arguments that (1) Defendant requested assurances that were not received; and (2) Sran Family Orchards rejected the contracts, constituting a breach and repudiation of the Master Agreement, thereby excusing Defendant from further performance.

In regard to the "judicial admission" relied upon in paragraph 20 of Defendant's Verified Answer, the court does not find this sufficient for establishing the element of probable validity. Ultimately, this element looks at the probable validity of the claim upon which the attachment is based. (Code Civ. Proc., § 484.090 subd. (a)(2), emphasis added.) Here, the "admission," regardless of whether it was a "clerical error" as suggested by Defendant, was not made as to the claim at issue for breach of contract.[1] In answering the first cause of action for breach of contract, Defendant denied the

[1] The "admission" was made as to the third cause of action of the Verified Complaint.

allegations of paragraphs 10 through 13 as to the amount owed, if any. (See Verified Answer, ¶¶ 10-13.)

The court intends to deny the application, without prejudice.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 2/17/2026.
(Judge's initials) (Date)