Tentative Rulings for May 15, 2025
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.***

22CECG02684 ***Leon Butler v. Amazon.com Services LLC***

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(47)

Tentative Ruling

Re: ***In Re Delilah Hernandez***
Superior Court Case No. 24CECG02980

Hearing Date: May 15, 2025 (Dept. 503)

Motion: Petition to Compromise the Claim for Delilah Hernandez

Tentative Ruling:

To deny pending the submission.

Explanation:

Deny without prejudice for the following reasons:

a) Plaintiff did not file an Order to Deposit Money in Blocked Account;
b) The Defendant/payer, is missing in the Order for Approving Claim or Action filed on April 25, 2025; and
c) The Order Approving Claim or Action, filed on April 25, 2025, provides that $8463.30 will be deposited into the blocked account. It is unclear when the rest of the proceeds will be deposited into the blocked account.

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 (Judge's initials) on 5/7/2025 (Date).

(47)

Tentative Ruling

Re: ***In Re: Easiah Jackson***
Superior Court Case No. 25CECG01884

Hearing Date: May 15, 2025 (Dept. 503)

Motion: Petition to Compromise the Claim of Easiah Jackson

Tentative Ruling:

To grant petition. Order signed. No appearance necessary. The court sets a status conference for Wednesday, August 28, 2025, at 3:30 p.m., in Department 503, for confirmation of deposit of the minors' funds into the blocked accounts. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

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 (Judge's initials) on 5/7/2025 (Date).

(35)

Tentative Ruling

Re: ***Wade v. Delivery Response: On Time Parcel, LLC et al.***
Superior Court Case No. 24CECG05530/COMPLEX

Hearing Date: May 15, 2025 (Dept. 503)

Motion: (1) By Defendant Amazon.com Services, LLC on Demurrer to Complaint
(2) By Defendant Amazon.com Services, LLC to Strike Complaint

Tentative Ruling:

To overrule the demurrer as moot. (Code Civ. Proc. § 472, subd. (a).)

To deny the motion to strike as moot. (Code Civ. Proc. § 472, subd. (a).)

Explanation:

A party may amend its pleading any time after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard if the amended pleading is filed and served no later than the date for filing an opposition. (Code Civ. Proc. § 472, subd. (a).) Here, plaintiff Murchant Wade timely filed a First Amended Complaint in lieu of an opposition to the demurrer and motion to strike filed by defendant Amazon.com Services, LLC. Accordingly, the demurrer is overruled as mooted by a superseding pleading. The motion to strike is denied as mooted by a superseding pleading.

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 5/12/2025.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Veronica Hernandez v. Grace Mendez***
Superior Court Case No. 24CECG02723

Hearing Date: May 15, 2025 (Dept. 503)

Motion: Demurrer by Cross-defendant Antonio Hernandez to Second Amended Cross-complaint

Tentative Ruling:

To sustain the demurrer by cross-defendant Antonio Hernandez without leave to amend. The prevailing party, Antonio Hernandez, is directed to submit to this court, within seven days of service of the minute order, a proposed judgment dismissing the Second Amended Verified Cross-complaint as to the demurring cross-defendant.

Explanation:

The plaintiffs, Veronica Hernandez (Veronica) and Vanessa Hernandez (Vanessa) initiated this action by filing a complaint against their mother, Grace Mendez also known as Grace Hernandez (Mendez), and other interested parties for declaratory relief, slander of title, and quiet title. Mendez filed a cross-complaint naming as cross-defendants Veronica, Vanessa, Antonio Hernandez (her ex-husband and plaintiffs' father [Antonio]), and Sylvia Ramirez, individually and dba A-Affordable Legal Service (Ramirez), alleging various claims, including a sole cause of action for fraud against Antonio. (The court refers to some of the parties by their first names due to their identical surnames, not out of disrespect.)

The court previously sustained Antonio's demurrer to the first amended cross-complaint (FACC) with leave to amend. Antonio now demurs to Mendez's second amended cross-complaint (SACC), which includes a single cause of action for fraud against Antonio.

Meet and Confer

Counsel for Antonio filed and served a declaration stating counsel met and conferred with Mendez's counsel by telephone at least five days before a responsive pleading was due to be filed, but was unable to reach an agreement resolving the matters raised by the demurrer. This satisfies the requirements of Code of Civil Procedure section 430.41 for the demurring party to meet and confer in person, by telephone, or by video conference with the opposing party.

Allegations of the Second Amended Cross-complaint

Mendez alleges, as she did in the FACC, that after an amicable divorce, she and Antonio mutually agreed that Mendez would receive their Fresno property located at 232 East Dudley Avenue (Dudley) and Antonio would receive their Fresno property

located at 108 South Boyd Avenue (Boyd). Although Mendez had retained a local family law attorney to represent her in the divorce, she agreed to Antonio's suggestion to use Ramirez, a paralegal, who is not a licensed attorney, rather than her retained counsel, to save money. Before meeting with Ramirez, Mendez and Antonio had agreed that they would leave the Boyd and Dudley properties to their daughters, Veronica and Vanessa, via living trust.

In her SACC, Mendez adds an allegation that '[t]here was never any discussion or thought that this agreement would only last for a certain amount of time or that it was or would one day be revocable." (SACC, ¶ 15, p. 4:8-10.) Mendez continues to allege, with minor changes in strikeout and bold type, that at the scheduled meeting with Ramirez, both Mendez and Antonio confirmed their agreement:

> During this meeting, Mendez and Antonio agreed, and confirmed with Ramirez, that Boyd Ave. would go to Antonio and Dudley Ave. to Mendez, respectively. Mendez and Antonio further agreed, and confirmed with Ramirez, that ~~they~~ **Antonio** would leave Boyd Ave. ~~and Dudley Ave.~~ to their two daughters, Veronica and Vanessa, via living trust, **and likewise, Mendez would leave Dudley Ave. to their daughters via living trust.** During the meeting with Ramirez and Margarita [her notary], Mendez and Antonio each signed multiple documents that Mendez, **as a law person relying on a professional,** believed were for the living trusts.

(SACC, ¶ 18, pp. 4:26-5:5.)

Mendez changes paragraph 19 of her FACC slightly, as noted below, but the meaning remains the same:

> Not understanding how living trusts work, or how property transfer into a trust and due to the **anger and pain Mendez has endured from the** detestable relationship **with** Vanessa and Veronica **since 2016,** ~~had with their mother,~~ Mendez ~~decided~~ **attempted** to disinherit her daughters and listed the Dudley Ave. property for sale in 2024.

(SACC, ¶ 20; cf. FACC, ¶ 19.)

After the Dudley property was in escrow, Mendez discovered she did not have authority to sell the property outright because instead of signing what she believed to be a living trust, she alleges she "actually executed a grant deed conveying ownership to Vanessa and Veronica, divesting herself of any **legal** ownership interest in Dudley Ave., and reserving only a life estate." (SACC, ¶ 21, p. 5:19-21.)

Antonio's Demurrer

Antonio again demurs to the only cause of action against him—the first cause of action for fraud. At the outset, Antonio claims the fraud claim is barred by the applicable three-year statute of limitations set forth in Code of Civil Procedure section 338, subdivision (d). Mendez suggests the statute of limitations does not bar her fraud claim under the discovery rule, which applies when it is particularly difficult for a plaintiff to

understand the breach of duty or when the injury is hidden beyond what an ordinary person could be expected to understand. (*Eisenberg Village of Los Angeles Jewish Home for the Aging v. Suffolk Construction Company, Inc.* (2020) 53 Cal.App.5th 1202, 1213 [finding in light of equitable basis for discovery rule, it did not apply to claim for disgorgement].)

Antonio also demurs on the basis that Mendez fails to state facts sufficient to constitute a cause of action for fraud. The parties agree the elements of fraud are: "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity . . . ; (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage. [Citation.]" (*Charpentier v. Los Angeles Rams Football Co., Inc.* (1999) 75 Cal.App.4th 301, 312, internal quotation marks omitted.) The court finds the SACC is subject to demurrer.

Once again Mendez fails to allege sufficiently a misrepresentation that caused her harm. "[I]t is not sufficient to allege fraud or its elements upon information and belief, unless the facts upon which the belief is founded are stated in the pleading." (*Dowling v. Spring Val. Water Co.* (1917) 174 Cal. 218, 221; see *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550 [plaintiff may allege matters on information and belief not within plaintiff's personal knowledge only if plaintiff has information leading plaintiff to believe allegations are true]; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1158-1159 [trial court properly sustained demurrer without leave to amend where plaintiff had no factual basis to believe allegations made on information and belief were true].) The court has disregarded Mendez's allegations on information and belief that lack information that would lead Mendez to believe the allegations are true. (*Ibid.*)

When the court sustained Antonio's demurrer to the FACC, it noted Mendez's failure to allege whether the agreement to leave the properties to the daughters was irrevocable. Such an allegation is relevant to Antonio's demurrer because it affects the elements of causation, reliance, and damages. If the parties intended to transfer their assets to a revocable living trust, with the daughters named as beneficiaries, either party could change the provisions and the beneficiaries at any time thereafter, negating Mendez's ability to prove causation, reliance, and damages. As Antonio points out, a trust is deemed revocable unless it is made expressly irrevocable by the "trust instrument." (Prob. Code, §15400.) "[A] settlor with the power to revoke a living trust effectively retains full ownership and control over any property transferred to that trust[.]" (*Arluk Medical Center Industrial Group, Inc. v. Dobler* (2004) 116 Cal.App.4th 1324, 1331-1332.)

If Mendez wanted to retain full ownership to change her mind and disinherit the daughters at a later time, her agreement with Antonio would "impliedly" be revocable. If Mendez wanted to make sure the agreement to the leave the properties to the daughters would be accomplished by a conveyance for their benefit 'impliedly forever," certain conveyances—such as a grant deed with a reserved life estate to Mendez and the remainder interest to the daughters, or a grant deed to Antonio and the daughters as joint tenants—would inure to the daughters' benefit "impliedly forever," unless the daughters voluntarily chose to relinquish their interests.

As he did in his demurrer to the FACC, Antonio argues persuasively that Mendez fails to allege an act taken in reliance upon a misrepresentation by Antonio, because

before meeting with Ramirez, Mendez was planning to leave the Dudley property to her daughters upon her death. The deed prepared by Ramirez would have accomplished Mendez's original stated purpose of making sure the property passed to her daughters upon her death without probate, but it did not leave open the possibility of disinheriting them. By reserving to herself all the rights and responsibilities of a life tenant in the Dudley property, Mendez still had the right to sell her life estate, but the remainder interest would pass to her daughters upon her death by operation of law without probate—she could not disinherit them.

Mendez contends she could not have known based on the grant deed she signed that she was reserving a life estate unto herself, and not signing a living trust. But she herself alleges that after Mendez told Ramirez she wanted a living trust to transfer Dudley for the benefit of her daughters, "Ramirez told Mendez she didn't want to do a living trust, but rather, convey title to Vanessa and Veronica, and reserve a life estate." (SACC, ¶ 60, p. 13:4-6.) Thus, Mendez plainly alleges that after Ramirez confirmed "the purpose of the living trust was for [Dudley] to go to Vanessa and Veronica," Ramirez, not Antonio, told Mendez she would not prepare a living trust, but suggested a different means to accomplish Mendez's stated purpose. (SACC, ¶ 60.)

Had the parties agreed the living trusts would be revocable, either party could have changed the provisions at any time after the creation of the trusts. Had the parties agreed the living trusts would be irrevocable, Mendez would not have the right to disinherit her daughters when she changed her mind later. In either event, the fraud claim fails because no action allegedly taken by Antonio caused damage to Mendez. Because the court finds Mendez fails to plead fraud with the requisite specificity and sustains the demurrer on this ground, the court need not address the parties' arguments regarding the statute of limitations.

In summary, when the court gives the SACC a reasonable interpretation, reading it as a whole and in context, and taking all material allegations as true, the first cause of action for fraud against Antonio is subject to demurrer. First, Mendez fails to allege a misrepresentation with the requisite specificity. Furthermore, Mendez fails to allege facts to establish the elements of reliance, causation, and consequential damages, to overcome her admission that she followed Ramirez's advice to create a life estate for herself by deed, rather than creating a living trust, to accomplish her stated purpose at the time. She alleges she was harmed, not by any action taken by Antonio, but by her decision to follow Ramirez's advice, which prevented her from disowning her daughters when she changed her mind later, and decided she did not want her agreement with Antonio to benefit her daughters 'impliedly forever." In short, if Mendez and Antonio transferred the properties to reciprocal revocable living trusts, either party would be free to change the provisions at any time thereafter. If Mendez and Antonio transferred the properties to irrevocable living trusts, Mendez and Antonio could not unilaterally disinherit their daughters. Either way Mendez chooses to describe her alleged agreement with Antonio, the fraud claim fails because Mendez would suffer the same consequences, with or without the alleged fraudulent conduct by Antonio.

Leave to Amend

It is the opposing party's responsibility to request leave to amend, and to show how the pleading can be amended to cure its defects. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) It is an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility the defect can be cured by amendment. The corollary is also true—when a complaint shows upon its face that there is no reasonable possibility to cure the defect, the court should deny leave to amend. Mendez has the burden to demonstrate how the SACC might be amended. Here, Mendez requests leave to amend, but fails to show how she can amend her pleading to cure its defects. Therefore, the court sustains the demurrer to the SACC without leave to amend.

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 5/13/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Veronica Gonzalez Avena v. Caruthers Liquidation and Wholesale, LLC***
Superior Court Case No. 24CECG00733

Hearing Date: May 15, 2025 (Dept. 503)

Motion: By Plaintiff to Enforce Settlement

Tentative Ruling:

To deny, without prejudice.

Explanation:

Plaintiff has failed to file any Proof of Service of the motion to enforce settlement. (Code Civ. Proc., § 1005; *Preis v. American Indemnity Co*. (1990) 220 Cal.App.3d 752, 758-759.) Additionally, the papers appear incomplete based on the documents indicated in Plaintiff's Notice of Motion.

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 5/13/2025.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Lori Forrest v. Rodney Walker***
Superior Court Case No. 24CECG03624

Hearing Date: May 15, 2025 (Dept. 503)

Motion: Demurrer to Second Amended Complaint

Tentative Ruling:

To sustain the defendants' demurrer to the second amended complaint without leave to amend. The prevailing parties are directed to submit to this court, within seven days of service of the minute order, a proposed judgment dismissing the second amended complaint as to the demurring defendants.

Explanation:

The plaintiff, Lori Forrest (Plaintiff), initiated this action by filing her original complaint on August 26, 2024, against the defendants, Rodney Noel Walker, Alan Sipole, Bill Davis, Dan Indgjerd, and International Glace, Inc. (together, Defendants). Defendants now demur to Plaintiff's Second Amended Complaint (SAC) for fraud and negligent infliction of emotional distress.

Meet and Confer

Counsel for Defendants filed and served a declaration stating counsel met and conferred with Plaintiff by correspondence and by telephone at least five days before a responsive pleading was due to be filed, but the parties were unable to reach an agreement resolving the matters raised by the demurrer. This satisfies the requirements of Code of Civil Procedure section 430.41 for the demurring party to meet and confer in person, by telephone, or by video conference with the opposing party.

Background and Allegations of the Second Amended Complaint

In January 2018 Plaintiff obtained a default judgment in favor of Plaintiff and her since-dissolved company, French Connection, LLC (French Connection) against defendant Sierra Food Group, Inc., a California corporation (SFG). In November 2018 SFG publicly filed a Certificate of Dissolution with the California Secretary of State, which includes a statement that "[t]he Corporation has been completely wound up and is dissolved." (RJN, ¶ 2, ex. B.) Thereafter in May 2019 this court entered a Clerk's Judgment on Sister-state Judgment, which ordered SFG to pay the amount owed to Plaintiff and French Connection under the Oregon default judgment. (RJN, ¶ 4, ex. C.) Plaintiff initiated this action in August 2024. Through the meet-and-confer process Plaintiff amended her complaint twice.

Defendants' Demurrer

Defendants now demur to the operative SAC, which contains two causes of action entitled: (i) fraud in avoidance of judgment liability; and (ii) negligent infliction of emotional distress. They demur on the grounds that Plaintiff's causes of action are barred by the applicable statute of limitations and Plaintiff fails to allege facts to constitute a cause of action.

Defendants correctly summarize the rules to apply the statute of limitations to the SAC:

> The statute of limitations for fraud in the context of a dissolved corporation is three (3) years from the discovery of the fraud. *(See Beal v. Smith* (1920) 46 Cal.App. 271.) Under California Corporations Code § 2010, the general statute of limitations for fraud applies to actions by or against dissolved corporations. Actions for negligent infliction of emotional distress must be filed within two (2) years of the accrual of the statute of limitations. (Code Civ. Proc., § 335.1.)
>
> Under California law, a plaintiff "discovers" a cause of action when they have, or should have, inquiry notice of the cause of action. *(Eidson v. Medtronic, Inc.* (2014) 40 F.Supp.3d 1202.) Further, a plaintiff seeking the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. *(Hendrix v. Novartis Pharmaceutical Corp.* (2013) 975 F.Supp.2d 1100.)

(Defs. memo, p. 8:9-18.)

The court takes judicial notice of the public record that in November 2018 SFG filed a Certificate of Dissolution with the California Secretary of State. (See also, SAC, ¶ 25.) Plaintiff contends the dissolution of SFG without satisfying the default judgment was an act of fraud and negligence. Plaintiff filed her original complaint in August 2024, nearly six years after SFG filed its Certificate of Dissolution. Plaintiff fails to plead facts to establish an inability to make an earlier discovery of the public notice of SFG's dissolution, which forms the basis of her causes of action for fraud and negligence, despite reasonable diligence. Therefore, the statute of limitations bars both of Plaintiff's causes of action alleged in the SAC.

In summary, the court sustains Defendants' demurrer to the SAC because it is barred by the applicable statute of limitations and for the additional reasons set forth in Defendants' supporting papers.

Leave to Amend

It is the opposing party's responsibility to request leave to amend, and to show how the pleading can be amended to cure its defects. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "[T]he plaintiff bears the burden of proving an amendment would cure the defect." (*Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1251.) To meet this burden, "[t]he

plaintiff must identify some legal theory or state facts that can be added by amendment to change the legal effect of his or her pleading." (*Ibid.*; accord, *Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 520, fn. 16.)

It is an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility the defect can be cured by amendment. The corollary is also true—when a complaint shows upon its face that there is no reasonable possibility to cure the defect, the court should deny leave to amend. Plaintiff has the burden to demonstrate how the SAC might be amended. Here, Plaintiff fails to oppose the demurrer and fails to show how she can amend her pleading to cure its defects. Therefore, the court sustains the demurrer to the SAC without leave to amend.

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 5/14/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Umpqua Bank v. Sran Family Orchards, Inc., et al.***
Umpqua Bank v. N.S. Farms, Inc., et al.
Superior Court Case No. 25CECG00844
Superior Court Case No. 25CECG01005

Hearing Date: May 15, 2025 (Dept. 503)

Motion: Order to Show Cause re: Appoint Receiver and Preliminary Injunction

If oral argument is timely requested, it will be entertained on Friday, May 16, 2025, at 1:30 p.m. in Department 503. Zoom appearances are authorized.

Tentative Ruling:

To grant plaintiff's request for an appointment of a receiver and preliminary injunction. Plaintiff shall submit a proposed order in each case consistent with the ruling no later than five days after the clerk's service of the minute order.

The court sets a status conference on May 29, 2025, at 3:30 p.m., in Department 503, regarding the nomination of a receiver in these cases. The parties are to meet and confer regarding the nomination of a receiver no later than 10 days prior to the status conference. Plaintiff shall file a declaration informing the court of the parties' nomination, including the receiver's curriculum vitae and qualifications, and provide a proposed amount of the receiver's bond along with the justifications for the amount proposed, no later than 7 days prior to the status conference.

Explanation:

Under Code of Civil Procedure section 564, subdivision (b),

A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge of that court, in the following cases:
….

(2) In an action by a secured lender for the foreclosure of a deed of trust or mortgage and sale of property upon which there is a lien under a deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt.
…

(6) Where a corporation is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

…

(9) In all other cases where necessary to preserve the property or rights of any party.

…

(11) In an action by a secured lender for specific performance of an assignment of rents provision in a deed of trust, mortgage, or separate assignment document.

(Code Civ. Proc., § 564, subd. (b).)

"In this state a receiver may be appointed *only* as permitted by Code of Civil Procedure section 564." (*Barclays Bank of California v. Superior Court* (1977) 69 Cal.App.3d 593, 597, internal citations omitted, italics in original.) In addition, "[t]he appointment of a receiver is a drastic remedy, may involve unnecessary expense and hardship and courts carefully weigh the propriety of such appointment in exercising their discretion to appoint a receiver particularly if there is an alternative remedy." (*Hoover v. Galbraith* (1972) 7 Cal.3d 519, 528.) Also, "[o]rdinarily, if there is any other remedy, less severe in its results, which will adequately protect the rights of the parties, a court should not take property out of the hands of its owners." (*Golden State Glass Corp. v. Superior Court of Los Angeles County* (1939) 13 Cal.2d 384, 393, internal citations omitted.)

Where the parties agree in a deed of trust that the lender is entitled to an assignment of rents, profits, and earnings from the borrower upon the borrower's default, and that the borrower agrees to appointment of a receiver if there is a default, the court has jurisdiction to appoint a receiver. (*Barclays*, *supra*, at pp. 599-600.) However, there is no *right* to appoint a receiver simply because there is a clause in the deed of trust that provides for such appointment. (*Id*. at p. 600.) "Such an appointment will be according to the principles and usages of equity, and the question 'is largely one in the discretion of the court.'" (*Ibid*, internal citations omitted.)

Here, there is an assignment of all inventory, chattel paper, accounts, equipment, and general intangibles clause in the Commercial Security Agreement, Agricultural Security Agreement, and Amendment to Commercial Security Agreement. (Gilbert Decl, Exs. 21-23.) Additionally, there is a clause stating that defendants consent to appointment of a receiver to take possession of the collateral, to operate the collateral and to collect the rents and apply the proceeds thereof to the indebtedness. (*Id*., at ¶ 48-50, Ex. 26.) However, as the Court of Appeal in *Barclays* held, such clauses do not automatically entitle the lender to the appointment of a receiver. The court must still consider whether the appointment is justified under section 564, as well as the considerations of equity. (*Barclays, supra,* at p. 600.)

In support of its motion for appointment of a receiver, plaintiff contends that defendants are insolvent and in default on the terms of the various promissory notes, as they have missed several payments and indicate an inability to make those payments. Moreover, plaintiff presents a document purportedly distributed by defendants entitled, "The Sran Family Companies Projections and Operation Funding Plan" dated January 23, 2025, which details $26mm (which this court assumes to mean million) in overdue accounts payable, property tax, payroll and grower payable, $5.44 in past due debt

carried into 2025, and an estimated $18mm cash deficit by December 13, 2025. (Gilbert Decl., ¶ 53, Ex. 27.) Although defendants indicate a change in circumstances in their opposition, defendants do not deny the precarious financial condition they are currently facing. Plaintiff contends that their interest in the collateral securing the loans are in danger of being lost, removed, or injured because such collateral is being liquidated to pay operating expenses instead of being used to repay the indebtedness, and defendants estimate that their almond inventory will be reduced to near zero by August 2025. Therefore, plaintiff concludes that appointment of a receiver is warranted.

On the other hand, it appears that the primary means defendants can possibly repay its creditors, including plaintiff, is by continuing to operate its businesses. Notably, however, defendants fail to present any evidence that they will be able to recover from the dire financial condition they are currently in or that they will otherwise be able to repay plaintiff. The fact that defendant has missed at least four payments under the Forbearance Agreement and has not articulated any definitive plan to repay plaintiff does support plaintiff's claim that defendant is insolvent. Under Civil Code section 3439.02, subdivision (b), "A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent." The burden is on the debtor to prove that it is not insolvent. (*Ibid*.) "The term 'insolvency' has two generally accepted definitions: (1) where there is an excess of liabilities over assets; and (2) where one is unable to meet his obligations as they mature in the ordinary course of business. In the absence of a controlling statutory definition, the second definition is preferred." (*California Retail Portfolio Fund GMBH & Co. KG v. Hopkins Real Estate Group* (2011) 193 Cal.App.4th 849, 859–860, internal citation omitted.)

Here, defendants have not been paying their debt to plaintiff, and there is no indication that they will be able to make payments anytime in the immediate future. Nor has defendant denied that it is failing to pay its debt to plaintiff, or that it will be able to do so anytime soon. While defendants argue that they have discussed the status of their loans and a further forbearance agreement and offered plaintiff additional collateral, these proposals do not appear to be likely to pay off the indebtedness. Defendants' indications that they have successfully resolved their lien in excess of $3,573,000 with another creditor, lowered their anticipated deficit by approximately $10,000,000 to $8,000,000, and reduced their amounts owed from approximately $109,000,000 to $88,000,000 do not establish that they are not insolvent, and in fact, tends to suggest that they are insolvent.

Next, while "the availability of other remedies does not, in and of itself, preclude the use of a receivership. [Citation.] . . . [A] trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership. [Citation.]" (*City and County of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 745.)

"This court has traditionally held that trial courts should evaluate two interrelated factors when deciding whether or not to issue a preliminary injunction. The first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued. [Citations.]" (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70.)

"The more likely it is that plaintiffs will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue. Further, 'if the party seeking the injunction can make a sufficiently strong showing of likelihood of success on the merits, the trial court has discretion to issue the injunction notwithstanding that party's inability to show that the balance of harms tips in his favor.'" (*Right Site Coalition v. Los Angeles Unified School Dist.* (2008) 160 Cal.App.4th 336, 338-39, citations omitted.)

Plaintiff must show that it would suffer irreparable harm if the injunction is not issued, and that money damages would not adequately compensate them for their injuries. "The concept of 'irreparable injury' which authorizes the interposition of a court of equity by way of injunction does not concern itself entirely with injury beyond the possibility of repair or beyond possible compensation in damages. Rather, by definition, an injunction properly issues in any case where 'it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.' (Civ. Code, § 3422.)" (*Wind v. Herbert* (1960) 186 Cal.App.2d 276, 285, citation omitted.) Also, a party is not entitled to injunction in case where he has a plain, speedy, and adequate remedy at law. (*Richards v. Kirkpatrick* (1879) 53 Cal 433.) Where party has an adequate remedy at law he may not resort to court of equity for injunctive relief. (*North Side Property Owners' Assn. v. Hillside Memorial Park* (1945, Cal App) 70 Cal App 2d 609.) However, injunctive relief may be granted even in an action purely for monetary damages, where a party "is doing, . . . or is about to do, . . . some act in violation of the rights of another party to the action respecting the subject of the action, and tending to render the judgment ineffectual." (*Lenard v. Edmonds* (1957) 151 Cal.App.2d 764, 769.)

Here, as described above, plaintiff has shown that it is likely to prevail on the merits of its claims, and that it will suffer irreparable harm if the requested injunction is not granted. There is no dispute that defendants have failed to make payments on their loans to plaintiff. And while monetary relief would be sufficient to remedy plaintiff's injury, plaintiff has shown that defendants are insolvent and it is unlikely that defendants would be able to respond in damages following the resolution of these proceedings without the issuance of an injunction. "[I]t was reasonably necessary and fair to both sides to maintain the *status quo* pending the outcome of the litigation[, where] [o]therwise, appellant could have deliberately stripped himself of all assets and made it impossible for him to pay any judgment that might be secured." (*Lenard v. Edmonds, supra,* 151 Cal.App.2d at p. 768.)

Furthermore, the balance of the equities weighs in favor of granting the injunction. Although defendants will suffer hardship in that they will be prevented from continuing the run their businesses as usual, plaintiff will be irreparably harmed if the court denies the injunction, as defendants will likely be unable to repay its loans if defendants are allowed to do so. On opposition, defendants argue that an injunction will not serve to preserve the collateral, because this would leave defendants without access to funds to pay for basic operational costs, leading to spoilage of the crops. These issues would be alleviated by the appointment of a receiver and the court agrees with plaintiff that no lesser remedy is as efficient.

Accordingly, plaintiff's request to appoint receiver is granted, and the court intends to grant a preliminary injunction, enjoining defendant from demanding,

collecting, receiving, spending, or in any other way converting or using any of the Bank Collateral, as that term is defined in the Complaint filed on February 18, 2025.

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 5/14/2025.
(Judge's initials) (Date)