

**AGREEMENT TO DEFEND PUBLIC OFFICER OR EMPLOYEE, RESERVATION OF RIGHTS  
AND NON-WAIVER**

1           WHEREAS, the undersigned public officer or employee is a party defendant in the  
2 following action:

3           NAME OF CASE: Elisa Wheeler, et al. vs. Sara Ann Spane, Jeffrey Allen Kertson, et al.,

4           ACTION NO: 25CECG02378

COURT: Fresno County Superior  
5 Court

6           WHEREAS, the undersigned officer or employee claims that the said action  
7 referenced above arose out of acts or omissions which, if they occurred at all, occurred within  
8 the course and scope of the officer's or employee's employment with the County of Fresno or of  
9 a Judicial District thereof and were not the result of fraud, corruption or malice; and

10           WHEREAS, the undersigned officer or employee has requested that the County of  
11 Fresno undertake his/her defense in said action pursuant to Article 4 (commencing with section  
12 825), Chapter 1, Part 2, Division 2.6 of Title 1 of the Government Code and said County is  
13 willing to conduct said defense subject to a reservation of its rights/non-waiver agreement to the  
14 full extent permitted in said provision of the Government Code.

15           The County and the undersigned public officer or employee therefore agree as  
16 follows:

17           1. Under this Agreement to Defend Public Officer or Employee, Reservation of  
18 Rights, and Non-Waiver ("Agreement"), the County of Fresno will undertake your defense in the  
19 action identified above for:

- 20           • Ordinary negligence which occurred within the course and scope of your  
21 employment.

22           2. The following matters are NOT COVERED by the County of Fresno under this  
23 Agreement:

- 24           • Any actions outside the course and scope of your employment.
- 25           • Any actions within the course and scope of your employment that were/are  
26 reckless, grossly negligent, willful, wanton, fraudulent, oppressive,  
27 malicious, arbitrary or capricious.
- 28           • Punitive damages (which are not currently alleged in this case)

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1           3. Pursuant to this Agreement, the County of Fresno may take the following actions if  
2 the facts of this case warrant:

- 3                   A. Seek a declaration of rights and duties regarding its defense and/or  
4                   indemnity obligations;
- 5                   B. Withdraw our defense and seek reimbursement for defense fees incurred in  
6                   defending claims with no potential for coverage;
- 7                   C. Seek reimbursement for any judgement or settlement paid by County of  
8                   Fresno on the ground that the sums were not paid in connection with  
9                   covered claims;
- 10                  D. The right to have separate verdict form at trial for non-covered claims;
- 11                  E. The right to amend this agreement at a later time.

12                   *Please bear in mind that the County of Fresno is not in any way asserting the*  
13                   *allegations against you have merit. The County of Fresno is simply stating that the*  
14                   *claims, or a portion of them, may not be covered.*

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16           4. PLEASE NOTE: The Public Officer or Employee signing this document has the  
17 right to seek advice of outside counsel/independent counsel at any time.

18                   I, **Jeffrey Allen Kertson** have read the above information and have had an  
19 opportunity to ask questions. I am requesting that the County of Fresno undertake my defense in  
20 the above-entitled action subject to a RESERVATION OF RIGHTS. I understand that I have the  
21 continuing right to seek advice of outside/independent counsel at any time and will advise the  
22 County of Fresno as soon as possible should I want to do so.

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