

Tentative Rulings for December 15, 2025
Department 501

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.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(20)

Tentative Ruling

Re: ***Wheeler v. Spane et al.***
Superior Court Case No. 25CECG0278

Hearing Date: December 15, 2025 (Dept. 501)

Motion: Defendant Jeffrey Kertson's Demurrer to First Amended Complaint

Tentative Ruling:

To sustain demurrers to the third and fourth causes of action as to Kertson only, with plaintiffs granted leave to amend. To overrule the demurrer to the fifth cause of action. (Code Civ. Proc., § 430.10, subd. (e).) Any amended complaint shall be filed within 10 days of the court's ruling on plaintiff's motion for leave to file a Second Amended Complaint (set for 12/30/2025), such that all amendments are included in a single pleading. All new allegations shall be in **boldface** type.

Explanation:

Third Cause of Action for Defamation

Defamation is a false, unprivileged and defamatory statement about an individual, published to a third person (not the plaintiff). (*Shively v. Boznich* (2003) 31 Cal.4th 1230, 1242; see also, Civ. Code, §§44-46.)

Any statements made to plaintiffs themselves are not actionable (unless about one plaintiff to another plaintiff). However, the FAC does not sufficiently allege any false statements made by Kertson about any plaintiff. In the third cause of action plaintiffs allege simply that "Defendants [of whom there are seven], on numerous occasions, including on May 3, 2025, have told people - specifically Plaintiffs' guests - that Plaintiffs are engaged in and are complicit in child pornography. Defendants have also shared these statements with Plaintiffs' neighbors, hoping to encourage more of Plaintiffs' neighbors to engage in harassing and demeaning conduct intended to scare Plaintiffs out of the neighborhood." (FAC ¶ 57.)

Plaintiffs need to be specific about what was said *by Kertson*, and to whom. In light of the fact that there are seven different individual defendants, and three different plaintiffs, plaintiffs need to be specific about what statements were made by each defendant, to whom the statements were made, and what was false about the statements. The allegations of the third cause of action are too vague and generalized to allege defamation by Kertson. In their opposition plaintiffs do not identify any false statement made by Kertson to any third party, instead focusing on other issues (such as disclosure of plaintiff's medical information). The opposition completely misses the mark. The demurrer is sustained with leave to amend.

Fourth Cause of Action for Invasion of Privacy

California has recognized common law rights of privacy (see, e.g., *Melvin v. Reid* (1931) 112 Cal.App. 285), comprising four distinct torts: (1) intrusion upon the plaintiff's seclusion or solitude or into his private affairs; (2) public disclosure of embarrassing private facts about the plaintiff; (3) publicity which places the plaintiff in a false light in the public eye; and (4) appropriation for the defendant's advantage, of the plaintiff's name or likeness. (*KNB Enterprises v. Matthews* (2000) 78 Cal.App. 362, 365, citing *Eastwood v. Superior Court* (1983) 149 Cal.App.3d 409, 416, citing Prosser, *Law of Torts* (3d ed. 1964) 829-851).

An expectation of privacy must be "objectively reasonable" in light of the circumstances (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 26-27, 37.) Kertson relies on the notion that otherwise offensive conduct may be permissible based on a "legitimate public interest in exposing and prosecuting serious crime that might justify publication of otherwise private information or behavior." (*Id.* at pp. 25-26.) This notion does not apply based on the facts alleged in the FAC. While Kertson is a law enforcement officer, the allegations do not indicate that he had any involvement in the investigation or prosecution of any crime allegedly committed by plaintiffs. Rather, plaintiffs allege that Kertson obtained confidential information of plaintiffs and publicized it to plaintiffs' and Kertson's neighbors in order to pressure plaintiffs to move out of the neighborhood because of their husband and father's arrest of possession of child sexual abuse material. Such circumstances would not render Kertson's conduct "inoffensive."

However, plaintiffs still have not sufficiently alleged invasion of privacy. The fourth cause of action alleges that "Defendants intruded into Plaintiffs' private areas by ... Defendants Kertson and Spane sharing Elisa's private medical and financial information on her computer while they were in police custody." (FAC ¶ 63.) The FAC's "BACKGROUND FACTS" section focused primarily conduct by Mike, Holly and Felmus. It alleges that the Fresno County Sheriff's Office confiscated and searched all electronic devices found in plaintiffs' residence, and the devices were thereafter returned. (FAC ¶ 15.) It does allege, though, that at one point in time Mike "relayed details of Elisa's private medical information and sources of her fixed income and threatened to report Elisa for insurance fraud. Elisa's medical and financial information is not widely available but was safeguarded on Elisa's computer. Plaintiffs allege that Mike obtained this information from Kertson and/or Spane as they had access to that information in light of the criminal investigation." (FAC ¶ 36.) Kertson was Lieutenant of Internal Affairs for the Fresno County Sheriff's Office, and Spane was a Postal Inspector with the Postal Service. (FAC ¶ 20.) These are all the allegations supportive of the allegation that Kertson and Spane shared Elisa's private medical and financial information. The allegation seems to be based on the assumption that Mike obtained the unspecified information from Kertson and/or Spane, who obtained that information from police involved in the criminal investigation of Jim Wheeler.

Kertson argues that "ELISA had no reasonable expectation of privacy in the content of her computer when accessed and used by law enforcement officers working for the investigating agency." The court does not agree with that conclusion. The FAC does not allege facts demonstrating that Kertson had any involvement in the investigation, right to access such information, or that it is normal or permissible for police

officers not involved in an investigation to publicly disseminate private financial or medical information about one not subject of an investigation to that person's neighbors in an effort to harass the person out of the neighborhood. While there may be a strong public interest in the investigation and prosecution of crimes related to child sexual abuse and pornography, that would not justify the disclosure of private financial or medical information of a relative of the person under investigation. That said, the facts plead are conclusory. Plaintiffs do not allege what was shared, and accordingly there is no showing that plaintiff Elisa had an objectively reasonable expectation of privacy in such information. Plaintiff need not specifically divulge the financial or medical information that was disseminated by Kertson, but must at least allege the substance or nature of the information such that it can be determined if there is an expectation of privacy. For that reason alone the demurrer should be sustained with leave to amend.

Moreover, the FAC does not even allude to disclosure of private information of plaintiffs J.T. or Skyia. Observing a person (J.T.) in a local place such as a coffee house (FAC ¶ 21) is not an invasion of privacy. To the extent the cause of action is based on people looking into plaintiffs' backyard, the FAC never alleges that it was Kertson who did so.

Fifth Cause of Action for ILED

Kertson's discussion of the fifth cause of action includes no discussion or analysis of the basis for the demurrer, instead proclaiming in conclusory fashion that certain elements are not alleged. (See MPA p. 7.) The demurrer is overruled, and the court should not consider new arguments raised for the first time in the reply.

While the demurrer to the fifth cause of action is not sustained, the court will permit plaintiffs to amend this cause of action as well to the extent they deem necessary to bolster the cause of action with adequate factual allegations. It would be a better use of judicial resources to evaluate plaintiffs' best version of their claims the next time the pleading is attacked. As noted above, there are significant deficiencies with plaintiffs' claims against Kertson.

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: DTT **on** 12/12/2025 .
(Judge's initials) (Date)