

**Tentative Rulings for February 1, 2022**  
**Department 501**

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**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).)**

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

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**(Tentative Rulings begin at the next page)**

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## **Tentative Rulings for Department 501**

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**Tentative Ruling**

Re: ***First American Title Company v. Castro, et al.***  
Superior Court Case No. 20CECG03467

Hearing Date: February 01, 2022 (Dept. 501)

Motion: Plaintiff and Cross-Defendant First American Title Company's  
Demurrer to Defendant and Cross-Complainant Charlene  
Watkins Castro's Cross-Complaint

**Tentative Ruling:**

To sustain plaintiff and cross-defendant First American Title Company's ("First American") demurrer to the first cause of action in cross-complainant Charlene Watkins Castro's ("Cross-Complainant") cross-complaint, for failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) Cross-Complainant is granted 20 days' leave to file a First Amended Cross-Complaint. The time to file such pleading will run from service by the clerk of the minute order. All new allegations in the pleading are to be set in **boldface** type.

**Explanation:**

Meet and Confer:

The only thing First American's counsel (Dina Ariza) did to comply with the meet and confer requirement was to send an e-mail correspondence to cross-complainant's counsel (Mark J. Castro) which included a closing comment providing a contact number in the event Mr. Castro wanted to discuss the matter and that if a response was not received by May 26, 2021, First American would proceed with filing the demurrer. Then, the declaration provides that Ms. Ariza turned down Mr. Castro's offer to stipulate to an extension of time to respond to the cross-complaint and ultimately, received no response from Mr. Castro by the deadline for moving parties' time to respond. This is not only insufficient, but completely fails to comply with Code of Civil Procedure 430.41.

There is no problem with sending written communication first and, in fact, it can be helpful to the process. But this does not shift the burden for meeting and conferring to the pleading party. The statute clearly places the burden on the moving party, who is not excused from this requirement unless they show that the pleading party failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. (Code Civ. Proc., § 430.41, subd. (a)(3)(B).) The evidence did not show a bad faith refusal to meet and confer on cross-complainant's part which would serve to excuse the moving party from complying with the statute. If First American required more time to comply with the meet and confer process, it could have filed a declaration stating that a good faith attempt to meet and confer was made, providing the reasons why the parties could not meet and confer, which would grant an automatic 30-day extension of time to file a responsive pleading. (*Id.*, subd. (a)(2).)

The court emphasizes that all parties are expected to adhere to statutory requirements. However, given the extreme congestion on the court's calendar and the fact that the parties immediately complied with the meet and confer process after the posting of the court's January 11, 2022, Tentative Ruling, the court declines to take First American's motion off calendar and will consider the merits of the motion.

In the future, the court expects both sides to comply with this statute.

Demurrer to Cross-Complainant's First Cause of Action—Professional Negligence:

First American demurs to the professional negligence claim, contending that cross-complainant fails to allege sufficient facts to state a valid claim because it, as the escrow holder, has no duty to inform the parties of the clouds on title, and cross-complainant cannot maintain a negligence action against it as a title insurer by relying solely on the preparation of a preliminary title report.

The handling of the escrow, title search, and issuance of title insurance are separate functions; thus, the duties and responsibilities of each of these parties are separate. Even when all three functions are performed by the same entity, liability and responsibilities are based on the particular function performed. (Cal. Ins. Code, § 12340 *et seq.*; *Rice v. Taylor* (1934) 220 Cal. 629, 636-637.)

- Duty as a Title Insurer Disregarded:

Here, it is undisputed that First American was designated as the escrow holder. While the Cross-Complaint never expressly alleges that First American also functioned as the title insurer for the sale of the subject property, it appears First American has performed some functions of a title insurer by preparing at least two preliminary title report for the parties. However, given that the Cross-Complaint only identifies First American as being, and having a duty as, an escrow holder, the court declines to address First American's title insurer argument.

- Duty as an Escrow Holder:

The complaint in an action for damages for negligent injury to person or property must allege: 1) defendant's legal duty of care toward plaintiff; 2) defendant's breach of duty—the negligent act or omission; 3) injury to plaintiff as a result of the breach—proximate or legal cause; and 4) damage to plaintiff. (*United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, 594.)

“[A]n escrow holder is the limited agent and fiduciary of all parties to an escrow and that as such it has a fiduciary duty to communicate to his principal knowledge acquired in the course of his agency with respect to material facts which might affect the principal's decision as to a pending transaction... However, it is equally true that the agency which exists (and the obligations pursuant thereto) is a limited one. If the several escrow instructions create in the escrow holder an agency, it must be one limiting the obligations of the escrow holder to each party to the escrow in accordance with the instructions given by such party... It is generally held that no liability attaches to the

escrow holder for his failure to do something not required by the terms of the escrow or for a loss incurred while obediently following his escrow instructions." (*Siegel v. Fidelity Nat. Title Ins. Co.* (1996) 46 Cal.App.4th 1181, 1193-1194 [internal citations omitted]; *Lee v. Escrow Consultants, Inc.* (1989) 210 Cal.App.3d 915, 921 ["[T]he fiduciary relationship between [cross-complainant] and [escrow holder] is limited to [the escrow holder] carrying out the escrow instructions..."].)

Here, although cross-complainant alleges that First American "had a duty ... to handle the escrow process for the Cross-Complainant with prudence and diligence, by keeping the sellers informed of the liens on the property, and informing the sellers which liens have been satisfied[.]"<sup>1</sup> the cross-complaint fails to state facts to support this imposition of duty. In fact, it is unclear what escrow instructions were even provided to First American. Consequently, cross-complainant has failed to allege facts sufficient to support a negligence cause of action against First American as an escrow holder.

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** 1/27/2022.  
(Judge's initials) (Date)

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<sup>1</sup> Cross-Complaint, 6:23-25.

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### Tentative Ruling

Re: ***Caruthers Raisin Packing Co., Inc. v. Friis-Hansen et al.***  
Superior Court Case No. 18CECG02798

Hearing Date: February 1, 2022 (Dept. 501)

Motion: Default Hearing

### Tentative Ruling:

To grant and sign the proposed judgment, but reduce the attorneys' fees to \$33,909.75. The total judgment will therefore be for \$135,020.31.

**Explanation:**

Default judgment was last denied because Doe defendants needed to be dismissed, and a hearing was required on the reasonableness of the attorneys' fees. The promissory note provides for recovery of costs of collection, including reasonable attorneys' fees, in the event an action is institute to collect on the note. Plaintiff seeks to recover \$6,620 paid to Lang, Richert & Patch for work assigning counsel of record with general business questions, answers and clarification pertaining to plaintiff and the lawsuit. Plaintiff also seeks \$28,805 paid to counsel of record.

As the court requested, plaintiff has addressed why it should be awarded more in attorneys' fees than is specified under Local Rule 2.8.3, Appendix A1. The court finds the amount requested is reasonable, except for the 20-plus hours spent on the default packet. Fees are reduced by \$1,515.25.

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 1/27/2022  
(Judge's initials) (Date)

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**Tentative Ruling**

Re: ***In Re: Jorge Torres Zavala***  
Superior Court Case No. 21CECG01389

Hearing Date: February 1, 2022 (Dept. 501)

Motion: Petition to Compromise a Minor's Claim, re: Jorge Torres Zavala

**Tentative Ruling:**

To deny the petition, without prejudice. Petitioner must file an Amended Petition, and obtain a new hearing date for consideration of the Amended Petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

**Explanation:**

The Petition at issue contains the following discrepancies and omissions:

*1. Item no. 12, Claimant's medical expenses*

On page 5, under item 12. b. (5)(b), three medical providers are listed: Valley Children's, Family Health Care, and Dynamic Kids. The petition states that Valley Children's charged \$2,995, that Family Health charged \$1,414.02, and that Dynamic charged \$1,950. In total then, medical expenses before deductions equal \$6,359.02. Yet, on page 4, under item 12. a. (1), the total medical expenses before deductions is listed as \$5,965.

Upon resubmission, the amount listed on page 4 under item 12. a. (1) must accurately reflect the total amount charged by all providers before deductions.

*2. Item no. 13, Attorney's fees*

Counsel again requests 25%, but insufficient information is provided as to the number of hours required and the complexity of the case to support the request for attorney's fees.

Upon resubmission, any request for attorney's fees must be justified pursuant to the factors listed in California Rules of Court, rule 7.955 (b). (See Cal. Rules Court, rule 7.955 (c).)

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** 1/28/2022 .  
(Judge's initials) (Date)