

2025 Cal. Fam. Law Rep. 16112

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California Family Law Report

IN BRIEF

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In affirmance, the First District held that plaintiff's appeal of three orders, including two imposing discovery sanctions against his counsel, are objectively and subjectively frivolous where two of the orders were plainly nonappealable and with regard to the sole appealable order, plaintiff's counsel raised arguments that had been forfeited for failure to raise them in the trial court and that directly contradicted the position taken at trial

*Morales v. City and County of San Francisco* (2025) 114 Cal.App.5th 43, 336 Cal.Rptr.3d 627, 2025 FA 2200. Erick De Leon Morales sued the City and County of San Francisco (City) for premises liability and negligence for injuries suffered when he fell after a scooter he was riding struck a pothole. On September 13, 2023, the City served requests for admission (RFAs) and form interrogatories. RFAs 5 through 7 asked Morales to admit his intoxication at the time of the accident. Form interrogatory 17.1 required Morales to identify facts, witnesses, and documents supporting his responses to RFAs that he did not admit.

On October 17, 2023, Morales served his response to the RFAs, which did not contain an unqualified admission to RFAs 5 through 7. In his response to the form interrogatories, Morales did not address RFAs 5 through 7. Two days later the City sent a meet and confer letter, advising Morales that he had “not responded to Form Interrogatory 17.1 at all with regard to RFAs 5-7.” Although Morales responded that he would amend his response, he failed to do so to interrogatory 17.1.

On December 7, 2023, the City sent a second meet and confer letter, again advising Morales that he had failed to provide a response to interrogatory 17.1 with regard to RFAs 5 through 7. The City added it was contemplating filing a motion to compel. After Morales failed to respond by the indicated deadline, the City filed a motion to compel.

On February 2, 2024, Morales served an amended response that included a response to interrogatory 17.1 with regard to RFAs 5 through 7. In his opposition to the motion to compel, Morales's counsel declared Morales “originally inadvertently missed serving further responses for Form Interrogatory 17.1 as to RFAs #5 to 7, but has since cured the issue.” Morales argued that

due to his amended response the City's arguments were made moot. In its reply, the City argued that it was forced to bring the motion to compel after Morales failed, for four months, to respond to its discovery requests concerning the "critical issue" of Morales' level of intoxication during the incident.

On January 16, 2024, a judge pro tem found that Morales did not have substantial justification for failing to respond to form interrogatory 17.1 as to RFAs 5 through 7 prior to the City's motion to compel. As such, the judge pro tem recommended granting the City's request for sanctions in the amount of \$6,500. On February 5, 2024, the trial court (San Francisco County's Ulmer) adopted the report and recommendation and imposed a discovery sanction of \$6,500 to be paid by Morales' counsel.

Meanwhile, on November 3, 2024, the City noticed an independent medical exam of Morales. Morales appeared with two observed chosen by his attorney. During the exam, the observers obstructed the exam to the point where the doctor was unable to conduct "fundamental portions of the examination," precluding his preparation of a report.

The City attempted to meet and confer regarding this incident but its efforts were unsuccessful. As a result, the City filed a motion to compel another exam. After hearing the matter, a judge pro tem concluded Morales' observers interfered with the examination and recommended Morales be ordered to appear for another exam and that sanctions be imposed. On February 14, 2024, the trial court adopted the report and recommendation and imposed a \$1,500 sanction. Morales appealed, and the City moved for partial dismissal of the appeal. The First District granted the City's motion for partial dismissal and affirmed.

Turning to Morales' contentions on appeal, the panel noted that, in addition to the two orders imposing sanctions, Morales appealed from a third order granting the City's motion for a protective order relating to Morales' disclosure of nonretained experts. The justices made short shrift of this appeal, agreeing with the City that the order was not separately appealable and, thus, dismissed that portion of the appeal.

The justices likewise dismissed Morales' appeal of the \$1,500 sanction for the medical exam. In so doing, the justices again agreed with the City that sanctions for discovery abuse are not separately appealable unless they exceed \$5,000. In response to the City's argument, Morales urged the panel to combine the two sanction orders in order to meet the \$5,000 threshold amount for both orders. The justices rejected this request, noting there was no basis to aggregate the orders. The justices noted that the two orders were issued on different dates, requested by different motions, and involved separate acts. The justices also declined to treat Morales' appeal as a writ, emphasizing the sanction was issued more than 18 months ago in a case that was settled more than 16 months ago.

Morales also argued the trial court erred by sanctioning him \$6,500 regarding form interrogatory 17.1. Specifically, Morales argued he had substantial justification for opposing the City's motion to compel and that the sanction order "exceeded all bounds of reason" and was "impermissibly punitive in nature." The justices disagreed, noting several reasons. First, Morales was aware of the form interrogatories and their due date as evidenced by his responses to the RFAs and other interrogatories. Second, the City made Morales aware of his failure to respond in a meet and confer letter two days later. Third, a month later, Morales agreed to amend his response to the interrogatory but again failed to address RFAs 5 through 7 in his amended response. And fourth, the City made Morales aware that his amended responses again failed to answer RFAs 5 through 7 in a second meet and confer letter. For these reasons, the justices concluded sufficient evidence supported the trial court's conclusion that Morales had no substantial justification to oppose the motion to compel.

The justices also rejected Morales' argument that his preliminary statements and general objections responded to the RFAs in question. According to Morales, the City's motion to compel should have been rejected since it was brought pursuant to [CCP § 2030.290](#), which applies when there has been no response at all. Instead, Morales argues the City's motion should have been brought pursuant to [CCP § 2030.300](#), which applies when a response is incomplete. Aside from the problem that Morales raised this issue for the first time on appeal, the justices noted that the position is "diametrically opposed" to the position that Morales' counsel took at the trial court when he informed the judge that those sections did not apply to the interrogatory and that the belated response was objection-free.

Finally, the panel concluded that Morales' appeal was objectively and subjectively frivolous since two of the three orders appealed were nonappealable and with regard to the sole appealable order, Morales' counsel raised arguments that had been forfeited for failure to raise them in the trial court and that directly contradicted the position taken at trial. In support of imposing the sanctions against Morales' counsel, the justices noted that counsel "had numerous opportunities to dismiss the appeal and to withdraw its baseless claims, but chose not to." For these reasons, the justices granted the City's motion for appellate sanctions.

Accordingly, the First District granted the City's motion to partially dismiss the appeal and affirmed the remaining order. The City also ordered Morales' counsel to pay the City the amount of \$30,000 to be paid no later than 30 days after the remittitur issues. The justices further ordered the clerk of the court to forward a copy of their opinion to the State Bar. CFLP § R.54.3.

## Library References

8 Witkin, Summary of Cal. Law (11th ed. 2025) Const Law § 864

Hogoboom & King, [Cal. Practice Guide: Family Law \(The Rutter Group\)](#) ¶ 16:235

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