No. S277211

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF LOS ANGELES,

Respondent and Plaintiff,

vs.

PRICEWATERHOUSECOOPERS, LLP,

Petitioner and Defendant.

On Review From the Court of Appeal, State of California,
Second Appellate District,
Division Five, 2nd Civil No. B310118

Appeal From the Superior Court, State of California,
County of Los Angeles, Case Number BC574690
The Honorable Elihu M. Berle

CITY OF LOS ANGELES' ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

The bulk of PricewaterhouseCoopers LLP's ("PwC") Petition recounts the – highly unusual if not *sui generis* – events that led to a $2.5 million discovery sanctions award against the City of Los Angeles (the "City"). The question at hand, however, is whether review is necessary to secure uniformity of decision or to settle an important question of law. The answer is no.

The Court of Appeal reversed the monetary sanctions award because the statutes under which PwC moved simply did not authorize that relief. Review is unnecessary because the Court of Appeal's decision did nothing more than inform PwC of its error and remand to allow it to bring a revised or amended motion in the trial court under the applicable statutes allowing for sanctions under appropriate circumstances. The City submits that there is no reason for this Court to intervene in that process, particularly at this time.

FACTUAL AND PROCEDURAL BACKGROUND

I. PwC's Sanctions Motion And The Trial Court's Ruling

PwC moved to impose discovery sanctions in excess of $9 million against the City pursuant to Code of Civil Procedure sections 2023.010 ("Section 2023.010") and 2023.030 ("Section 2023.030"). (Petition ("Pet.") at pp. 22-23 [citing 2AA939-942]; Court of Appeal Opinion ("Op.") at p. 39.) PwC did not cite any other statute(s) as grounds for its motion. (See Pet. at pp. 22-23.) On November 10, 2020, the trial court granted PwC's motion and awarded $2.5 million in discovery sanctions against the City (the "Order"). (Pet. at pp. 23-24 [citing 8AA4012].)

II. The Court Of Appeal Reverses And Remands

On October 20, 2022, the Court of Appeal reversed the sanctions award holding, *inter alia*, that PwC's motion was based on statutes that did not allow for such awards (the "Opinion"). As the Court of Appeal explained, the discovery statutes PwC invoked were merely definitional and do nothing more than

describe the general categories of misconduct sanctionable ***under other*** provisions of the Discovery Act. (Op. at pp. 42, 46). The Court of Appeal observed that Section 2023.010 is devoid of language authorizing the court to impose a sanction of any kind under Chapter 7 of the Civil Discovery Act (Op. at p. 43):

> If the Legislature intended for the court to impose sanctions for misuse of the discovery process based directly on the provisions of section 2023.010, they knew how to write section 2023.010 to authorize sanctions under section 2023.030.

(Op. at p. 43.)

As to Section 2023.030, it describes the different types of sanctions available under the Discovery Act, but only when another provision of the Act authorizes a particular sanction. (Op. at p. 36.) The Court of Appeal stated that "[t]he plain language of the statute requires sanctions under section 2023.030 to be authorized by another provision of the Discovery Act." (Op. at p. 47.) It also stated that "Section 2023.030 does not independently authorize the court to impose sanctions for discovery misconduct." (Op. at p. 46.)

The Court of Appeal "conclude[d] that sections 2023.010 and 2023.030 do not independently authorize the trial court to impose monetary sanctions for misuse of discovery." (Op. at p. 49.) Therefore, the Court found that "[t]he award of monetary sanctions in this case, which was based solely on sections 2023.010 and 2023.030 without regard to any other provision of the Discovery Act, constituted an abuse of discretion because it was outside the bounds of the court's statutory authority." (Op. at p. 49.)

The Court of Appeal also squarely rejected PwC's catch-all argument that trial courts have the inherent power to award sanctions to ensure the orderly administration of justice. (Op. at p. 59.) No such inherent power exists where, as here, the Legislature exercised its ability to regulate (limit) those inherent powers by enacting a statutory framework (the Civil Discovery Act) that includes statutes limiting when sanctions are available.

Again, PwC's sanctions motion simply did not seek sanctions under a statute allowing for such an award.[1]

Because PwC "presented its costs in the motion below based on the general categories of misconduct described in section 2023.010, rather than on the defendant's reasonable expenses incurred as a result of sanctionable conduct under discovery provisions other than sections 2023.010 and 2023.030," the Court of Appeal could not evaluate "whether the sanctions awarded may have been an appropriate exercise of the trial court's discretion under other discovery provisions." (Op. at pp. 2-3.) Consequently, the Court of Appeal reversed and remanded the matter to allow PwC "to present the issue of sanctions to the trial court for determination under the correct

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[1] The Court of Appeal also addressed the case law PwC cited in support of its supposition that sanctions may be imposed directly under Sections 2023.010 and 2023.030 without regard to any other provision of the Discovery Act that actually does authorize sanctions under appropriate circumstances. (Op. at p. 51.) The Court of Appeal found the cases were factually distinguishable because they simply did not "consider the statutory language of section 2023.030 that limits sanctions 'to the extent authorized by' another provision of the Discovery Act." (Op. at pp. 51-52.)

law." (Op. at p. 3 ["We reverse the postjudgment order awarding sanctions and remand for a new determination on the issue of discovery sanctions."].)

STANDARD OF REVIEW

This Court may "order review of a Court of Appeal decision . . . [w]hen necessary to secure uniformity of decision or to settle an important question of law." (Cal. Rules of Court, rule 8.500, subd. (b)(1).) The foregoing does not mean that review extends to correcting purported errors by the Courts of Appeal, no matter how allegedly egregious or prejudicial. (See *id*.)

As explained below, the instant case does not involve important, but unsettled, questions of law. Nor is review necessary to secure uniformity of decision in the lower courts. This is a discovery dispute where the Court of Appeal reversed due to an error made by PwC in its moving papers – an error which PwC is free to address on remand.

ARGUMENT

I. Whether Sections 2023.010 And 2023.030 Alone Empower Trial Courts To Award Sanctions Does Not Involve Unsettled Or Important Questions Of Law

The plain language of Section 2023.010 sets forth nothing more than a description of the conduct that, if proven, would be considered "[m]isuses of the discovery process." Sanctions are never mentioned. Section 2023.010 identifies the conduct that might constitute a misuse of the discovery process, and Section 2023.030 serves as the companion statute listing the various different consequences, including monetary sanctions, "[t]o the extent authorized" under other chapters of the Discovery Act to remedy a discovery abuse. (Code Civ. Proc., §§ 2023.010, 2023.030.)

As noted by the Court of Appeal at page 46 of its Opinion, Section 2023.030 unmistakably provides that sanctions are available "[t]o the extent authorized by the ***chapter*** governing any ***particular discovery method*** or any ***other provision*** of this title . . . ." (Emphasis added.) As the Court of Appeal

observed, PwC failed to seek sanctions under the chapter governing particular discovery methods – such as Chapter 9, Code of Civil Procedure sections 2025.010 *et. seq.*, governing the conduct of depositions, including sanctions, or Chapter 14, Code of Civil Procedure sections 2031.010 *et. seq.*, governing inspection demands, including sanctions, and so on.

The review PwC seeks does not involve an important question of law, much less an unresolved important question of law. It does nothing more than inform litigants seeking discovery sanctions to do so under the statute that specifically regulates the method of discovery to which the misconduct pertains – nothing more or less. (Op. at pp. 49-51.)

Nor is review even necessary for PwC itself – the Court of Appeal gave PwC a second chance, remanding the matter to the trial court so that PwC can pursue monetary sanctions under the appropriate statutes based on the specific facts of this case. (Op. at p. 3.)

PwC does not contend that the Opinion establishes some sort of irrational rule, procedure, or trap for the unwary inconsistent with the Discovery Act. The unusual interpretation PwC urged of the Discovery Act would allow litigants to move for discovery sanctions without reference to the very statutes governing the method of discovery to which the request for sanctions pertains.

II. Review Is Unnecessary To Secure Uniformity Of Decisions; There Is No Split Of Authority

The Court of Appeal's decision does not "conflict[] with every other decision to address the issue," as PwC incorrectly argues. (Pet. at p. 28.) Ignoring the Court of Appeal's conclusion that the law does not support PwC's position (Op. at p. 51), PwC continues to misread several cases to argue that "section 2023.030 provides independent authority for courts to impose monetary sanctions for misuses of the discovery process." (Pet. at pp. 28-32.) The cases do not so hold. For example, in *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 62 (reversing order denying monetary sanctions

and remanding), the court engaged in no discussion as to whether Section 2023.030 required monetary sanctions to be authorized by another provision of the Civil Discovery Act or could, standing alone, support a sanctions award. (*Id.* at pp. 65, 73-78.) As nothing in *Kwan* indicates that the litigants or the court even considered the issue, it cannot under any circumstances stand for a proposition that it never addressed. "It is axiomatic that cases are not authority for propositions that are not considered." (*California Building Industry Association v. State Water Resources Control Board* (2018) 4 Cal.5th 1032, 1043 [citing *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1160]; see also *The California Gun Rights Foundation v. Superior Court* (2020) 49 Cal.App.5th 777, 792.)

The same is true for the other cases on which PwC incorrectly relies (Pet. at pp. 30-32), none of which interpret the "[t]o the extent authorized" language in Section 2023.030: *Pratt v. Union Pacific Railroad Company* (2008) 168 Cal.App.4th 165 [not interpreting the "[t]o the extent authorized" language] (Op.

at p. 52)[2]; *Department of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154 [same] (Op. at pp. 52-53); *Cornerstone Realty Advisors, LLC v. Summit Healthcare Reit, Inc.* (2020) 56 Cal.App.5th 771 [same]; and *Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1 [same] (Op. at p. 57). None of these cases discussed whether the express language of Section 2023.030 required monetary sanctions to be authorized by another provision of the Civil Discovery Act, and they most definitely did not concern whether monetary sanctions can be imposed under Sections 2023.010 and 2023.030 alone. PwC's forced reliance on factually inapposite cases, based on circumstances not present here, further illustrates the absence of any proper basis for review. (Pet. at pp. 34-35; see also Op. at pp. 53-59.)

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[2] As the Court of Appeal recognized, the facts in *Pratt* clearly "reflect that sanctions were authorized by a discovery provision ***other than*** sections 2023.010 and 2023.030." (Op. at p. 52 [emphasis added].)

A split of authority does not exist with respect to the issue for which PwC seeks review. Indeed, courts that have addressed this issue have agreed with the Court of Appeal's decision. (E.g., *New Albertsons, Inc. v. Superior Court* (2008) 168 Cal.App.4th 1403, 1422-1423 [explaining that the "[t]o the extent authorized" language in Section 2023.030 means "the statutes governing the particular discovery methods limit the permissible sanctions to those sanctions provided under the applicable governing statutes"]; *London v. Dri-Honing Corp.* (2004) 117 Cal.App.4th 999, 1005-1007 [citing *Kuhns v. State of California* (1992) 8 Cal.App.4th 982; *Zellerino v. Brown* (1991) 235 Cal.App.3d 1097] ["Given the unique parameters of each discovery method, discovery sanctions are available under different circumstances and for different types of abuses in each method's statute."].)

III. Securing Uniformity Of Decisions Is Undermined If Trial Courts Can Use Their "Inherent Power" To Side-Step Applicable Statutes

PwC next speculates that, if allowed to stand, the Court of Appeal's decision will somehow interfere with the inherent power

of trial courts, thereby resulting in a lack of uniformity of decisions and unsound public policy. Exactly the opposite is true.

A. The Civil Discovery Act Restricts The Exercise Of A Court's Inherent Power, Not the Other Way Around

California's discovery statutes are a proper exercise by the Legislature of its ability to regulate the exercise of the Court's inherent powers. (*New Albertsons, Inc.*, *supra*, 168 Cal.App.4th at p. 1431 [citing *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1103].) For this reason, trial courts may not use their inherent powers to award attorneys' fees as a sanction absent statutory authority or an agreement of the parties. (*Olmstead v. Arthur J. Gallagher & Co.* (2004) 32 Cal.4th 804, 809; see also *Clark v. Optical Coating Lab., Inc.* (2008) 165 Cal.App.4th 150, 164 [recognizing that "trial courts may not award attorney fees as a sanction for misconduct absent statutory authority (or an agreement of the parties)"].)

Disregarding the foregoing, PwC proposes an entirely new rule whereby trial courts would be free to use their "independent

authority" to award monetary sanctions so long as the exercise of that authority is not specifically "prohibited by other provisions of the Discovery Act" (Pet. at p. 37.) The two cases PwC cites for this proposition are, in fact, in accord with the Opinion. In one of those cases, *Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, the discussion of a trial court's inherent authority concerned nonmonetary sanctions – specifically, terminating sanctions. (*Id.* at pp. 736, 757-63 [addressing party's "multi-faceted challenge to the trial court's reliance on its inherent power to dismiss [party's] lawsuit"].) *Slesinger* specifically noted that "a trial court must be mindful that under [*Bauguess v. Paine* (1978) 22 Cal.3d 626] its inherent authority to sanction for egregious misconduct does not include the power to award attorney fees to punish that misconduct." (*Slesinger*, *supra*, 155 Cal.App.4th at p. 765, fn. 19.) Unsurprisingly, the

Court of Appeal in the instant case did not adopt PwC's interpretation of *Slesinger*. (Op. at p. 61.)[3]

As to the other case PwC cites, *Padron v. Watchtower Bible & Tract Society of N.Y., Inc.* (2017) 16 Cal.App.5th 1246, nothing therein remotely authorizes an award of monetary sanctions in the absence of statutory authorization. Rather, *Padron* stands for the common sense proposition that, once there has been a finding that monetary sanctions are warranted under the Discovery Act, trial courts have discretion with respect to the proper amount of those sanctions – which has always been the rule in California. (*Id.* at pp. 1246, 1264.) *Padron* is in every respect consistent with *Slesinger*.

B. Uniformity Of Decision Would Be Not Be Promoted If The Law Were As PwC Suggests

The fundamental purpose of the Discovery Act is to provide structure and statewide uniformity concerning the authorized

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[3] Other courts have similarly recognized that inherent authority, standing alone, does not extend to awarding monetary sanctions. (E.g., *Clark*, *supra*, 165 Cal.App.4th at p. 165; *New Albertsons, Inc., supra*, 168 Cal.App.4th at pp. 1432-1433.)

methods of discovery and authorization for imposition of discovery sanctions. This Court recognized as much in *Olmstead*, *supra*, 32 Cal.4th at p. 809, holding monetary sanctions awardable only pursuant to statute authorizing such awards, or agreement between the parties – trial courts have no independent or non-statutory power to do so. (See also *London*, *supra*, 117 Cal.App.4th at pp. 1005-1006 ["Given the unique parameters of each discovery method, discovery sanctions are available under different circumstances and for different types of abuses in each method's statute."].)

Were the rule otherwise, the policy of promoting uniformity of decisions would be significantly impaired because different trial courts would be free to use their inherent power, or unwritten rules, to resolve discovery disputes irrespective of the statutory framework. How those inherent powers would be exercised would, of course, also vary depending on where the trial court is located and who the trial judge happens to be. PwC's

position would rewrite the Discovery Act by removing the Legislature's regulation.

IV. PwC Misrepresents And Overstates The Import Of The Decision Below

Contrary to PwC's "say so," the Court of Appeal's decision in no way, shape, or form will hamstring a trial court's ability to address misconduct or award sanctions, much less put at risk the "day-to-day operation of, and administration of justice in, California courts." (Pet. at p. 47.) Nor will it prohibit litigants from seeking monetary sanctions or trial courts from assessing sanctions, so long as the moving party seeks relief under the appropriate statute and circumstances. Trial courts have long had the ability to impose, and can continue to impose, sanctions where appropriate.[4] (Op. at pp. 56-57.)

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[4] Despite PwC's contention that it should not be required to separately categorize the fees pertaining to each purported misuse of the discovery process, that is exactly what the Legislature has long required. (Code Civ. Proc., § 2023.030; see also *London*, *supra*, 117 Cal.App.4th at pp. 1005-1006; *New Albertsons, Inc.*, *supra*, 168 Cal.App.4th at pp. 1422-1423.)

CONCLUSION

PwC fails to proffer a legally-cognizable basis for review by this Court. The Opinion is entirely consistent with pre-existing California authority and, at its core, merely instructs parties seeking discovery sanctions to be mindful to do so under the specific statutes authorizing such relief. In no way does any aspect of the Opinion create a conflict with decisional law or present an important issue of law meriting review.

DATED: January 12, 2023

Respectfully submitted,

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DATED: January 12, 2023

By: _____

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Tammy Kawashima

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