No. S277211

IN THE SUPREME COURT OF CALIFORNIA

CITY OF LOS ANGELES,

Plaintiff and Appellant,

v.

PRICEWATERHOUSECOOPERS, LLC,

Defendant and Respondent.

After a Decision of the Court of Appeal of the State of California,
Second Appellate District, Division Five,
Case No. B310118

On Appeal from the Superior Court of Los Angeles County
Case No. BC574690
The Honorable Elihu M. Berle, Presiding

PRICEWATERHOUSECOOPERS LLP'S OPENING BRIEF ON THE MERITS

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ISSUE PRESENTED FOR REVIEW

Whether courts' authority to impose monetary sanctions for misuse of the discovery process is limited to circumstances expressly delineated in a method-specific provision of the Civil Discovery Act, or whether courts have independent authority to impose monetary sanctions for such discovery misconduct, including under sections 2023.030 and 2023.010 of the Code of Civil Procedure.

INTRODUCTION

In the proceedings below, the City of Los Angeles sought to recover hundreds of millions of dollars that it had paid in a class settlement to resolve claims allegedly attributable to work PricewaterhouseCoopers LLP ("PwC") performed for the Los Angeles Department of Water and Power ("LADWP") to modernize its outdated billing system. The litigation that ensued, however, revealed that this settlement was a collusive sham engineered by the City Attorney's Office to extort millions from PwC. The entire case was orchestrated by the City Attorney's Office and its Special Counsel, Paul Paradis, who had served as counsel for the named plaintiff, drafted the class action complaint, and recruited an outside attorney to serve as nominal class counsel

in exchange for a multi-million-dollar kickback. Four of the leading actors in this fraud, including Paradis, former Chief Assistant City Attorney Thomas Peters, and ex-LADWP General Manager David Wright, have since pleaded guilty to felonies ranging from bribery to aiding and abetting extortion for illegal activities in connection with the litigation against PwC.

The trial court ordered the City to pay $2.5 million in sanctions to defray some of the more than $8 million in expenses incurred by PwC as a direct result of the City's efforts to hide its fraud through a years-long pattern of discovery abuse. The court did so under Code of Civil Procedure section 2023.030, which states that "[t]he court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process . . . pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct" (Code Civ. Proc., § 2023.030, subd. (a)), and section 2023.010, which defines "misuse[s] of the discovery process" sanctionable under section 2023.030 (*id.*, § 2023.010).[1] But the Court of Appeal majority, over a 35-page dissent, reversed the sanctions order, holding that the trial court acted "outside the

[1] Unless otherwise specified, all statutory citations are of the Code of Civil Procedure.

bounds of [its] statutory authority" because "[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 pp. 47, 49.)

The Court should reverse the Court of Appeal's judgment for at least three independent reasons.

***First*,** the Court of Appeal majority's decision fundamentally misreads the text of section 2023.030 and undermines the legislative purpose undergirding the Civil Discovery Act. Section 2023.030 by its terms independently authorizes courts to impose monetary sanctions by providing that they "may" sanction "misuse[s] of the discovery process" (Code Civ. Proc., § 2023.030, subd. (a))—a term defined in section 2023.010. In reaching its contrary conclusion, the Court of Appeal majority relied on language in the introductory paragraph of section 2023.030 stating that courts may impose sanctions only "[t]o the extent authorized by the chapter governing any particular discovery method or any other provision of this title." (Code Civ. Proc., § 2023.030.) But while the Court of Appeal read that language to limit *when* a court may impose sanctions, it is more naturally read to limit the *type* or *severity* of sanctions that may be imposed for the misuses of the

discovery process described in section 2023.010. This distinction is confirmed both by the ordinary meaning of the term "[t]o the extent" and the structure of section 2023.030, which contains five subsequent subdivisions outlining increasingly severe sanctions that a court may impose, from monetary sanctions to terminating sanctions and contempt.

The Court of Appeal majority's decision would fatally undermine the core purpose underlying the Civil Discovery Act's sanctions provisions by leaving broad swaths of discovery misconduct beyond courts' power to discipline. While the discovery-method-specific provisions of the Discovery Act encompass certain discrete forms of misconduct, there inevitably arise situations that could arguably be "beyond the reach of the Rules" because the "entire course of conduct throughout the lawsuit evidence[s] bad faith and an attempt to perpetrate a fraud on the court." (*Chambers v. NASCO, Inc.* (1991) 501 U.S. 32, 51.) In these cases, the misconduct "create[s] a negative synergistic effect, rendering the degree of overall unfairness to defendant more than that flowing from the sum of the individual errors." (*People v. Hill* (1998) 17 Cal.4th 800, 847.) The Legislature doubtless intended courts to have authority to address such

pervasive misconduct. In fact, it expressly "recognize[d] that other categories of abuse may develop" that could constitute a "misuse of the discovery process." (Reporter's Note to Section 2023.030.) The majority's opinion, however, undermines that clear legislative purpose.

Second, the trial court properly sanctioned the City under its inherent authority grounded in article VI, section 1 of the California Constitution. That provision bestows courts with the powers necessary to carry out their duty in our tripartite system of government of applying the law and administering justice in each of the cases before them. The Court of Appeal acknowledged that the trial court had the inherent authority to impose sanctions against the City here, but concluded that this authority extended only to *nonmonetary* sanctions. But that distinction finds no support in precedent—and even less in logic, as monetary sanctions are typically *less* severe than nonmonetary sanctions.

Third, even if the Court of Appeal majority correctly stated the rule governing courts' power to impose sanctions under the Discovery Act, this Court should still reverse the Court of Appeal's judgment and reinstate the trial court's sanctions award because the full amount awarded by the trial court is attributable to

conduct that is sanctionable under method-specific provisions of the Discovery Act. Although the trial court found that PwC incurred more than $8 million in expenses for discovery and motions practice related to the City's discovery abuse (just a small portion of PwC's overall fees in this case), it awarded only a fraction of that amount as sanctions, which precludes any suggestion that the award was intended to punish the City. It is therefore beside the point whether *some* of the more than $8 million in expenses incurred by PwC in investigating the City's fraud cannot be attributed to conduct specifically proscribed by method-specific provisions of the Discovery Act. What matters is whether the fraction of that amount awarded by the trial court can be. And the record here is clear that it can.

Consequently, the Court should reverse the Court of Appeal's judgment and remand with instructions to reinstate the trial court's sanctions award in full.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual Background

The City of Los Angeles retained PwC in 2010 to help modernize LADWP's antiquated billing system. (5AA2337.) In the years after the new billing system went live, LADWP customers

filed several lawsuits against the City alleging billing improprieties. (*Ibid.*) In an effort to shift the blame for those billing errors and extort tens of millions from PwC, the City, represented by the City Attorney's Office and its Special Counsel, Paul Paradis, Gina Tufaro, and Paul Kiesel, filed this action against PwC on March 6, 2015, alleging fraudulent inducement and breach of contract. (4AA1621–1622.)

Less than a month later, on April 1, a putative class action was filed against the City on behalf of LADWP customers in *Jones v. City of Los Angeles*, which was assigned to the same judge as this action. (4AA1607.) The lead plaintiff in that case, Antwon Jones, was an LADWP customer who had been overbilled by LADWP. (4AA1584.) Jones retained Paradis in December 2014 to file a lawsuit against the City related to overbilling (4AA1584–1585), but unbeknownst to Jones, Paradis was then retained by the City to assist it in drafting a lawsuit on behalf of LADWP against PwC (4AA1586–1587).

Paradis introduced Jones to Ohio attorney Jack Landskroner, with whom he had previously worked as lead co-counsel in unrelated litigation, just six days before the *Jones v. City of Los Angeles* complaint was filed. (4AA1602–1603.) Despite

Paradis's ongoing attorney-client relationship with both Jones and the City, he and then-Chief Deputy City Attorney James Clark engaged in settlement "negotiations" with his *Jones* co-counsel (Landskroner) immediately after the filing of that complaint, resulting in the submission of a preliminary class settlement to the trial court on August 7, 2015—before the City even filed an answer to the complaint, and before either party had engaged in any discovery. (4AA1609–1614.) The "settlement" provided that the City would pay the full costs of remediating any billing errors, as well as a staggering *$19 million* in attorney's fees—even though the only legal work done in the case was the drafting of a sham complaint and bogus settlement negotiations. (4AA1615–1619; see also PwC's Request for Judicial Notice ("RJN"), Ex. A, Factual Basis for Plea Agreement for Paul O. Paradis at p. 24; *id.*, Ex. C, Factual Basis for Plea Agreement for Thomas H. Peters at pp. 28–29.)[2] The City then asserted these amounts as its purported damages in the instant action and fraudulently demanded their recovery from PwC. (4AA1622.)

[2] All page numbers in citations of exhibits in PwC's Request for Judicial Notice refer to the numbers in the header of each document.

On January 20, 2017, the City produced a privilege log containing more than 19,000 entries, including a document labeled "Jones v. PwC—Initial Complaint—FINAL.doc" that the City claimed was protected by the attorney-client privilege. (4AA1625–1626.) On February 3, 2017, PwC moved to compel production of more than 18,000 of those documents, including the *Jones v. PwC* complaint. (4AA1626.) Over the ensuing months, the parties' privilege disputes were narrowed until the *Jones* complaint was one of the only documents in dispute. (See PwC's RJN, Ex. A, Factual Basis for Plea Agreement for Paul O. Paradis at p. 21.)

When PwC filed a second motion to compel production of the *Jones* complaint on November 3, 2017, the City responded by falsely insisting that "PwC's attempt to suggest any collusion in the *Jones* case . . . is completely without merit and in bad faith." (4AA1635–1636.) Had the City produced the *Jones v. PwC* complaint, however, it would have instantly revealed the fraudulent nature of the settlement in *Jones v. City of Los Angeles*: The complaint showed on its face that the City's Special Counsel, Paradis and Kiesel, had served as Jones's counsel and drafted the *Jones* complaint against the City before handing it off to Landskroner. Paradis further misled the court by representing

that "LADWP officials requested that outside counsel prepare a draft complaint alleging claims that could be brought by an LADWP rate payer against PwC" (*ibid.*), and by repeatedly failing to disclose his representation of Antwon Jones. (See PwC's RJN, Ex. A, Factual Basis for Plea Agreement for Paul O. Paradis at pp. 27–28; PwC's RJN, Ex. C, Factual Basis for Plea Agreement for Thomas H. Peters at pp. 29–30.)

The City doubled down on its lies at the December 4, 2017 hearing on PwC's motion to compel production of the *Jones v. PwC* complaint. Paradis represented that he had prepared the draft complaint *for the City*, not for Jones, and that Jones's name was on the draft complaint because, according to Paradis, it had been randomly selected from the names of LADWP customers who had complained about billing irregularities. (4AA1636–1637; 1RT20 ["There were several people who had been complaining to the Department . . . and Mr. Jones's name was one of them"].) The trial court reserved decision on the motion but granted PwC a person most qualified (PMQ) deposition of the City "to lay a foundation as to the party on behalf of whom the complaint was drafted and the reasons for it." (4AA1639.)

Yet the City refused to produce a PMQ witness for the court-ordered deposition. That willful disobedience led PwC to file another motion more than four months later, on May 25, 2018, resulting in another hearing on June 21, 2018, at which Judge Berle pointedly noted that he had "ordered the deposition already. I don't think it's necessary to issue a new order to state that I really mean what I already said." (1RT323; see also 4AA1641–1643.)

After further stalling, the City eventually produced then-Chief Assistant City Attorney Thomas Peters as its PMQ witness on September 13, 2018. (4AA1643.) But the City continued to thumb its nose at the trial court's orders, with Peters defiantly boasting that he "did *nothing* to prepare" for the deposition and neither looked for nor produced any of the documents called for by the deposition notice. (4AA1644–1647, italics added.) Worse still, Peters repeatedly perjured himself throughout the deposition by lying about how, for example, he directed Paradis to draft the *Jones v. PwC* complaint as a "thought experiment," and how he did not know if Jones "even had counsel." (4AA1646–1647.) All of that was demonstrably false, as demonstrated by Peters' own subsequent testimony in which he acknowledged that Paradis had

represented Jones before drafting the *Jones* complaint. (4AA1647; see also PwC's RJN, Ex. C, Factual Basis for Plea Agreement for Thomas H. Peters at p. 27.) When PwC tried to question Peters about the City's knowledge of the pre-existing relationship between Paradis and Landskroner, Paradis (who was defending the deposition) improperly terminated the court-ordered deposition by unilaterally walking out with his client. (4AA1644–1647.)

In another effort to evade the trial court's orders and cover up its wrongdoing, the City filed a motion seeking to prohibit PwC from deposing a PMQ witness regarding the *Jones v. PwC* complaint. (4AA1648.) That motion repeated the City's lies about the *Jones* complaint, this time adding an even more outrageous layer of falsity by insisting that "Jones was selected as a ***fictitious*** plaintiff." (4AA1648–1649, bold italics added.) As a result, PwC was forced to file yet another motion to compel, which also requested sanctions for the City's efforts to obfuscate discovery into the *Jones* complaint. (4AA1649.)

At the hearing on PwC's motion on December 5, 2018, Kiesel was finally forced to acknowledge on the City's behalf, for the first time, that "Special Counsel [Paradis and Kiesel] *did* have a

relationship with Mr. Jones." (1RT1242.) But Kiesel falsely asserted that the relationship "was not adverse to the City of Los Angeles until Mr. Jones wanted to pursue an action against the City." (*Ibid.*) Even though that admission eviscerated the City's false claim of attorney-client privilege over the *Jones v. PwC* complaint, the City simply changed tack and improperly asserted that the mediation and common-interest privileges supposedly applied. (4AA1651, 1654.)

On January 24, 2019, the court granted PwC's motion to compel the City's continued PMQ deposition, ordered PwC to depose Antwon Jones, and ordered the City to produce all documents called for in the PMQ deposition notice. (4AA1655.) That order resulted in the City finally producing, on February 12, 2019, the cover and signature pages of the draft *Jones v. PwC* complaint. (4AA1656–1657.) Those pages explicitly identified the *City*'s Special Counsel—Paul Paradis, Gina Tufaro, and Paul Kiesel—as counsel for Antwon Jones, *the putative plaintiff suing the City*. (4AA1656.) The City did not, however, produce any other responsive documents, ignoring the other requests for production in the PMQ deposition notice and once again disobeying and violating the court's express order to do so. (4AA1656–1657.)

Three months later, on April 26, 2019, the City produced a file labeled "Emails Responsive to PMQ" that Kiesel had given to Peters in advance of the continued PMQ deposition. (4AA1673–1677.) That production demonstrated that Peters, who had defended the continued deposition of the City's PMQ witness on February 26, 2019, possessed—but did not disclose—relevant documents in advance of the continued PMQ deposition, in blatant violation of the court's order. (4AA1659, 1676–1677.) Those documents showed that Paradis had drafted Jones's complaint against the City while serving as the *City*'s Special Counsel, and that Landskroner's public role as Jones's counsel was part of an orchestrated fraud.

The continued PMQ deposition in February 2019 was a watershed in exposing the City's years-long pattern of discovery abuse, fraud, and criminality. The testimony of Clark, who served as the City's latest PMQ witness, flatly contradicted many of the City's previous sworn representations. (4AA1652–1653.) For example, Clark admitted that several members of the City Attorney's Office were aware *before* the *Jones v. City of Los Angeles* complaint was filed on April 1, 2015 that Paradis had an attorney-client relationship with Jones; that Clark became aware of that

fact in December 2014; that Paradis had recruited Landskroner to sue the City on Jones's behalf and introduced Landskroner to Jones just six days before Landskroner filed the fraudulent *Jones* complaint against the City; that Landskroner was referred the case because he would settle it on terms more favorable to the City than counsel representing the numerous other ratepayers who had sued LADWP; that Paradis "had prepared the earlier [*Jones*] Complaint"; and that Clark knew all along that Landskroner would immediately reach out to "settle" the case with the City. (4AA1660–1663.)

Shortly thereafter, at a March 4, 2019 hearing on the outstanding privilege issues, the trial court asked Landskroner direct questions about the attorney's fees he recovered in *Jones v. City of Los Angeles*, but Landskroner refused to answer, invoking the Fifth Amendment. (4AA1665.) The trial court then ordered Paradis and Landskroner to appear in court over the ensuing days for depositions by PwC's counsel. (*Ibid.*) Just two days later, on March 6, 2019, the City fired Special Counsel Paradis, Tufaro, and Kiesel. (4AA1665–1666.) But the City continued to conceal its earlier fraudulent misdeeds, insisting that its Special Counsel had acted alone and without the City's knowledge. (4AA1668–1669.)

To this end, the City had Clark walk back key testimony from his PMQ deposition in an errata containing 54 major "correct[ions]" to his testimony. (4AA1668.) Through this "errata," Clark recanted and qualified many of his most damning admissions, including that he knew *before April 1, 2015* that the City's Special Counsel, Paradis, had recruited Landskroner to represent Jones *in an action to be brought against the City*. (4AA2051.) Clark changed his testimony to assert that he understood in March 2015 that Paradis had recruited Landskroner *to sue PwC, not the City*. (4AA2050–2051.) That change was entirely inconsistent with Clark's other testimony. (See 4AA1668–1670.)[3]

The dramatic 180-degree reversals and alterations to Clark's deposition testimony necessitated two more depositions of Clark on April 9 and April 29, 2019. (4AA1672, 1675.) At those depositions, Clark continued to contradict and recant his earlier testimony against the City and falsely disclaimed knowledge of the

[3] For example, Clark's errata changed his testimony from acknowledging that he knew a settlement demand would be forthcoming from Jones before the filing of the *Jones v. City of Los Angeles* complaint to denying that Jones would demand a settlement. (4AA1669.) Yet that still conflicted with Clark's testimony that he expected, before the *Jones* complaint was filed, that the City would settle with Jones. (*Ibid.*)

City's fraudulent *Jones* scheme. (4AA1675–1676.) These further recantations led to an additional *eighteen* fact witness depositions, which accounted for a large portion of the more than $8 million in fees that PwC would eventually seek as sanctions. (3RT4837.)

Clark's representation that the City was unaware of the *Jones* fraud was contradicted by the subsequent May 29, 2019 deposition testimony of Special Counsel Paul Kiesel, who finally confessed in detail the City's plan to draft, file, and immediately "settle" Jones's sham complaint against the City. (4AA1601–1612.) Kiesel testified, in fact, that the City Attorney's Office was the "*principal strategist*" in the filing of the *Jones* complaint and subsequent settlement. (4AA1680, italics added.) Kiesel produced documents demonstrating that within weeks of being sued in the *Jones* action, the City believed it was in its own "best interest" for Landskroner to appear before the court and "establish [his] active participation . . . and possible lead position" in the case so that he could negotiate the sham settlement with the City. (4AA1612; 5AA2224.)

Clark's reversals led PwC to make further document requests on July 2, 2019 that independently threatened to expose the City's knowing participation in the collusive *Jones* litigation.

(4AA1686.) In response, the City once again flagrantly disregarded its discovery obligations, refusing to produce documents by improperly asserting the "mediation privilege" and refusing to produce relevant communications regarding Jones on the ground that such documents were supposedly protected by the "attorney-client privilege" and "work-product" privilege. (4AA1685–1690.) On July 25, 2019, the trial court granted PwC's motions to compel production of both sets of documents, finding that the so-called "mediation" involved two colluding parties (the City and Jones) and was a total "charade" and "sham" that amounted to a "fraud on the Court." (2RT3329–3331; 3653–3655.) The court also rejected the City's other assertions of privilege on the ground that "the entire lawsuit, mediation, [and] settlement, was allegedly fraudulent" and that "[t]he entirety of the communications orchestrating that lawsuit directly relate to that collusive conduct and subsequent coverup" and were therefore discoverable under the crime-fraud exception because "there exist[s] a reasonable relationship between the ostensible fraud and the attorney-client communications that are at issue." (2RT3653.)

The City nonetheless continued to obstruct PwC's document requests on the baseless ground that they were protected by the

attorney-client privilege. In response to PwC's fifth and sixth sets of requests for production, the City argued that the crime-fraud exception did not apply because "Paradis and Kiesel acted alone, without the City's knowledge or approval"—even though the court had, by that time, twice found that PwC had reasonably established the existence of fraud by the City. (4AA1691.) The court made that finding once again at the August 12, 2019 hearing on PwC's motion to compel those documents, finding that the evidence "directly contradicts the City's already questionable claim that Special Counsel were rogue actors." (4AA1690–1692.) But although the court ordered the City to produce all documents encompassed within PwC's motion, the City failed to do so—opting instead to later appeal on September 24, 2019 the court's decision to the Court of Appeal. (4AA1692.) At a status conference on September 25, 2019, the court once again ordered the City to produce the documents requested by PwC's fifth and sixth set of requests for production. (4AA1693.)

Rather than comply with that order and produce the documents, the City dismissed its bogus claims against PwC on

September 26, 2019. (4AA1693.)[4] During the next several months, PwC undertook efforts to compel the discovery that had been ordered by the court before the City dismissed its complaint. (4AA1695–1696.) But those efforts were frustrated, as the court observed, by the City's constant stonewalling of the court's discovery orders; as the court recognized, PwC's discovery motions were "obviously a prelude to the sanctions motion to be filed by [PwC]." (3RT4529.)

[4] After the City dismissed its complaint, the U.S. Attorney's Office for the Central District of California publicly announced that four individuals involved in this case—including Special Counsel Paul Paradis, LADWP's former General Manager David Wright, and then-Chief Assistant City Attorney Thomas Peters—had pleaded guilty to criminal charges against them. Paradis pleaded guilty to a felony bribery charge for accepting an illegal kickback of nearly $2.2 million for getting another attorney to purportedly represent his ratepayer client, Antwon Jones, in a collusive lawsuit against the City. (PwC's RJN, Ex. A.) Wright also pleaded guilty to a felony bribery charge for lying to federal investigators about not having any financial or business interest in which Paradis was associated. (*Id.*, Ex. B.) Peters pleaded guilty to a felony charge for aiding and abetting extortion related to the City's efforts to hide from PwC critical documents that would have revealed that the filing of the *Jones v. City of Los Angeles* complaint and subsequent settlement was a sham. (*Id.*, Ex. C.) The federal district court has since accepted the guilty pleas of all three defendants. (*Id.*, Ex. D–F.) Jack Landskroner had passed away before charges were filed.

II. Procedural Background

A. The Trial Court Awards PwC Just a Fraction of the Amount It Requests in Sanctions Against the City.

PwC repeatedly raised the prospect of seeking discovery sanctions, including both monetary and terminating sanctions, as more and more of the City's misconduct came to light, but each time the trial court instructed PwC to wait until the close of discovery to move for sanctions so the court could address the full extent of the City's serial discovery abuse in context on a complete record. (4AA1643, 1649.)

At an August 27, 2018 hearing, for example, the court stated that it "is going to allow the parties at a later date to make [a] further request for sanctions if the conduct of refusing to produce documents continues and the Court will evaluate the request for sanctions *based upon the entirety of the discovery process* in this case." (1RT631, italics added.) And at a hearing on December 5, 2018, the Court again "defer[red] any issue of sanctions until we conclude this issue to determine all the facts and circumstances with regard to the matters in dispute" regarding the *Jones v. PwC* complaint. (1RT915–916.)

On June 29, 2020, after the court entered the City's voluntary dismissal with prejudice, PwC filed its motion for sanctions under sections 2023.030 and 2023.010. (2AA939–942.) PwC described how the City had repeatedly and willfully misused the discovery process over the course of two-and-a-half years, including by asserting privileges in bad faith, misrepresenting and concealing facts to avoid the production of documents, and refusing to comply with the court's orders. (2AA956–992.) PwC moved to recover sanctions for: (1) $2,801,946.49 in attorney's fees and costs it incurred in connection with its efforts to compel production of the draft *Jones v. PwC* complaint; (2) $4,259,529.14 in fees and costs resulting from the City's attempts to conceal its knowledge of and participation in the fraudulent *Jones* scheme; and (3) $1,149,907.90 in fees and costs for the time spent drafting the sanctions motion. (2AA1008–1015; see 8AA4010–4011.)

After a lengthy hearing on October 6, 2020, the trial court granted PwC's motion. (8AA4012.) It found that sanctions were warranted under both "the Civil Discovery Act" and "the Court's inherent power to deal with litigation abuse" in light of the extensive history of "serious abuse of discovery by the City and its counsel." (8AA4010–4011.) Judge Berle found that PwC had

"been required to expend [a] substantial number of hours" because of the City's "abuse in discovery," which included:

- Improperly claiming privilege over more than 19,000 documents—including the draft complaint in *Jones v. PwC*—that were responsive to PwC's first request for production. (3RT4833; see 4AA1624–1633.)

- Failing to produce the *Jones v. PwC* draft complaint after the court ordered the City to do so. (3RT4833.)

- Providing a false response to PwC's third set of requests for production by representing that there was only one responsive document that existed regarding communications between Jones's counsel and counsel for LADWP, when in fact "multiple documents were [later] produced as responsive." (3RT4833–4834; see also 4AA1673–1677.)

- Improperly claiming privilege yet again over the *Jones v. PwC* draft complaint, requiring PwC to file a second motion to compel. (3RT4834; see 4AA1633–1634.)

- Failing to apprise the court at the December 4, 2017 hearing on PwC's second motion to compel that there existed an "attorney-client relationship between Mr. Paradis as counsel and Mr. Jones as client." (3RT4834.)

- Disregarding the court's order to produce a PMQ witness, requiring PwC to move to compel compliance with the court's order. (3RT4834.)

- Actions that rendered useless the PMQ deposition of Thomas Peters, including his "refus[al] to produce any documents," his "admi[ssion] . . . that he did not prepare for his deposition," and his failure "to answer questions by instruction of counsel." (3RT4835.)

- Lying to the court at the December 12, 2018 hearing on PwC's motion to compel the PMQ deposition testimony

ordered by the court by falsely representing "that Mr. Paradis never represented Jones." (3RT4835.)

- Improperly asserting a common-interest privilege in response to PwC's requests for production even though "the City could not provide any authority" or "articulate what exactly that interest was, except that it was apparently a common interest in orchestrating a settlement." (3RT4836.)

- Falsely characterizing the *Jones v. PwC* complaint as a "thought experiment." (3RT4836; see 4AA1646–1647.)

- Serving a five-page errata "in which Mr. [James] Clark recanted or disclaimed numerous material aspects of his February deposition testimony[,] thus necessitating two further dates of deposition testimony from Mr. Clark." (3RT4837; see 4AA1668.)

- Mr. Clark's recanting of additional prior testimony during subsequent PMQ depositions on April 9 and 29, 2019, "necessitat[ing] [the] taking [of] an additional 18 fact witness depositions" by PwC. (3RT4837.)

- Improperly asserting a mediation privilege over documents requested by PwC. (3RT4838.)

Although PwC had requested at least $8,002,412 in sanctions (2AA942), the trial count found, "[b]ased upon consideration of all the evidence and the totality of the circumstances," that $2.5 million in sanctions against the City was appropriate (3RT4839). It issued its sanctions award on November 10, 2020, in a written order that was "based on the [c]ourt's oral statements on the record during the October 6, 2020 hearing" on PwC's motion for monetary sanctions. (8AA4009.)

B. The Court of Appeal Majority Vacates the Sanctions Award on Novel Statutory Grounds It Raised Sua Sponte Less Than a Month Before Argument.

The City appealed the trial court's sanctions award on two grounds: (1) that the trial court lacked jurisdiction to award sanctions after the case had been dismissed, and (2) that PwC's sanctions motion was untimely. But after briefing was completed, and less than a month before oral argument, the Court of Appeal issued a letter asking the parties to submit letter briefs addressing "whether the trial court had authority to award monetary sanctions in this case pursuant solely to the provisions of Code of Civil Procedure sections 2023.010 and 2023.030"—an issue that appeared nowhere in either party's briefing or in the trial court. (B310118, Order on 7/6/22.)

On October 20, 2022, the Court of Appeal issued a divided opinion. The court unanimously rejected the City's jurisdictional argument (Op. at pp. 62–64; Dis. Op. at p. 1) and timeliness argument (Op. at pp. 64–66; Dis. Op. at p. 1)—the only ones the City had raised. Yet Justice Moor, writing for the majority, nevertheless reversed on the novel statutory ground the majority had raised sua sponte, based on its belief 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.)

Characterizing both provisions as mere "definitional statutes" (Op. at p. 39), the majority concluded that monetary sanctions may be imposed for discovery abuses "only to the extent authorized by *another* provision of the Discovery Act"—that is, subsequent discovery-method-specific provisions of the Discovery Act (*id.* at p. 2, italics added). The majority acknowledged that there was "no prior case law [holding] that the statutory language of section 2023.030 requires monetary sanctions to be authorized by another provision of the Discovery Act" (*id.* at p. 3)—in fact, every other Court of Appeal to consider the question had "universally recognized" courts' authority "to award monetary sanctions under section 2023.030" (Dis. Op. at p. 30). But the majority nevertheless held, despite the chorus of authority to the contrary, that "the plain language of the statutes" did not authorize courts to impose discovery sanctions. (Op. at p. 49.)

Under the majority's interpretation of the statutory scheme, the Discovery Act permits the award of sanctions only if the court ties a party's "reasonable expenses incurred as a result of

sanctionable conduct" to particular discovery-method-specific "provisions other than sections 2023.010 and 2023.030." (*Id.* at p. 3.) Because the trial court did not "tailor[] its award to expenses resulting from sanctionable conduct" described in subsequent, discovery-method-specific provisions *other than* sections 2023.010 and 2023.030, the majority reversed the sanctions award and remanded to the trial court. (*Id.* at p. 50.)

Justice Grimes dissented from "the majority's unprecedented statutory analysis" in a thoughtful 35-page opinion. (Dis. Op. at p. 19.) As she explained, the majority adopted "a principle announced for the first time today—one that has never before been applied in any published opinion or argued by counsel, one that was not raised in the trial court below, and one that was not raised by the City in this appeal." (*Ibid.*) Indeed, prior to the majority's decision, courts interpreting sections 2023.010 and 2023.030 had "universally" concluded that those provisions independently authorize courts to impose sanctions for discovery misconduct. (*Ibid.*, citing, inter alia, *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57 and *Pratt v. Union Pacific Railroad Co.* (2008) 168 Cal.App.4th 165.)

Justice Grimes explained that the majority's decision was tainted by its flawed reading of section 2023.030's introductory paragraph, which states that, "[t]o the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court . . . may impose the following sanctions against anyone engaging in a misuse of the discovery process. . . ." (Code Civ. Proc., § 2023.030.) The majority construed that language as requiring the trial court to "assess compliance with the specific procedures or prerequisites of [each] particular discovery method" in the Discovery Act (Dis. Op. at p. 25) and to tie each portion of the sanctions award to "expenses incurred as a result of sanctionable conduct under a discovery provision other than 2023.010 or 2023.030" (Op. at p. 50), but "[n]o case precedents actually support the majority's novel conclusion" (Dis. Op. at p. 22). Instead, the cases on which the majority relied demonstrate that section 2023.030's "[t]o the extent authorized by" language "refers to the *type* of sanction that may be imposed, and *not* to the procedural requirements contained in the statutes governing particular discovery methods." (*Ibid.*)

The majority's conclusion also disserved the Legislature's purpose in enacting the Discovery Act. As the majority

acknowledged, that statute was intended to prevent litigants from "undermin[ing] the goals of civil discovery by practices detrimental to its proper operation." (Op. at p. 45.) The majority's decision, however, hamstrings the ability of trial courts to "deal with an egregious *pattern* of stonewalling and falsity in discovery responses" by requiring them to "adher[e] to the procedural prerequisites of each separate discovery statute for each particular discovery violation." (Dis. Op. at p. 35, italics added.) That result was particularly troubling in this case, which "present[ed] a record of egregious discovery abuse that [was] unmatched" in Justice Grimes's 40-year career, including a quarter-century on the bench. (*Id.* at p. 1.)

STANDARD OF REVIEW

This Court "review[s] questions of statutory interpretation de novo." (*Christensen v. Lightbourne* (2019) 7 Cal.5th 761, 771.) Likewise, questions regarding the scope of courts' inherent authority are reviewed de novo. (See, e.g., *Marshall v. County of San Diego* (2015) 238 Cal.App.4th 1095, 1105 ["[D]etermining whether a trial court has the inherent authority to take an action is reviewed de novo," citing *People v. Lujan* (2012) 211 Cal.App.4th 1499, 1507].)

ARGUMENT

I. Section 2023.030 Independently Authorizes Courts to Impose Monetary Sanctions for Misuses of the Discovery Process Identified in Section 2023.010.

In interpreting a statute, the Court's "fundamental task is to determine and effectuate the intended purpose of the statutory provisions at issue." (*Ryan v. Rosenfeld* (2017) 3 Cal.5th 124, 128.) This requires "analyz[ing] the statute's text in its relevant context, as text so read tends to be the clearest, most cogent indicator of a specific provision's purpose in the larger statutory scheme." (*Los Angeles County Bd. of Supervisors v. Super. Ct.* (2016) 2 Cal.5th 282, 293.) To determine the relevant context, the Court must "consider the ordinary meaning of the language in question as well as the text of related provisions, terms used in other parts of the statute, and the structure of the statutory scheme." (*Larkin v. Workers' Comp. Appeals Bd.* (2015) 62 Cal.4th 152, 157.) If the "statutory text admits of more than one reasonable interpretation, [the Court] may consider various extrinsic aids—including the legislative history—to the extent they are helpful in illuminating that purpose." (*People v. Hubbard* (2016) 63 Cal.4th 378, 386.)

Each of these indicia of statutory meaning leads inexorably to the conclusion that section 2023.030 independently authorizes

courts to sanction the full range of misuses of the discovery process defined in section 2023.010. Every Court of Appeal to consider the question—prior to the split decision here—has so held. (See, e.g., *Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57; *Pratt v. Union Pacific Railroad Co.* (2008) 168 Cal.App.4th 165; *Dept. of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154, disapproved on another ground in *Presbyterian Camp & Conference Centers, Inc. v. Super. Court* (2021) 12 Cal.5th 493, 516, fn. 17; *Cornerstone Realty Advisors, LLC v. Summit Healthcare Reit, Inc.* (2020) 56 Cal.App.5th 771.) The Court should therefore reverse the judgment below and remand with instructions to reinstate, in full, the trial court's sanctions award.

A. The Text of Section 2023.030 Clearly Authorizes Courts to Impose Monetary Sanctions for Misuses of the Discovery Process.

Section 2023.030 of the Code of Civil Procedure provides in relevant part:

> To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process:

> (a) The court may impose a monetary sanction ordering that one engaged in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. The court may also impose this sanction on one unsuccessfully asserting that another has engaged in the misuse of the discovery process, or on any attorney who advised that assertion, or on both. If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(Code Civ. Proc., § 2023.030.)

The first sentence of subdivision (a) is dispositive of the question presented here: "The court ***may impose a monetary sanction*** ordering that one engaged in the ***misuse of the discovery process*** . . . pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct." (*Id.* § 2023.030, subd. (a), bold italics added.)

The ordinary meaning of the word "may" confers discretionary authority to do something—in this case, to impose a monetary sanction. (See, e.g., Black's Law Dict. (11th ed. 2019) (defining "may" as "[t]o be permitted to"); Webster's 3d New International Dict. (1993) p. 1396 [defining "may" as "hav[ing] the ability or competence to" and "hav[ing] permission to"]; Oxford

English Dict. (3d ed. 2001) [defining "may" as "[e]xpressing permission or sanction: be allowed (to do something) by authority, law, rule, morality, reason, etc."].) California courts routinely interpret "may" consistent with its ordinary, permissive meaning. (See, e.g., *In re Richard E.* (1978) 21 Cal.3d 349, 354 ["The ordinary import of 'may' is a grant of discretion."]; *People v. Perez* (2021) 67 Cal.App.5th 1008, 1015 ["[A]pplying the ordinary meaning of the word 'may,' we conclude the exception in subdivision (b)(2) of section 1473.7 grants discretionary authority to the court."]; *People v. Moine* (2021) 62 Cal.App.5th 440, 448 ["[I]n delineating the trial court's authority by use of the word 'may,' the statutory language itself indicates the trial court has broad discretion to grant or deny diversion."].)

And under section 2023.030, courts have this discretionary authority to impose monetary sanctions on anyone engaged in a "misuse of the discovery process." This is a clear reference to section 2023.010, which defines "***[m]isuses of the discovery process*** [to] include" specified forms of misconduct, such as "[e]mploying a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense," "[f]ailing to respond or to submit to

an authorized method of discovery," and "[m]aking an evasive response to discovery." (Code Civ. Proc., § 2023.010, bold italics added.)

Nothing in this language indicates that a court's authority to impose monetary sanctions for misuse of the discovery process is contingent upon a *separate* authorization provided *elsewhere* in the Discovery Act, such as in subsequent, discovery-method-specific provisions. Other Courts of Appeal have confirmed as much. (See, e.g., *Kwan*, *supra*, 58 Cal.App.5th at pp. 74–75 ["[S]ection 2023.030(a) of the Civil Discovery Act mandates that the trial court impose a monetary sanction for Kwan's and VeriPic's discovery wrongdoing"].) And the Court of Appeal majority did not suggest otherwise.[5] Instead, it looked to *different* language in the *introductory paragraph* of section 2023.030, which states that, "***[t]o the extent authorized by*** *the chapter governing*

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[5] The Court of Appeal majority *did* dismiss section 2023.030 and 2023.010 as "definitional statutes." (Op. at p. 39.) But definitional statutes do not speak in terms of what a court "may" or "shall" do. Notably, the Discovery Act contains a (different) definitional statute that is cast in entirely different terms than section 2023.030. (See Code Civ. Proc., § 2016.020 ["As used in this title: (a) 'Action' includes a civil action and a special proceeding of a civil nature. (b) 'Court' means the trial court in which the action is pending, unless otherwise specified . . ."].)

any particular discovery method or any other provision of this title, the court . . . may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process[.]" (Code Civ. Proc., § 2023.030, bold italics added.) In the majority's telling, this "[t]o the extent authorized" language "requires sanctions under section 2023.030 to be authorized by another provision of the Discovery Act." (Op. at p. 47.) But the majority's reasoning is unpersuasive for at least three reasons.

First, it disregards—and reads out of the statute—the operative clause of the introductory paragraph: a court "***may impose*** . . . sanctions against ***anyone*** engaging in conduct that is a ***misuse of the discovery process***." (Code Civ. Proc., § 2023.030, bold italics added.) That clause is materially identical to the first sentence of subdivision (a), which states that a court "***may impose a monetary sanction*** ordering that one engaged in the ***misuse of the discovery process*** . . . pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct." (*Id.* § 2023.030, subd. (a), bold italics added.) And, as explained above, this language plainly authorizes courts to impose sanctions for the full range of misconduct identified in section 2023.010.

The Court of Appeal majority did not mention—much less grapple with—the introductory paragraph's operative, independent clause. Instead, it focused only on that paragraph's *subordinate* clause. But while a subordinate clause may delimit the contours of the authority granted in the independent clause, it cannot abrogate that authority entirely. It is, after all, a well-established canon of statutory interpretation that courts "will not allow a subordinate clause to *completely obliterate* the affirmative representation of an independent clause." (*Williams v. SBE Entertainment Grp.* (C.D. Cal. Oct. 2, 2008) 2008 WL 11343070, at *2; see also *Aydin Corp. v. First State Ins. Co.* (1998) 18 Cal.4th 1183, 1222 [dis. opn. of Mosk, J.] ["The main clause, which defines the general scope of the [authority], and the subordinate clause, which defines its precise dimensions, are necessarily interrelated—not unlike the definition of a square as a rectangle with four equal sides and the identification of the length of the sides"].) Because legislators "are presumed to be grammatical in their compositions" (Scalia & Garner, Reading Law: The Interpretation of Legal Text (2012) p. 140), the Court of Appeal majority erred by departing from that canon here.

That kind of obliteration is precisely what the Court of Appeal majority's statutory construction accomplished. Notwithstanding the categorical language of the introductory paragraph's operative, independent clause authorizing courts to sanction "anyone" engaged in any kind of "misuse of the discovery process" identified in section 2023.010, the majority interpreted the subordinate clause to effectively erase this language, withdrawing that power and limiting courts' discretion to sanction only *different* conduct identified *elsewhere* (e.g., in subsequent, discovery-method-specific provisions) in the Discovery Act. Notably, much of that conduct is entirely distinct from the misuses of the discovery process addressed in section 2023.010, covering routine motions and objections rather than evasive, harassing, or dilatory abuse, and covering discrete instances of misconduct rather than systemic, multi-year patterns of abuse, like that engaged in by the City here. (See, e.g., Code Civ. Proc., § 2030.290, subd. (c) [authorizing monetary sanctions "against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust"];

id., § 2031.300, subd. (c) [authorizing monetary sanctions "against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to a demand for inspection, copying, testing, or sampling, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of that sanction unjust"].)

And even if the sanctionable conduct identified elsewhere in the Discovery Act could be considered a "misuse of the discovery process," the Court of Appeal majority's reading renders the use of that term in Section 2023.030 surplusage insofar as it adds no meaning that is not already supplied by those other discovery-method-specific provisions. But this Court's "premise when reading statutes is that, as much as possible, every word should add meaning—and no language should serve as mere surplusage." (*Presbyterian Camp, supra,* 12 Cal.5th at p. 509.) Indeed, no matter how one interprets the subsequent, method-specific provisions of the Discovery Act, the Court of Appeal majority's opinion renders section 2023.030's language stating that a "court may impose a monetary sanction" against one "engaged in the misuse of the discovery process" surplusage.

Second*,** the Court of Appeal majority's decision reads the term "to the extent authorized" to mean "if" or "only if"—i.e., "if*** authorized by the chapter governing any particular discovery method or any other provision of this title." But that is not how section 2023.030 is written, and courts have rejected similar attempts to read these two terms as having the same meaning. (See, e.g., *John Hancock Mutual Life Ins. Co. v. Harris Trust & Savings Bank* (1993) 510 U.S. 86, 104–105 ["But Congress did not say a contract is exempt 'if' it provides for guaranteed benefits; it said a contract is exempt only '*to the extent*' it so provides"]; *In re Duvall* (W.D. Tex. 1998) 218 B.R. 1008, 1013 ["[T]he words 'to the extent' in [11 U.S.C.] § 522(f)(1) . . . are words of limitation: Depending on the facts of the case, a debtor may be permitted to avoid a lien in full, or he may be permitted to avoid the lien only in part. In other words, the statute does not state that a 'debtor may avoid the fixing of a lien *if* it impairs an exemption'"].) Reading the phrase as the Court of Appeal majority did is particularly nonsensical where, as here, it appears immediately before a sentence that does actually use the word "if": "***If*** a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject

to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2023.030, subd. (a), bold italics added.)

This makes sense: While "if" connotes a relationship in which a given outcome either will or will not obtain based on the occurrence of some condition precedent, "to the extent" simply conveys an uppermost or outer limit on a potential *range* of outcomes. (See Oxford English Dict. ["*to a certain, great,* etc., *extent, to the (full) extent of.* Hence: the limit to which anything extends"]; Webster's 3d New International Dict. (1993) p. 805 [defining "extent" to include "the limit to which something extends <exerting the full ~ of his power> <to a certain ~ she was fond of him>"].)

That is how the First Appellate District read the phrase in *Reyna v. McMahon* (1986) 180 Cal.App.3d 220. The court in that case was charged with deciding whether a state statute prohibiting the disbursement of unemployment benefits "to the extent required by federal law" prohibited a worker who was unemployed as a result of a union strike from receiving any unemployment benefits, or only benefits under a federally funded program. (*Id.* at p. 224, citing Welf. & Inst. Code, § 11250.4.) The court adopted

the latter interpretation, holding that the statute "disqualifies strikers from receipt of [unemployment] benefits only when federal funds are involved in the program," but that payments from "[t]he state-only [unemployment] program [are] not affected." (*Id.* at p. 226.)

This ordinary meaning of the phrase "to the extent" is confirmed by other provisions in the Discovery Act that use the exact same phrase:

- "If an interrogatory cannot be answered completely, it shall be answered *to the extent* possible" (Code Civ. Proc., § 2030.220, subd. (b), italics added);
- "If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters *to the extent* of any information known or reasonably available to the deponent" (*id.*, § 2025.230, italics added);
- "Employing a discovery method in a manner or *to an extent* that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense" (*id.*, § 2023.010, subd. (c), italics added).

None of these provisions uses the phrase "to the extent" in the atextual manner the Court of Appeal majority did here with respect to the subordinate clause of section 2023.030's introductory paragraph.

Read correctly, the "to the extent authorized" language in the introductory paragraph of section 2023.030 does not limit the *conduct* that a court may sanction, as the Court of Appeal majority erroneously held, but rather the *type* or *severity* of sanctions that may be imposed, as the dissent correctly explained. (See Dis. Op. at p. 20 [noting that "the '[t]o the extent authorized' language of section 2023.030 simply refers to authority to impose the *type* of sanction in question (here, monetary)"].)

This conclusion follows from the structure of section 2023.030. The introductory paragraph that contains this limiting clause is followed by five subdivisions outlining, in increasing severity, the types of sanctions that a court "may impose . . . against anyone engaging in conduct that is a misuse of the discovery process" (Code Civ. Proc., § 2023.030), including monetary sanctions, issue sanctions, evidence sanctions, terminating sanctions, and contempt sanctions. Courts routinely recognize that these subdivisions lay out a continuum of sanctions that a court may impose. (See *Sabetian v. Exxon Mobil Corp.* (2020) 57 Cal.App.5th 1054, 1084 ["Code of Civil Procedure section 2023.030 authorizes a trial court to impose a range of penalties against 'any party engaging in the misuse of the discovery process,'

including monetary and evidence sanctions"]; *Lopez v. Watchtower Bible & Tract Society of New York, Inc.* (2016) 246 Cal.App.4th 566, 604 ["California discovery law authorizes a range of penalties for a party's refusal to obey a discovery order, including monetary sanctions, evidentiary sanctions, issue sanctions, and terminating sanctions"].)

But subsequent, method-specific provisions of the Discovery Act limit which of these types of sanctions may be imposed for certain misconduct. For example, section 2030.300 provides that *only* monetary sanctions are available against a party "who unsuccessfully makes or opposes a motion to compel a further response to interrogatories" (*id.*, § 2030.300, subd. (d)), and that "the imposition of an issue sanction, an evidence sanction, or a terminating sanction" is available only "[i]f a party then fails to obey an order compelling further response to interrogatories" (*id.*, § 2030.300, subd. (e)). Other provisions outline a similarly graduated approach to sanctions for other forms of misconduct. (See, e.g., *id.*, § 2031.320 [demands for inspection, copying, testing, or sampling]; *id.*, § 2032.620 [delivery of medical reports].)

Thus, the "[t]o the extent authorized" language in the introductory paragraph of section 2023.030 simply confirms that,

notwithstanding the broad general authority to impose a wide range of sanctions conferred by the principal clauses of section 2023.030's introductory paragraph and the first sentence of subdivision (a), courts may not impose sanctions that exceed the outer limits prescribed in certain situations by subsequent, more specific provisions of the Discovery Act.

This is consistent with the "well-established" principle of statutory construction "that a specific provision prevails over a general one relating to the same subject." (*Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (1999) 71 Cal.App.4th 1518, 1524; see also *Lake v. Reed* (1997) 16 Cal.4th 448, 464 [noting that "a more specific statute controls over a more general one"].) And it is also in keeping with longstanding authority in the Court of Appeal interpreting this exact phrase. (See, e.g., *London v. Dri-Honing Corp.* (2004) 117 Cal.App.4th 999, 1006 ["This structure suggests that the section 2023, subdivision (b) phrase '[t]o the extent authorized by the section governing any particular discovery method . . . , the court . . . may impose the following sanctions' simply refers to whether the discovery method statute authorizes a type of sanction (i.e., monetary, issue, evidence, terminating, or contempt) for a

particular misuse of the discovery method."]; *New Albertsons, Inc. v. Super. Ct.* (2008) 168 Cal.App.4th 1403, 1422 ["Section 2023.030 authorizes a court to impose the specified types of sanctions '[t]o the extent authorized by the chapter governing any particular discovery method or any other provision of this title.' This means that the statutes governing the particular discovery methods limit the permissible sanctions to those provided under the applicable governing statutes"].)

Third*,** the Court of Appeal's interpretation of section 2023.030's introductory paragraph renders the statutory provision internally inconsistent and self-contradictory. While the court interpreted that paragraph to require authorization in another part of the Discovery Act as a precondition to imposing sanctions, the very first subdivision of section 2023.030 provides that "[t]he court may also impose this [monetary] sanction ***on one unsuccessfully asserting that another has engaged in misuse of the discovery process" (Code Civ. Proc., § 2023.030, subd. (a), bold italics added)—conduct that is not addressed anywhere else in the Act. Yet it is a well-established "rule of statutory construction . . . that words and provisions in a statute that relate to the same subject matter 'must be harmonized to the

extent possible.'" (*People v. Gonzalez* (2008) 43 Cal.4th 1118, 1127.) Because the Court of Appeal majority's interpretation of section 2023.030's introductory paragraph cannot be harmonized with the plain text of subdivision (a), it cannot be right and should be rejected by this Court.

Because the text of section 2023.030 clearly authorizes courts to sanction the full range of misuses of the discovery process identified in section 2023.010, there is no need for the Court to consult legislative history. (See *Scher v. Burke* (2017) 3 Cal.5th 136, 148 ["Where statutory text 'is unambiguous and provides a clear answer, we need go no further'"]; *Henson v. C. Overaa & Co.* (2015) 238 Cal.App.4th 184, 198 ["[W]e need not look to the legislative history as the statutory text is clear"].) But even if there were such a need, the legislative history further confirms the reading of section 2023.030 advanced herein and by Justice Grimes in her well-reasoned dissent.

B. The Legislative History of the Civil Discovery Act Confirms That Sections 2023.030 and 2023.010 Were Designed to Give Courts Broad Authority to Address Discovery Abuse, Especially Systemic Patterns of Abuse.

The Civil Discovery Act was enacted in 1986 after a three-year effort "to completely revise the original 1957 system of civil

discovery." (Donovan, *The Sanction Provision of the New California Civil Discovery Act, Section 2023: Will It Make a Difference or Is It Just Another 'Paper Tiger'?* (1988) 15 Pepperdine L.Rev. 401, 401.) In the years preceding its enactment, commentators and practitioners alike increasingly lamented that "discovery ha[d] become an unconstrained free-for-all within the gamut of lawyers' imaginations," and that "[t]he problem ha[d] gotten so out of hand that '[for years] it has been accepted doctrine that there is serious discovery abuse.'" (Mares, *The California Civil Discovery Act of 1986: Discovery the New-Fashioned Way!* (1989) 18 Sw.U. L.Rev. 233, 237.)

A particular target of criticism was courts' weak sanctioning authority under then-existing law, which resulted in sanctions being "applied in relatively few situations, and only when there ha[d] been an egregious abuse of the discovery process." (Tonegato, *The Decline & Fall of Sanctions in California Discovery: Time to Modernize California Code of Civil Procedure Section 2034* (1974) 9 U.S.F. L.Rev. 360, 361.) This was not because courts were reticent to sanction parties, but because the law simply "d[id] not cover all possible violations of the discovery process," and left

broad swaths of "abuses of discovery where no effective sanctions c[ould] be imposed." (*Id.* at p. 385.)

The Legislature enacted the Civil Discovery Act of 1986 to remedy these serious shortcomings and make civil discovery more fair and efficient. Indeed, as then-Judge Epstein observed shortly after the Act took effect, one of the legislation's main goals was "to identify discovery abuses, and eliminate or at least reduce these abuses." (Epstein, *The Civil Discovery Act of 1986* (Sept. 1987) 10 L.A. Lawyer 18, 19; see also *Fairmont Ins. Co. v. Super. Ct.* (2000) 22 Cal.4th 245, 251 ["[T]he purpose of the statute was to eliminate a source of discovery abuse and unnecessary trial delays"].) And the key provisions by which it sought to accomplish this goal were the statutory provisions now found in sections 2023.030 and 2023.010.[6]

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[6] As originally enacted, both provisions were subdivisions of Section 2023. In 2004, the Legislature passed "a nonsubstantive reorganization of the civil discovery provisions, keeping the existing statutory language but dividing the statutes into short sections grouped in chapters according to subject matter." (Cal. Law Revision Com. rec. 793 (Sept. 2003).) With this reorganization, section 2023, subdivision (a) became section 2023.010, and section 2023, subdivision (b) became section 2023.030.

Section 2023.010 "list[s] nine acts which constitute discovery misuses." (Donovan, *supra*, 15 Pepperdine L.Rev. at p. 404.) The very "significance" of this list was that it clearly defined for judges the types of conduct that they could sanction: "[I]t gives timid judges a solid foundation from which to work. It relieves them, in part, from making discretionary judgment calls, by providing a statutory framework to support the imposition of sanctions." (*Ibid.*)

While "the new statute label[ed] the particular sanctions available for *specified actions* throughout the act" (*id.* at p. 408, italics added)—in provisions addressing discrete methods of discovery, which "are followed by a cross-reference to section 2023 [that] defines exactly what those terms mean" (*ibid.*)—there is nothing in the legislative history to suggest that those were the *only* actions for which sanctions may be imposed. On the contrary, those provisions addressing discrete methods of discovery simply establish rules governing the most frequent types of discovery misconduct so that "both judges and attorneys can fully realize the ramifications of specific misuses and take steps accordingly." (*Id.* at p. 409.)

Reading Sections 2023.030 and 2023.010 as limiting courts to imposing sanctions only where specifically authorized by a subsequent provision specific to discrete methods of discovery, as the Court of Appeal majority did, would simply replicate the unduly rigid and constricted prior sanctions regime that motivated the Legislature to enact the current Civil Discovery Act. And it would do so in direct contravention of the Legislature's acknowledgment that the misuses of the discovery process described in the Civil Discovery Act are "illustrative, not exhaustive" because "other categories of abuse may develop," and because leaving the matter open-ended would "underscore[] the importance of conducting discovery in a manner that does not abuse the methods provided to achieve its goals." (Reporter's Note to Section 2023.030.)

Worse still, the Court of Appeal majority's decision leaves the most pervasive and systemic forms of discovery abuse beyond the reach of courts' power to sanction. While the discovery-method-specific provisions of the Discovery Act cover a wide range of *discrete* forms of discovery misconduct, they do not address

patterns of misconduct that (as here) infect an entire proceeding.[7] These patterns of misconduct can (and often do) impose costs that go far beyond the sum of their individual parts—i.e., the refusal to produce a document or frivolous objections to a line of deposition questioning. (See *People v. Hill* (1998) 17 Cal.4th 800, 847 ["The sheer number of the instances of prosecutorial misconduct, together with the other trial errors, . . . created a negative synergistic effect, rendering the degree of overall unfairness to defendant more than that flowing from the sum of the individual errors"].) And even where the full effect of the misconduct can hypothetically be allocated among particular discovery-method-specific provisions of the Discovery Act, the Court of Appeal's decision places the enormous burden of this allocation on the innocent party who has already been forced to needlessly litigate

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[7] Moreover, those discovery-method-specific provisions do not cover all possible forms of discrete misconduct. As Justice Grimes noted, "the chapters of the Discovery Act governing particular discovery methods do not mention sanctions for spoliation of evidence." (Dis. Op. at p. 32; but see *Cedars-Sinai Medical Center v. Super. Ct.* (1998) 18 Cal.4th 1, 12 ["Destroying evidence in response to a discovery request after litigation has commenced would surely be a misuse of discovery within the meaning of section 2023"].) Nor do they address lying to the court during a discovery hearing. It is difficult to believe that the Legislature meant to leave this type of misconduct outside the scope of courts' power to remedy. Yet that is the upshot of the Court of Appeal majority's decision.

meritless issues—with any accounting error, whether by the party or the court, redounding to the benefit of the wrongdoer.

The Court should therefore reject that reading and interpret section 2023.030 consistent with its plain text, structure, purpose, and history described above—as independently authorizing courts to sanction the full range of misuses of the discovery process described in section 2023.010.

II. Courts Have Inherent Authority Under the Constitution to Impose Monetary Sanctions for Discovery Misconduct That Imperils the Sound Administration of Justice.

In addition to its statutory authority to issue monetary sanctions for discovery misconduct under sections 2023.030 and 2023.010, the trial court also had the inherent authority under the Constitution to impose monetary sanctions for the kind of serious, systemic discovery misconduct and abuse engaged in for over two and a half years by the City that imperiled the sound administration of justice—even if that misconduct was not expressly sanctionable under the Discovery Act. Numerous other Courts of Appeal have so held prior to the split decision below. (See, e.g., *Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155

Cal.App.4th 736; *Padron v. Watchtower Bible & Tract Society of New York, Inc.* (2017) 16 Cal.App.5th 1246.)

"Even in the absence of an express grant of authority, each branch of government possesses certain inherent and implied powers." (*United Auburn Indian Cmty. of Auburn Rancheria v. Newsom* (2020) 10 Cal.5th 538, 550–551.) These "broad inherent power[s]" are "not confined by or dependent on statute," but instead arise from "article VI, section 1 of the California Constitution." (*Stephen Slesinger*, *supra*, 155 Cal.App.4th at p. 758, citing *Walker v. Super. Ct.* (1991) 53 Cal.3d 257, 267.) Because these inherent powers "necessarily result . . . from the nature of [courts as an] institution," they do not require express authorization by the Legislature. (*United States v. Hudson* (1812) 11 U.S. 32, 34.)

In determining whether a power falls within the inherent authority of a separate, co-equal branch of government, this Court has considered whether the exercise of that power is "necessary" for that branch "to properly and effectively function as a separate department in the scheme of our state government." (*Super. Ct. v. County of Mendocino* (1996) 13 Cal.4th 45, 54; see *Brydonjack v. State Bar of Cal.* (1929) 208 Cal. 439, 442 ["Our courts are set up

by the Constitution without any special limitations" and should therefore "maintain vigorously all the inherent and implied powers necessary to properly and effectively function as a separate department in the scheme of our state government"].) "[F]undamental inherent equity, supervisory, and administrative powers" are encompassed within the judiciary's inherent authority, for example, when the exercise of those powers "enable[s] [courts] to carry out their duties." (*Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967.) Because courts are charged with "[e]nsur[ing] the orderly administration of justice," they are bestowed with the powers necessary "to exercise reasonable control over all proceedings connected with pending litigation." (*Ibid.*)

Among "the [judiciary's] most basic functions" is "ensuring the orderly administration of justice." (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1104.) This includes the duty "to preserve public trust in the scrupulous administration of justice and the integrity of the bar." (*Great Lakes Construction, Inc. v. Burman* (2010) 186 Cal.App.4th 1347, 1355.) To this end, courts must be able to exercise the powers necessary "to enforce rights and redress wrongs." (*Lorraine v. McComb* (1934) 220 Cal. 753, 756.)

Thus, when confronted with "abuse of the litigation process," a court "may invoke its inherent power" "to prevent the taking of an unfair advantage and to preserve the integrity of the judicial system." (*Peat, Marwick, Mitchell & Co. v. Super. Ct.* (1988) 200 Cal.App.3d 272, 289; accord *Conn v. Super. Ct.* (1987) 196 Cal.App.3d 774, 785 ["the court has the inherent power to control the proceedings before it and to make orders which prevent the frustration, abuse, or disregard of the court's processes"].) The imposition of sanctions "remed[ies] the harm caused to the party suffering the . . . misconduct." (*Kwan, supra,* 58 Cal.App.5th at p. 74.) Sanctions also serve "to preserve the integrity of [the court's] proceedings" and "restore[] balance to the adversary system when the misconduct of one party has destroyed it." (*Slesinger*, *supra*, 155 Cal.App.4th at p. 761.)

Courts' inherent authority to sanction willful abusers of the discovery process, such as the City here, is robust and varied when the sound administration of justice has been threatened. *Peat Marwick*, for example, upheld the authority of courts to impose evidentiary sanctions as a remedy for litigation misconduct—there, "acquiring the pivotal expert witness of [the] adversary" and causing the "breach of an attorney-client relationship" and "a cloud

of suspicion over the litigation process." (*Peat Marwick*, *supra*, 200 Cal.App.3d at p. 283.) For this discovery abuse, the trial court ordered that the defendant was prohibited "from controverting plaintiffs' evidence on certain elements of [their] malpractice allegations." (*Id.* at p. 275.) Although no statute expressly authorized the court to impose such a sanction, the Court of Appeal correctly concluded that "a considerable body of authority" had recognized that trial courts' inherent powers ought to be "flexibly applied in response to the many vagaries of the litigation process." (*Id.* at p. 287, citations omitted; see *Le Francois*, *supra*, 35 Cal.4th at p. 1104 [declining to interpret a statute to restrict "a court's ability to sua sponte reconsider its own rulings" because such a law would not be "a reasonable regulation on [the] judicial function[]" of "ensuring the orderly administration of justice"].)

Courts' inherent sanctioning authority includes the authority to issue the "drastic remedy" of terminating a case for litigation misconduct. (*Slesinger*, *supra*, 155 Cal.App.4th at p. 764.) In *Slesinger*, the Court of Appeal affirmed the trial court's imposition of a terminating sanction based on its finding that the plaintiff had engaged in "deliberate and egregious" repeated misconduct to obtain confidential documents outside of discovery.

(*Id.* at p. 768.) When such "deliberate and egregious misconduct . . . renders any sanction short of dismissal inadequate to protect the fairness of the trial, California courts necessarily have the power to preserve their integrity by dismissing the action." (*Id.* at p. 762.) Such a drastic power was necessary, the court explained, "to preserve and protect the integrity of the judicial process" and "restore[] balance to the adversary system when the misconduct of one party has destroyed it." (*Id.* at pp. 756, 761.)

The authority to impose monetary sanctions for discovery abuse is all the more necessary for courts to "control litigation before them" and "[e]nsure the orderly administration of justice." (*Rutherford*, *supra*, 16 Cal.4th at p. 967; see *Padron*, *supra*, 16 Cal.App.5th at pp. 1264–1265.) Misuse of the discovery process—especially when it is "willful," "egregious," and "repeated"—"permeat[es] nearly every single significant issue" in the case and "threaten[s] the integrity of the judicial process." (*Dept. of Forestry, supra,* 18 Cal.App.5th at p. 197.) Monetary sanctions are often necessary for courts to "recompense those who are the victims of misuse of the Discovery Act." (*Townsend v. Super. Ct.* (1998) 61 Cal.App.4th 1431, 1438.)

And as the facts of this case clearly illustrate, monetary sanctions may be the only form of sanctions that are "appropriate to the dereliction and tailored to the harm caused by the withheld discovery." (*Padron*, 16 Cal.App.5th at p. 1262.) By the time the trial court ruled on PwC's sanctions motion, the City had dismissed its claims against PwC after engaging in more than two and a half years of rampant, willful discovery abuse. (8AA4009; 4AA1693.) Consequently, the court was unable to impose an evidentiary, issue, or terminating sanction—none of which would have had any meaningful effect by that point. (See *Peat Marwick*, *supra*, 200 Cal.App.3d at p. 291; *Slesinger*, *supra*, 155 Cal.App.4th at p. 762.) Instead, upon finding that "there ha[d] been a serious abuse of discovery by the City and its counsel," the court was limited to imposing monetary sanctions against the City to compensate PwC for the "substantial number of hours" it was "required to expend . . . because of the [City's] abuse in discovery." (8AA4011.) Monetary sanctions were the only remedy that could "restore[] balance to the adversary system when the misconduct of [the City had] destroyed it." (*Slesinger*, *supra*, 155 Cal.App.4th at p. 761.)

The inherent authority to impose monetary sanctions is particularly important in a case such as this one where repeated, systemic, willful discovery abuse infects and taints the entire proceeding. PwC was forced to spend years—solely because of the City's relentless misconduct—briefing motions, attending hearings, and taking depositions in an effort to unravel the City's web of lies and discovery abuses. As the U.S. Supreme Court has observed in interpreting the scope of federal courts' inherent powers, "requiring a court first to apply [r]ules and statutes containing sanctioning provisions to discrete occurrences before invoking inherent power to address remaining instances of sanctionable conduct would serve only to foster extensive and needless satellite litigation" in cases such as this "in which all of a litigant's conduct is deemed sanctionable." (*Chambers v. NASCO, Inc.* (1991) 501 U.S. 32, 50–51.)

The Court of Appeal majority acknowledged that courts have inherent sanctioning authority. (Op. at p. 59.) It concluded, however, that such inherent authority was limited only "to impos[ing] nonmonetary sanctions." (*Ibid.*) But it offered little in the way of reason or precedent for such a counterintuitive holding. Seizing on inapt authority, the majority maintained that the trial

court lacked the inherent authority to impose monetary sanctions against the City because "courts are prohibited 'from using fee awards to punish misconduct unless the Legislature, or the parties, authorized the court to impose fees as a sanction.'" (Op. at p. 60, quoting *Olmstead v. Arthur J. Gallagher & Co.* (2004) 32 Cal.4th 804, 809.)

But that artificial distinction between monetary and nonmonetary sanctions finds no support in precedent, history, practice, or reason. To the contrary, it ignores the settled principle that there is "no intrinsic limitation" on the authority of courts to remedy all "forms of litigation abuse" and "preserve the integrity of the judicial system." (*Peat Marwick*, *supra*, 200 Cal.App.3d at p. 289.) Yet under the rule adopted by the Court of Appeal majority, courts would be "powerless to remedy [several] forms of litigation abuse"—including the City's years-long pattern of repeated discovery misconduct in this case, which came fully to light only after the City dismissed its claims against PwC and thus could no longer be remedied through a nonmonetary sanction. (*Ibid.*) As Justice Grimes observed, the City's dismissal of its claims against PwC was just the latest gambit in its years-long effort to make "evidence related to its coverup of its participation

in the potential *Jones* class action fraud unavailable." (Dis. Op. at p. 32.)

The majority purported to rely on this Court's decision in *Bauguess v. Paine* (1978) 22 Cal.3d 626 in distinguishing between a court's authority to impose monetary and nonmonetary sanctions. (Op. at p. 61.)[8] But that decision cannot bear the weight the Court of Appeal majority foisted on it. In *Bauguess*, this Court held that the award of *attorney's fees* was not encompassed within courts' inherent sanctioning authority when it was intended "to *punish* misconduct." (*Bauguess, supra*, 22 Cal.3d at p. 638, italics added.) The exercise of such a power, this Court reasoned, may "imperil the independence of the bar and thereby undermine the adversary system" by preventing attorneys from serving as "vigorous advocate[s]" for their clients. (*Ibid.*) And because the

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[8] The majority also cited this Court's decision in *Olmstead v. Arthur J. Gallagher & Co.* (2004) 32 Cal.4th 804, 809. (Op. at p. 61.) But *Olmstead* merely reiterated that, under *Bauguess*, courts were "prohibited . . . from using fee awards to punish misconduct unless the Legislature, or the parties, authorized the court to impose fees as a sanction." (*Olmstead, supra,* 32 Cal.4th at p. 809, citing *Baugess* (1978) 22 Cal.3d 626, 637–638.) The issue in *Olmstead* was not courts' inherent sanctioning authority but instead the proper interpretation of Code of Civil Procedure section 128.5, which the Legislature enacted after *Bauguess* to authorize courts to award sanctions, including attorney's fees, in response to bad-faith litigation tactics. (See *ibid.*)

Legislature "ha[d] provided by statute that awards of attorney's fees may be granted by a court in specific situations," the exercise of such an inherent punitive power would conflict with statutory law. (*Id.* at p. 639.)

Bauguess's rationale and holding do not apply here, nor do they support the Court of Appeal majority's holding that courts lack the inherent authority to impose monetary sanctions to remedy the worst kinds of systemic discovery abuse. The trial court's $2.5 million sanction against the City was not an award of PwC's attorney's fees—which totaled well in excess of the $8,002,412 that PwC incurred as a direct result of the City's serial discovery abuse—and certainly was not a *punitive* award of such fees. Rather, it was intended as a *partial* remedy for the "serious abuse of discovery by the City and its counsel," which forced "PwC . . . to expend a substantial number of hours"—more than 9,800, all told—on a case it should never have had to defend against. (8AA4010-4011.) "Far from being unnecessary," such a sanction was "essential for the court to preserve the integrity of its proceedings." (*Slesinger*, *supra*, 155 Cal.App.4th at p. 761.) By exercising its inherent sanctioning power after the City dismissed its bogus claims against PwC, the trial court helped "restore[]

balance to the adversary system when the misconduct of [the City] ha[d] destroyed it." (*Ibid.*)

The trial court's alternative exercise of its inherent authority to sanction the worst kinds of serial discovery abuse also does not contravene any provision of the California Constitution, "nullify existing legislation[,] or frustrate legitimate legislative policy." (*Ferguson v. Keays* (1971) 4 Cal.3d 649, 654.) In *Bauguess*, this Court recognized that the exercise of an inherent power to award attorney's fees was inconsistent with statutory law because "[t]he Legislature has provided by statute that awards of attorney's fees may be granted by a court in *specific* situations" that did not apply to the facts of that case. (*Bauguess*, *supra*, 22 Cal.3d at p. 639.)

Here, in contrast, no such legislatively-enacted limits exist: The trial court's exercise of its inherent authority to impose monetary sanctions was fully consistent with statutory law. Indeed, as explained above, the Legislature's enactment of section 2023.030—which expressly authorizes courts to "order[] that one engaging in the misuse of the discovery process . . . pay the reasonable expenses, *including attorney's fees*, incurred by anyone as a result of that conduct"—demonstrates that it sought to authorize courts to impose monetary sanctions for discovery

misconduct. (Code Civ. Proc., § 2023.030, subd. (a), italics added.) And even if this Court were to conclude that section 2023.030 does not independently authorize the imposition of monetary sanctions, the statute's "failure to expressly mention" the authority to impose monetary sanctions does not "imply any sort of limitation on the [judiciary's] inherent powers." (*United Auburn*, *supra*, 10 Cal.5th at p. 554.) Instead, "[i]n the absence of an express grant or denial of authority" under California law, courts may exercise that authority as part of their inherent powers necessary to protect against the subversion of the administration of justice. (*Id.* at p. 563.)

"The Legislature . . . plays a robust role in responding to the use, and defining the scope, of [inherent judicial] power." (*United Auburn*, *supra*, 10 Cal.5th at p. 565.) Going forward, the Legislature therefore "remain[s] free to restrict or eliminate" courts' inherent authority to sanction the worst and most dangerous kinds of discovery abuse. (*Ibid.*) But because the Legislature has not enacted any such limitation here, the trial court's sanctions award was consistent with and flowed from its inherent authority to impose sanctions to protect against serial discovery abuse that threatens the sound administration of justice.

III. The Trial Court's Sanctions Award Should Be Affirmed Even Under the Court of Appeal Majority's Flawed Reading of Sections 2023.030 and 2023.010.

Even if this Court were inclined to uphold the Court of Appeal majority's flawed reading of the Discovery Act as "requir[ing] sanctions under section 2023.030 to be authorized by another provision of the Discovery Act" (Op. at p. 47), it should still reverse the Court of Appeal's judgment "remand[ing] for the trial court to enter a new and different order . . . based on discovery provisions authorizing the imposition of sanctions" (*id.* at p. 66). It should do so because the trial court has already made sufficient findings to uphold its sanctions award under these subsequent, discovery-method-specific provisions of the Act. (See *Harlow v. Carleson* (1976) 16 Cal.3d 731, 738–739 ["Our power '. . . to affirm, modify, or direct the entry of a final judgment . . . [is] to be liberally construed to the end that a cause may be disposed of on a single appeal.' Where the result, were we to remand, is foreordained from the record, we should exercise this power to dispose of the case without further proceedings"]; *People v. Flores* (2020) 9 Cal.5th 371, 432 ["[I]t is clear the trial court would not have exercised its discretion to eliminate the firearm enhancements 'in the interest of justice,' had such discretion been available to it at the time of

sentencing. Under these circumstances, a remand is not required"].)

Those findings are detailed at length above. (See *ante* at pp. 30–32.) But to reprise just a few examples, the trial court found extensive misconduct (undisputed by the City on appeal) surrounding PwC's deposition of the City's PMQ witness, including the City's refusal to produce a PMQ witness when first ordered to do so (3RT4834) and, once such a witness was produced, that witness's "refus[al] to produce any documents," his "admi[ssion] . . . that he did not prepare for his deposition," and his failure "to answer questions by instruction of [the City's] counsel" (3RT4835). This falls squarely within the scope of sanctionable conduct under section 2025.450. (See Code Civ. Proc., § 2025.450, subd. (a) [authorizing monetary and other sanctions where "a person designated by an organization that is a party under section 2025.230 . . . fails to appear for examination, or to proceed with it, or to produce for inspection any document"].)

Similarly, the trial court found (again without contradiction by the City on appeal) that the City improperly claimed privilege over more than 19,000 documents that were responsive to PwC's first request for production (3RT4833; see 4AA1624–1633), failed

to produce the critical *Jones v. PwC* draft complaint even after being repeatedly ordered by the court to do so (3RT4833), and provided a false response to PwC's third set of requests for production (3RT4833–4834; see 4AA1673–1677.) This conduct is also expressly sanctionable under section 2031.320. (See Code Civ. Proc., § 2031.320, subd. (a) [authorizing monetary and other sanctions where a party "fails to permit the inspection, copying, testing, or sampling" of documents, among other things].)

Justice Grimes acknowledged as much in her dissent. As she explained, "[t]here is no ambiguity about what conduct the court found sanctionable." (Dis. Op. at p. 34.) On the contrary, "[t]he trial court identified the two general categories of discovery methods that were misused: withholding documents . . . and asserting false claims of privilege to prevent document production and depositions[.]" (Dis. Op. at p. 34.) And "[t]here is no question that monetary sanctions are authorized for those kinds of discovery violations." (*Ibid.*)

Moreover, "[t]he court identified the number of hours and amount of fees PwC claimed in respect of each category." (Dis. Op. at p. 34.) In particular, the trial court expressly found that, over the more than two years between when PwC first moved to compel

production of the *Jones v. PwC* complaint and when that complaint was finally produced, "PwC incurred fees in the amount of $2,801,946.49 for counsel's expenditure of 3,468.38 hours" trying to obtain the withheld *Jones* complaint, "fees in the amount of $4,259,529.14 for 5,000.2 hours" attributable to "the City's attempts to cover up its knowledge [of] and participation in the potential *Jones* fraud," and "$1,149,907.90 for 1,336.40 hours expended by counsel in connection with" the sanctions motion. (84AA4010–11.)

The Court of Appeal majority did not dispute any of this. As a result, the Court should reverse the Court of Appeal's judgment and remand with instructions to reinstate, in full, the trial court's well-reasoned and well-supported sanctions award, even if this Court were to conclude that the Court of Appeal majority correctly construed sections 2023.030 and 2023.010 of the Discovery Act.

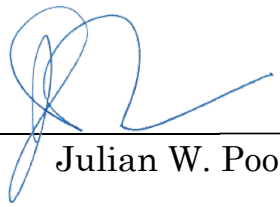
CONCLUSION

The trial court acted well within its authority under both the Civil Discovery Act and the California Constitution when it imposed sanctions against the City for its systemic pattern of repeated discovery abuse, fraud, and criminal misconduct that wasted millions of dollars and nearly a decade of the parties' and

the court's time. Even if the trial court did not cite and rely on all the statutory provisions it could have, its award should still be upheld because the record leaves no doubt that PwC incurred at least $2.5 million in fees and costs uncovering the City's fraud—much of it at the trial court's direction. The Court should therefore reverse the judgment below and remand with instructions to reinstate, in full, the trial court's sanctions award.

Dated: April 10, 2023 Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP



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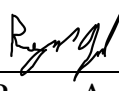

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I, Suzanne Wilson, declare as follows:

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PRICEWATERHOUSECOOPERS LLP'S OPENING BRIEF ON THE MERITS

to the persons named below at the address shown, in the manner described below:

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Suzanne Wilson

STATUTORY ADDENDUM

Cal. Code Civ. Proc., § 2023.010

2023.010 Misuses of the discovery process include, but are not limited to, the following:

(a) Persisting, over objection and without substantial justification, in an attempt to obtain information or materials that are outside the scope of permissible discovery.

(b) Using a discovery method in a manner that does not comply with its specified procedures.

(c) Employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.

(d) Failing to respond or to submit to an authorized method of discovery.

(e) Making, without substantial justification, an unmeritorious objection to discovery.

(f) Making an evasive response to discovery.

(g) Disobeying a court order to provide discovery.

(h) Making or opposing, unsuccessfully and without substantial justification, a motion to compel or to limit discovery.

(i) Failing to confer in person, by telephone, or by letter with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that an attempt at informal resolution has been made.

Cal. Code Civ. Proc., § 2023.030

2023.030 To the extent authorized by the chapter governing any particular discovery method or any other provision of this title, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process:

(a) The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. The court may also impose this sanction on one unsuccessfully asserting that another has engaged in the misuse of the discovery process, or on any attorney who advised that assertion, or on both. If a monetary sanction is authorized by any provision of this title, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(b) The court may impose an issue sanction ordering that designated facts shall be taken as established in the action in accordance with the claim of the party adversely affected by the misuse of the discovery process. The court may also impose an issue sanction by an order prohibiting any party engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses.

(c) The court may impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in evidence.

(d) The court may impose a terminating sanction by one of the following orders:

(1) An order striking out the pleadings or parts of the pleadings of any party engaging in the misuse of the discovery process.

(2) An order staying further proceedings by that party until an order for discovery is obeyed.

(3) An order dismissing the action, or any part of the action, of that party.

(4) An order rendering a judgment by default against that party.

(e) The court may impose a contempt sanction by an order treating the misuse of the discovery process as a contempt of court.

(f)(1) Notwithstanding subdivision (a), or any other section of this title, absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S277211**
Lower Court Case Number: **B310118**

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

4/10/2023

Date

/s/Julian Poon

Signature

Poon, Julian (219843)

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