Case No. S277211

IN THE SUPREME COURT OF THE STATE 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 for Los Angeles County
Case No. BC574690 • The Honorable Elihu M. Berle, Presiding

CITY OF LOS ANGELES' ANSWER BRIEF ON THE MERITS

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ISSUE PRESENTED FOR REVIEW

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

INTRODUCTION

PricewaterhouseCoopers LLP ("PwC") has presented an Opening Brief on the Merits ("OBM") portraying the Court of Appeal's decision as a major, unprecedented shift in California law. It was no such thing. The Court of Appeal applied the plain language of the Civil Discovery Act in rejecting PwC's argument that Code of Civil Procedure sections 2023.010 and 2023.030[1] authorize monetary discovery sanctions, and reaffirmed established case law holding that such sanctions cannot be imposed pursuant to inherent authority; rather, monetary sanctions can only be imposed as authorized by the Civil Discovery Act's method-specific provisions.

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise specified.

Nor did the Court of Appeal extinguish PwC's ability to properly seek monetary sanctions again. It remanded the case so that PwC could move again for monetary sanctions—this time under the proper method-specific provisions.

In addition to its exaggerated portrayal of the Court of Appeal's decision, the Opening Brief misreads the Civil Discovery Act, grafting its prefatory language onto the Act's method-specific provisions, contrary to what the Legislature plainly intended, and rendering neighboring sanctions provisions superfluous.

Equally flawed is the Opening Brief's characterization of the legislative history: the Reporter's Notes for the current version of Sections 2023.010 and 2023.030, for example, are fatal to PwC's interpretation. They confirm that Section 2023.010 is merely "illustrative," and Section 2023.030 is "mainly definitional in function." (Reporter's Note to Section 2023, subds. (a), (b).) And the reporter to the joint commission charged with drafting the Civil Discovery Act later explained that Section 2023.010 is a "statutory preamble or policy statement," while Section 2023.030 is "only a lexicon." (2 Hogan & Weber, *Cal. Civil Discovery* (2 ed. 2005) Sanctions, §§ 15.1, 15.2.)

The practical ramifications of any decision upsetting the Legislature's intent, moreover, would be to spawn uncertainty for parties by "plung[ing] the trial and appellate courts back into a sea of discovery disputes when their dockets are already at flood stage." (*Beverly Hosp. v. Super. Ct.* (1993) 19 Cal.App.4th 1289, 1296.)

This Court has repeatedly deferred to the Legislature's intent, refraining from rewriting statutory law. (*Equilon Enters. v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 59; *Cal. Teachers Ass'n v. Governing Bd. of Rialto Unified Sch. Dist.* (1997) 14 Cal.4th 627, 632.) Doing so here means affirming the Court of Appeal and validating its determination that—as framed by the Legislature—a trial court's authority to impose monetary sanctions for misuse of the discovery process is limited to the circumstances expressly delineated in the Civil Discovery Act's method-specific provisions.

BACKGROUND

I. The Relevant Lawsuits

A. The City's Action Against PwC

In 2010, the City of Los Angeles (the "City") retained PwC to modernize its Department of Water and Power's ("LADWP")

Customer Care & Billing system ("CC&B System"). (6 AA 3091-3093.) After more than two years of development, and after the City paid PwC over $70 million under what was commonly called the CISCON contract, the new CC&B System "went live." (6 AA 3141-3142, 3147-3149.) The rollout was a disaster; it resulted in an overwhelming number of delayed, inconsistent, and inaccurate customer bills. (6 AA 3094, 3147.)

The City filed this lawsuit against PwC, alleging that it had grossly misrepresented or concealed important facts, including about its technical qualifications to even participate in the competitive bidding process for the CISCON contract. (6 AA 3091-3093.) Had it known those facts, the City alleged, PwC would have been disqualified from bidding on the CISCON contract in the first place. (6 AA 3093.) The City also alleged that PwC misrepresented its qualifications to fraudulently induce the City to enter the CISCON contract. (6 AA 3091-3093.) There was evidence that, in violation of Georgia and California criminal law, PwC personnel impersonated a government official in Georgia during a phone call with LADWP to provide LADWP a wholly fictitious reference. (6 AA 3109-3117.)

Paul Kiesel and Paul Paradis initially represented the City as Special Counsel ("former Special Counsel") in its action against PwC. (6 AA 3220.) Following motion practice, written discovery, and depositions, PwC moved for summary adjudication. (1 AA 96-110.) PwC contended that its misrepresentations were nonactionable "puffery," that it was unreasonable for the City to rely on PwC's representations or subsequent oral statements, and that PwC's false statements and omissions were immaterial. (1 AA 101-108.) The trial court disagreed. PwC's motion for summary adjudication was denied because triable issues of fact existed as to PwC's fraud in inducing the City to obtain the CISCON contract. (*Ibid.*)

B. The Billing Class Actions Against The City

After the CC&B System's disastrous rollout, ratepayers filed several class action lawsuits against the City and LADWP in Los Angeles Superior Court (collectively, the "Billing Class Actions").[2] The Billing Class Actions alleged that the CC&B

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[2] *Jones v. City of Los Angeles*, Los Angeles Superior Court Case No. BC577267; *Kimhi v. City of Los Angeles*, Los Angeles Superior Court Case No. BC536272; *Bransford v. City of Los Angeles*, Los Angeles Superior Court Case No. BC565618; *Fontaine v. City of Los Angeles*, Los Angeles Superior Court Case

System PwC implemented resulted in delayed, inconsistent, and inaccurate bills. The Billing Class Actions were deemed related to this case. (8 AA 4037.)

Most of the Billing Class Actions were resolved via settlement (the "*Jones* Settlement") in *Jones v. City of Los Angeles* ("*Jones*"). (5 AA 2340-2344; 7 AA 3278-3302.) PwC was not a party to any of the Billing Class Actions, including *Jones*. In the *Jones* Settlement, the City acknowledged that, among other things, it was committed to return 100% of any overpayments and correcting all the inaccurate charges. (5 AA 2340-2344.)

II. PwC's Discovery Motions And Requests For Sanctions

During the pendency of the City's case, PwC sought monetary discovery sanctions against the City on two occasions. (6 AA 3227-3232, 3234-3237.) PwC first sought monetary sanctions in a motion filed in April 2018. (6 AA 3227-3232.) Though the parties had engaged in earlier discovery disputes,

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No. BC571664; *Morski v. Los Angeles Department of Water & Power*, Los Angeles Superior Court Case No. BC 568722; and *Macias v. Los Angeles Department of Water and Power*, Los Angeles Superior Court Case No. BC594049.

PwC did not seek monetary sanctions until its April 2018 motion because "[it] d[id]n't think it's appropriate to do" based on the City's previous conduct. (5 AA 2530; 2 RT 303.) The trial court granted PwC's first monetary sanctions request, but reduced the "excessive" sanctions PwC sought from $46,000 to $7,500. (5 AA 2543, 2546; 2 RT 316, 319.)

PwC made its second monetary discovery sanctions request against the City in November 2018. (6 AA 3234-3237.) The trial court denied that request for monetary sanctions without prejudice. (7 AA 3260-3276.)

Despite PwC's later claim, the trial court did not authorize or instruct PwC to file a motion for discovery sanctions, monetary or otherwise, at a later date. (5 AA 2583-2620; 2 RT 601-634; 2 AA 949.) PwC's misrepresentation in this regard is rooted in the trial court's ruling on a set of three discovery motions filed by PwC and another defendant: (1) PwC's motion to compel further responses from a third-party known as TMG; (2) individual defendant LaRocque's motion to compel further responses from TMG; and (3) LaRocque's motion to compel the City to produce an employee for deposition. (6 AA 3239-3241, 3243-3253, 3255-3257; 5 AA 2588, 2600, 2605, 2608; 2 RT 603, 615, 620, 623.) Only

defendant LaRocque—not PwC—sought sanctions against the City in connection with his motion. (6 AA 3243-3253, 3255-3257; 5 AA 2616, 2618-2619; 2 RT 631, 633-634.) The trial court granted the motions concerning TMG, but denied defendant LaRocque's requests for sanctions against TMG and the City, without prejudice. (5 AA 2616, 2618-2619; 2 RT 631, 633-634.) The trial court's order did not relate in any way to PwC seeking discovery sanctions against the City. (5 AA 2583-2620; 2 RT 601-634; 2 AA 949.)

III. PwC's Discovery Regarding The *Jones* Case

After the trial court denied PwC's motion for summary adjudication, PwC sharpened its focus on alleged misconduct in *Jones*.[3] During this discovery, it was revealed that the City's outside Special Counsel at the time (Kiesel and Paradis) had a continuing, but undisclosed, relationship with Antwon Jones, the

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[3] PwC claimed that *Jones* and the *Jones* Settlement were relevant to damages in the City's case against it. (2 AA 955.) The City argued, *inter alia*, that this relevance assertion was unfounded because the City did not simply rely upon the *Jones* Settlement's terms to support its damages claims. (6 AA 3032.) After all, PwC was not a party in *Jones* or to the *Jones* Settlement agreement (*ibid.*), and the order approving the *Jones* Settlement expressly forbids the City from using its terms as evidence to prove any claim in a separate case. (7 AA 3286.)

Jones plaintiff, and that they were directly involved in the filing of the *Jones* case against their own client—the City. (1 AA 92.) The City Attorney commenced an ethics inquiry, at the trial court's request, into the actions of any attorney acting under his office's authority with respect to the *Jones* case. (2 AA 551, 577; 2 RT 1525.) Soon thereafter, former Special Counsel withdrew as counsel for the City and were replaced with the firm known at the time as Browne George Ross LLP. (2 AA 551.)

For the sake of transparency, and to meet the issues surrounding former Special Counsel head-on, the City and its new outside counsel prioritized providing information that PwC claimed it needed in discovery. The City provided PwC with extraordinary access to the City's inside and outside attorneys, over one-hundred-thousand pages of documents, and limited disclosure of otherwise privileged information. (2 AA 552.) Within days, PwC deposed Antwon Jones, Kiesel, Thomas Peters (then Chief of the Civil Litigation Branch of the Office of the City Attorney), James Clark (then Chief Deputy City Attorney), and Jack Landskroner (former class counsel in *Jones*, who asserted his privilege against self-incrimination pursuant to the 5th Amendment). (2 AA 552, 581; 3 RT 2410.)

Rather than focusing on the City's fraud claims that had survived PwC's motion for summary adjudication, PwC went all in on discovery relating to *Jones*—taking a total of 23 depositions spanning 34 deposition days. (2 AA 552.) PwC obtained additional substantive testimony from, among others: the City's outside counsel in the Billing Class Actions; the then-Los Angeles City Attorney; the then-LADWP General Counsel and the then-LADWP Assistant General Counsel; two deputy city attorneys assigned to LADWP; former Liaison Counsel for the *Jones* class; the former LADWP General Manager; and several active and retired LADWP employees. (*Ibid.*)

Moreover, the City and its counsel worked around the clock to collect, review, and produce documents in 14 document productions—while also preparing for and defending depositions, drafting responses to discovery, and cooperating with the U.S. Department of Justice (which was conducting its own investigation into *Jones*), the newly appointed Special Master, and its own ethics expert Ellen Pansky. (*Ibid.*) The City ultimately produced over 17,000 documents, comprising over 123,000 pages, related to *Jones*. (*Ibid.*) This included numerous attorney-client and work-product privileged documents produced

pursuant to an agreement that the limited disclosure would not be more broadly construed as a waiver. (*Ibid.*)

IV. PwC's Representations About Seeking Sanctions Related To The *Jones* Case

On March 19, 2019, in the midst of this ongoing discovery, PwC announced in open court that it intended to file a motion for terminating sanctions based on the City's alleged conduct in *Jones*—again, a lawsuit to which PwC was never a party—as well as former Special Counsel's alleged misconduct during the course of discovery in this case. (6 AA 2857; 3 RT 2409.) According to PwC, by March 2019, it already had "a large story to tell that is backed up by documents produced during discovery, transcripts and sheer logic." (6 AA 2857-2858; 3 RT 2409-2410.) PwC further represented to the trial court that it aimed to file the motion "on or about July 15 of [2019]." (6 AA 2858; 3 RT 2410.) PwC, however, did not meet that deadline.

V. The City Dismisses The Case With Prejudice, And PwC Files Its Motion For Monetary Discovery Sanctions

On September 26, 2019, the City filed a voluntary Request for Dismissal of its Complaint, with prejudice. (7 AA 3304-3316.) The clerk entered the dismissal on October 2, 2019. (*Ibid.*) At

that time, PwC still had not filed its threatened motion for discovery sanctions.

On June 29, 2020, PwC finally filed a motion for monetary discovery sanctions ("Sanctions Motion") under Code of Civil Procedure sections 2023.010 ("Section 2023.010") and 2023.030 ("Section 2023.030").[4] (2 AA 939-942.) PwC argued that the City engaged in misuses of the discovery process under Section 2023.010. (2 AA 939-942, 957-958.) PwC further argued that the trial court had authority to award monetary sanctions under Section 2023.030 and its inherent power. (2 AA 939-942, 951.) PwC did not rely on any additional sections of the Civil Discovery Act in support of its Sanctions Motion. (See 2 AA 939-942.)

PwC sought to recover, at minimum, "all of [its] discovery costs from 2017 to March 2019" related to a draft complaint known as the "*Jones v. PwC* complaint." (2 AA 978; see also 2 AA 960-961.) This included sanctions relating to conduct that was the basis of previous motions to compel for which PwC declined to

[4] PwC's Sanctions Motion was not filed until nine months after the City filed a voluntary Request for Dismissal of its Complaint in this action, with prejudice. (7 AA 3304-3316; 2 AA 939-942.)

seek sanctions. (2 AA 958, 961-963, 966, 969-970; 4 AA 1626-1627, 1629-1630, 1633-1634, 1637-1638, 1639-1640; 5 AA 2364-2365, 2494, 2530; 2 RT 26; 7 AA 3449.)

PwC argued it was entitled to these sums because, among other things, its "discovery and motion practice" costs were "immense," equaling "multiple millions of dollars." (2 AA 960-961.) The attorney-time records that PwC submitted in support of the Sanctions Motion did not separate the amount of attorneys' fees based on the City's specific misconduct. Rather, the fees requested in the Sanctions Motion were divided into three broad categories totaling "at least $8,002,412" under Section 2023.030 for alleged discovery misuse and abuse. (2 AA 942; 4 RT 4830, 4825.) First, PwC sought $2,801,946.49 in fees as discovery sanctions allegedly related to its efforts to compel the production of "the *Jones v. PwC* complaint" and information surrounding the drafting of that complaint. (8 AA 3768-3769, 3883.) Second, PwC sought $4,259,529.14 in fees as sanctions relating to alleged discovery abuses to "cover up [the City's] knowledge and participation in the potential *Jones* fraud." (2 AA 1014; 3 AA 1242; 4 RT 4832.) And third, PwC sought $1,149,907.90 in fees in connection with merely preparing and filing the Sanctions Motion

itself. (8 AA 3769, 3902.) On top of that, the Sanctions Motion sought "up to an additional amount of $1,000,000" due to the egregious alleged nature of the City's discovery abuse. (2 AA 942; 4 RT 4830, 4825.)

VI. The Trial Court Awards PwC Monetary Discovery Sanctions

The trial court heard PwC's Sanctions Motion on October 6, 2020—just over a year after the City voluntarily dismissed the case with prejudice. (4 RT 4803.) Without citing or relying on any method-specific provision of the Civil Discovery Act—including those specifically mentioning sanctions or monetary sanctions—the trial court awarded monetary sanctions in favor of PwC and against the City in the amount of $2,500,000. (8 AA 4008-4012; 4 RT 4839.)

The trial court's order ("Sanctions Order") did not allocate any portion of the $2,500,000 to different categories of misconduct. (8 AA 4008-4012.) The trial court also did not explain what the $2,500,000 included or excluded from the more than $9,000,000 that PwC sought in the Sanctions Motion. (See 8 AA 4008-4012; 4 RT 4839.) Nor did the trial court decide whether monetary discovery sanctions could be awarded under

Sections 2023.010 and 2023.030 without relying on or considering the method-specific provisions of the Civil Discovery Act. (See *ibid.*) Instead, the trial court stated that its decision was "[b]ased upon consideration of all the evidence and the totality of the circumstances." (4 RT 4839; 8 AA 4008-4012.)

VII. The Court of Appeal Reverses The Trial Court's Sanctions Order

On October 20, 2022, the Court of Appeal reversed the Sanctions Order, concluding that "the award of monetary sanctions was not authorized by the statutes cited." (Opinion ["Op."] at 2.) "PwC brought its motion for monetary sanctions under sections 2023.010 and 2023.030 of the Discovery Act." (*Id.* at p. 39.) But "[t]he plain language of the [Civil Discovery Act's] statutory scheme does not provide for monetary sanctions to be imposed based solely on the definitional provisions of sections 2023.010 or 2023.030, whether construed separately or together." (*Id.* at p. 2; see also *id.* at p. 39 ["We conclude that these definitional statutes, standing alone or read together, do not authorize the court to impose sanctions in a particular case."].) "Section 2023.010 describes conduct that is a misuse of the discovery process, but does not authorize the imposition of

sanctions," while "monetary discovery sanctions may be imposed under section 2023.030 only to the extent authorized by another provision of the Discovery Act." (*Id.* at p. 2.)

The Court of Appeal did not foreclose PwC's ability to seek monetary sanctions against the City for alleged discovery abuses in this case. In fact, the Court of Appeal acknowledged that "[t]he trial court was authorized by other provisions of the Discovery Act . . . to impose some amount of monetary sanctions in connection with rulings in favor of the defendant on discovery motions during the litigation." (*Ibid.*) It could not, however, "evaluate on this record whether the sanctions awarded may have been an appropriate exercise of the trial court's discretion under other discovery provisions." (*Id.* at pp. 2-3.) This was "because [PwC] presented its costs in the [Sanctions Motion] based on the general categories of misconduct described in section 2023.010, rather than on [PwC's] reasonable expenses incurred as a result of sanctionable conduct under discovery provisions other than sections 2023.010 and 2023.030." (*Ibid.*) The parties also did not "squarely raise[ ] in the trial court" the issue of "the court's authority to award sanctions under sections 2023.010 and 2023.030." (*Id.* at p. 3.) The Court of

Appeal, therefore, decided that the Sanctions Order "must be reversed" and "remand[ed] for a new determination on the issue of discovery sanctions." (*Ibid.*) On remand, PwC must be allowed "to present the issue of sanctions to the trial court for determination under the correct law." (*Ibid.*)

Justice Grimes dissented from the majority's conclusions that Sections 2023.010 and 2023.030 "'do not authorize the court to impose sanctions in a particular case'" and that the case should be remanded to the trial court. (Dis. Op. at pp. 1-2 [quoting Op. at p. 39].)

ARGUMENT

The Court of Appeal's decision should be affirmed. A court has no authority to impose monetary sanctions for discovery misuse under Sections 2023.010 and 2023.030, or pursuant to a trial court's inherent authority. Rather, the statute's plain language and legislative history confirm that monetary discovery sanctions are available only where authorized by other, method-specific provisions of the Civil Discovery Act. Reversing the Court of Appeal—despite the Civil Discovery Act's plain language, history, and statutory context—would create

uncertainty and upset the Legislature's intent of decreasing discovery disputes and motion practice.

I. A Court's Authority To Impose Monetary Discovery Sanctions Is Limited To Circumstances Delineated In The Civil Discovery Act's Method-Specific Provisions

A. California's Rules Of Statutory Interpretation

The Court's process of interpreting a statute is well established. "'[O]ur fundamental task here is to determine the Legislature's intent so as to effectuate the law's purpose.'" (*Skidgel v. Cal. Unemployment Ins. Appeals Bd.* (2021) 12 Cal.5th 1, 14 [quoting *People v. Murphy* (2001) 25 Cal.4th 136, 142].)

The Court begins "by examining the statutory language, giving it a plain and commonsense meaning. [It] do[es] not, however, consider the statutory language in isolation; rather, [it] look[s] to the entire substance of the statutes in order to determine their scope and purposes." (*Id.* at p. 14 [internal citations and quotations omitted].) The Court "construe[s] the words in question in context" and "must harmonize the various parts of the enactments by considering them in the context of the statutory [framework] as a whole." (*Ibid.* [internal citations and

quotations omitted]; see also *Cal. Mfrs. Ass'n v. Pub. Utilities Comm'n* (1979) 24 Cal.3d 836, 844.)

"[W]e give significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose." (*Smith v. Super. Ct.* (2006) 39 Cal.4th 77, 83 [internal quotations omitted].) "Interpretive constructions which render some words surplusage, defy common sense, or lead to mischief or absurdity, are to be avoided." (*Cal. Mfrs. Ass'n*, *supra*, 24 Cal.3d at p. 844 [collecting cases].) "'It is well settled, also, that a general provision is controlled by one that is special, the latter being treated as an exception to the former. A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.'" (*Muller v. Fresno Cmty. Hosp. & Med. Ctr.* (2009) 172 Cal.App.4th 887, 906 [quoting *Rose v. State* (1942) 19 Cal.2d 713, 723-724].)

"'If the statutory language is unambiguous, then its plain meaning controls.'" (*Skidgel*, *supra*, 12 Cal.5th at p. 14 [quoting *Cole*, *supra*, 38 Cal.4th at p. 975]; see also *Madrigal v. Hyundai Motor Am.* (2023) 90 Cal.App.5th 385, 407 ["courts will not

interpret away clear language in favor of an ambiguity that does not exist"] [internal quotations omitted].) "This court has no power to rewrite the statute so as to make it conform to a presumed intention which is not expressed. . . . If the statutory language contains no ambiguity, the Legislature is presumed to have meant what it said, and the plain meaning of the statute governs." (*Stephens v. Cty. of Tulare* (2006) 38 Cal.4th 793, 801-802 [internal quotations omitted]; see also *Cal. Fed. Sav. & Loan Ass'n v. City of Los Angeles* (1995) 11 Cal.4th 342, 349.)

"'If, however, the language supports more than one reasonable construction, then we may look to extrinsic aids, including the ostensible objects to be achieved and the legislative history.'" (*Skidgel*, *supra*, 12 Cal. 5th at p. 14 [quoting *Cole*, *supra*, 38 Cal.4th at p. 975].)

As discussed below, under these rules of statutory interpretation, the statutory provisions at issue do not authorize, by themselves, imposition of monetary discovery sanctions.

B. The Plain Language Of The Civil Discovery Act Confirms The Court Of Appeal's Decision

Sections 2023.010 and 2023.030 of the Civil Discovery Act are unambiguous: they do not authorize courts to impose

monetary sanctions for discovery misconduct. Instead, they direct the reader to apply those sections containing method-specific provisions.

The Civil Discovery Act, which governs pretrial discovery in a civil action in California, sets forth six approved methods of obtaining discovery: (a) depositions, (b) interrogatories, (c) inspections of documents, things, and places, (d) physical and mental examinations, (e) requests for admission, and (f) exchanges of expert trial witness information. (*Catholic Mutual Relief Soc'y v. Super. Ct.* (2007) 42 Cal.4th 358, 366 [citing Code Civ. Proc., § 2016.010, et seq.]; Code Civ. Proc., § 2019.010.) Different chapters of the Civil Discovery Act govern each of these methods. (Code Civ. Proc., §§ 2025.010-2034.730.) For example, Chapter 13 governs written interrogatories (*id.*, §§ 2030.010, et seq.), and Chapter 15 physical and mental examinations (*id.*, §§ 2032.010, et seq.).

"The statutes governing each discovery method authorize particular types of sanctions in particular circumstances." (*New Albertsons, Inc. v. Super. Ct.* (2008) 168 Cal.App.4th 1403, 1423; see also *London v. Dri-Honing Corp.* (2004) 117 Cal.App.4th 999, 1006 ["Given the unique parameters of each discovery method,

discovery sanctions are available under different circumstances and for different types of abuses in each method's statute."].) For example, Chapter 13 mandates that trial courts shall impose monetary sanctions, absent substantial justification, against a party "who unsuccessfully makes or opposes a motion to compel a response to interrogatories" (Code Civ. Proc., § 2030.290, subd. (c)) or "who unsuccessfully makes or opposes a motion for a protective order under [Section 2030.090]" (*id.*, § 2030.090, subd. (d)). And Chapter 15 authorizes trial courts to impose monetary sanctions, absent substantial justification, against a party "who unsuccessfully makes or opposes a motion to compel compliance with a demand for a physical examination." (*Id.*, § 2032.250, subd. (b).)

Sections 2023.010 and 2023.030 are not part of any method-specific chapter; they are found in Chapter 7, "Sanctions." As the first section in Chapter 7, Section 2023.010 lists nine examples of "[m]isuses of the discovery process." (*Id.*, § 2023.010.) Section 2023.010 does not contain the sanctions-related language found in the Civil Discovery Act's other provisions specific to discovery methods, *i.e.*, the "court shall impose a monetary sanction under Chapter 7 (commencing with

Section 2023.010) against any party, person, or attorney who . . . ." (E.g., *id.*, §§ 2030.090, subd. (d), 2031.310, subd. (h), 2031.320, subd. (b).) In other words, Section 2023.010 merely lists types of discovery misuse. (2 Hogan & Weber, *Cal. Civil Discovery* (2 ed. 2005) Sanctions, § 15.1 ["statutory preamble or policy statement identifying generally the classes of undesirable conduct"].) Nothing in Section 2023.010 authorizes, mandates, or empowers courts with any authority to impose sanctions, including monetary sanctions, for discovery misuse. (See Code Civ. Proc., § 2023.010.)

Meanwhile, Section 2023.030 describes the types of sanctions that are available when authorized by another provision of the Civil Discovery Act. (*Id.*, § 2023.030; see also *London*, *supra*, 117 Cal.App.4th at p. 1006.) Section 2023.030 begins with the following clause that limits the rest of the statute: "*To 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 conduct that is a misuse of the discovery process." (Code Civ. Proc., § 2023.030 [emphasis added].) Section 2023.030 then describes the types of sanctions available under the Civil

Discovery Act, including "monetary sanction," "issue sanction," "evidence sanction," "terminating sanction," and "contempt sanction." (*Id.*, § 2023.030, subds. (a)-(e); see also *Moofly Prods., LLC v. Favila* (2020) 46 Cal.App.5th 1, 10; *New Albertsons*, *supra*, 168 Cal.App.4th at p. 1422.) "'This means that the statutes governing the particular discovery methods limit the permissible sanctions to those sanctions provided under the applicable governing statutes.'" (*Moofly Prods.*, *supra*, 46 Cal.App.5th at pp. 10-11 [quoting *New Albertsons*, *supra*, 168 Cal.App.4th at p. 1422].)

Based on its plain language, Section 2023.030 does not authorize any sanctions, including monetary sanctions; instead, the sanctions language in the Civil Discovery Act's method-specific provisions authorize sanctions described in Section 2023.030. (See Code Civ. Proc., § 2023.030.)

To read Sections 2023.010 and 2023.030 as authorizing monetary discovery sanctions on their own would make superfluous not only Section 2023.030's language requiring authorization by another section, but also the sanctions provisions of those chapters governing the specific discovery methods. (*Cal. Mfrs. Ass'n*, *supra*, 24 Cal.3d at p. 844

["Interpretive constructions which render some words surplusage . . . are to be avoided."].) Trial courts would not need to consult or comply with the sanctions-related limitations and requirements that the Legislature included in the method-specific provisions. Instead, parties and trial courts could cite and rely on only Sections 2023.010 and 2023.030 to impose monetary sanctions for discovery abuse without regard to the specific requirements set forth in the method-specific provisions. Such an interpretation would essentially circumvent the Legislature's decision to make the "statutes governing each discovery method authorize particular types of sanctions in particular circumstance." (*New Albertsons*, *supra,* 168 Cal.App.4th at p. 1423; see also *Moofly Prods.*, *supra*, 46 Cal.App.5th at pp. 10-11.)

Reversing the Court of Appeal would also reverse the "'well settled'" understanding that "'[a] specific provision relating to a particular subject will govern in respect to that subject, as against a general provision . . . .'" (*Muller*, *supra*, 172 Cal.App.4th at p. 906 [quoting *Rose*, *supra*, 19 Cal.2d at pp. 723-724] ["Thus, we must look to section 2034.300, subdivision (b) and not the general provisions providing for sanctions for 'conduct that is a misuse of the discovery process' found in Code of Civil

Procedure section 2023.030."].) Here, Sections 2023.010 and 2023.030—found in the general "Sanctions" chapter of the Civil Discovery Act—are "controlled" by the narrower method-specific provisions. (*Ibid.*) The sanctions provisions in the Civil Discovery Act's method-specific provisions "govern in respect to that subject [of sanctions], as against a general provision" like Section 2023.010 or Section 2023.030. (*Ibid.*)

Because the Civil Discovery Act is unambiguous, "the Legislature is presumed to have meant what it said, and the plain meaning of the language governs." (*Madrigal*, *supra*, 90 Cal.App.5th at p. 407.)

C. The Civil Discovery Act's Legislative History Further Bolsters The Court Of Appeal's Decision

Even if there were some ambiguity in Sections 2023.010 and 2023.030, the Court of Appeal should still be affirmed. "'If . . . the language supports more than one reasonable construction, then we may look to extrinsic aids, including the ostensible objects to be achieved and the legislative history.'" (*Skidgel*, *supra*, 12 Cal.5th at p. 14 [quoting *Cole*, *supra*, 38 Cal.4th at p. 975]; see also *Cal. Mfrs. Ass'n*, *supra*, 24 Cal.3d at p. 844.) The Court can "examine the legislative history and

statutory context of the act under scrutiny." (*Sand v. Super. Ct.* (1983) 34 Cal.3d 567, 570 [collecting cases].)

In this case, the Reporter's Notes and other extrinsic aids bolster the Court of Appeal's decision. The Reporter's Notes for a statute are "entitled to great weight in construing the statute and in determining the intent of the Legislature." (*London*, *supra*, 117 Cal.App.4th at p. 1008 fn. 2; *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973, 980; see also *Schreiber v. Estate of Kiser* (1999) 22 Cal.4th 31, 35-39 [relying on Reporter's Notes to interpret Civil Discovery Act].) Professor James E. Hogan, who was the reporter to the joint commission charged with drafting the Civil Discovery Act, wrote the statute's Reporter's Notes. (*Schreiber*, *supra*, 22 Cal.4th at p. 35; *London*, *supra*, 117 Cal.App.4th at pp. 1007-1008; see also 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 fn. 2, 402 fn. 9.) Professor Hogan and the Reporter's Notes confirm that Section 2023.010 and 2023.030 are illustrative and definitional, and that they do not independently authorize trial courts to impose monetary discovery sanctions.

The Reporter's Note for what is now Section 2023.010 explains that this provision was "arguabl[y] . . . unnecessary" because of "the detailed regulations of the discovery process in the various sections governing the individual methods of discovery." (Reporter's Note to Section 2023, subd. (a).)[5] As the reporter to the joint commission charged with drafting the Civil Discovery Act later wrote: This is "essentially a statutory preamble or policy statement identifying generally the classes of undesirable conduct that prompted the 1986 revision of California's civil discovery system." (2 Hogan & Weber, *supra*, § 15.1; see also Op. at p. 45.) Nevertheless, the commission included Section 2023.010 to be "illustrative," "list[ing] in a general way the major categories of actions that it regards as an abuse." (Reporter's Note to Section 2023, subd. (a); see also 2 Hogan & Weber, *supra*, § 15.1 ["[T]his catalog of the nine types of discovery misuse ultimately adds nothing substantive to the Civil Discovery Act."].) In no way does Section 2023.010 grant

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[5] "Code of Civil Procedure former section 2023 was repealed effective July 1, 2005, and reenacted without substantive changes as sections 2023.010, 2023.020, 2023.030, and 2023.040." (*Muller*, *supra*, 172 Cal.App.4th at p. 905 fn. 23.) Former Section 2023, subdivision (a) is now Section 2023.010; and former Section 2023, subdivision (b) is now Section 2023.030.

trial courts any authority to impose sanctions, including monetary sanctions.

Section 2023.030 is a "Definition Provision." (2 Hogan & Weber, *Cal. Civil Discovery* (2 ed. 2005) Sanctions, § 15.2 [emphasis omitted].) The Reporter's Note for what is now Section 2023.030 specifically describes the statute as "mainly definitional in function." (Reporter's Note to Section 2023, subd. (b); see also 2 Hogan & Weber, *supra*, § 15.2 ["Section 2023.030 is thus principally a definitional statute"].) Section 2023.030 explains what the various types of sanctions described throughout the Civil Discovery Act mean. (Reporter's Note to Section 2023, subd. (b).) Thus, "it is only a lexicon." (2 Hogan & Weber, *supra*, § 15.2; see also Op. at pp. 48-49.)

Other provisions in the Civil Discovery Act describe the "sanctions that may be imposed for any particular discovery dereliction . . . simply as," *inter alia*, "monetary sanction," "followed by a cross-reference to [Section 2023.030] to ascertain just what those terms mean." (Reporter's Note to Section 2023, subd. (b).) Section 2023.030 "enables the Commission to implement in a manageable way its decision that the sanctions available for a particular breach of a discovery duty should be

specified in any particular section of the Discovery Act that creates that duty." (*Ibid.*)[6] In other words, as Professor Hogan explained in a treatise, Section 2023.030 is a "general statute" that "names and defines the various sanctions that might be available for misuse of discovery. Then, in the individual statutes that regulate each discovery device, it specifies which of those sanctions are available for specific misuses of that device." (2 Hogan & Weber, *supra*, § 15.2; see also Op. at p. 49.)

This statutory structure reflected a deliberate and "significant[ ]" change for the Legislature. (*London*, *supra*, 117 Cal.App.4th at p. 1006.) "Under the original discovery act, the statutes governing particular discovery methods did not discuss sanctions. [Internal citation.] Rather, a single statute defined the different types of discovery sanctions and explained which of these sanctions were available for each discovery abuse." (*Ibid.* [citing 2 Hogan & Weber, *supra*, § 15.2]; see also Donovan, *supra*, 15 Pepperdine L.Rev. at p. 408.) The Legislature changed this

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[6] (See also 2 Hogan & Weber, *supra*, § 15.2 ["[Section 2023.030] principally names and defines the adjectives, 'monetary,' 'issue,' 'evidence,' 'terminating' and 'contempt,' that the Act uses elsewhere to describe the specific sanctions available for any particular discovery abuse."].)

approach in 1986—the Civil Discovery Act "label[ed] the particular sanctions available for specified actions throughout the act. These sanctions are followed by a cross-reference to section 2023 which defines exactly what those terms mean." (Donovan, *supra*, 15 Pepperdine L.Rev. at p. 408 ["The result is a more organized and predictable approach for practitioners."]; see also *London*, *supra*, 117 Cal.App.4th at p. 1006.) The Legislature's decision to codify the particular discovery sanctions in method-specific provisions further confirms that they control general provisions like Sections 2023.010 and 2023.030. (See *Muller*, *supra*, 172 Cal.App.4th at p. 906.)

Accordingly, "[t]o determine the proper statutory basis for sanctions, a party should first consider the sanctions authorized by the [Civil Discovery Act] for the particular discovery method at issue (e.g., depositions, interrogatories, requests for admission)." (Levine, *O'Connor's Cal. Practice* (2023 ed.) Civil Pretrial, ch. 9-A § 5; see also 2 Hogan & Weber, *supra*, § 15.1 ["The individual sections of the Act regulating the six methods of discovery contain the provisions that aim to eliminate or ameliorate the listed abuses."].) "The provisions governing particular discovery methods limit the types of sanctions a party

can obtain." (Levine, *supra*, ch. 9-A § 5 [internal citations omitted].) "Trial courts should look to these provisions, and not to Section 2023.010, when a party brings any particular discovery misuse or abuse to its attention." (2 Hogan & Weber, *supra*, § 15.1.)

Although PwC is well aware of this legislative history and these extrinsic aids—the Opening Brief cites to the Reporter's Notes, as well as to a law review article that quotes the Reporter's Notes verbatim (OBM at pp. 12-13, 54-55, 57, 58)—its Opening Brief cites nothing to support its bald assertion that "the statutory provisions now found in sections 2023.030 and 2023.010" were "the key provisions by which" the Legislature sought to reduce and eliminate discovery abuses. (*Id.* at p. 56.) Sections 2023.010 and 2023.030 never carried, or were intended to carry, such weight and authority.

II. There Is No Merit To PwC's Contention That Sections 2023.010 And 2023.030 Independently Authorize Courts To Impose Monetary Discovery Sanctions

Faced with statutory language, legislative history, and extrinsic aids that confirm the Court of Appeal's decision, PwC goes to great lengths to manufacture ambiguity where none

exists. The Opening Brief contends that Sections 2023.010 and 2023.030 independently authorize trial courts to impose monetary discovery sanctions without regard to the Civil Discovery Act's method-specific provisions. (*Id.* at pp. 11, 42-43.) This position is unfounded and contravenes the Legislature's intent, as well as well-established California law.

A. PwC's Position Has Been Correctly Rejected Before

PwC represents to this Court that, except for the Court of Appeal in this case, "[e]very Court of Appeal to consider the question" of whether "section 2023.030 independently authorizes courts to sanction the full range of misuses of the discovery process defined in section 2023.010" "has so held." (*Id.* at pp. 38-39.) That is false.

In *Muller*,[7] the defendants/appellees—like the City, here—argued that "[Section 2023] sanctions are only applicable if there is a specific provision elsewhere in the Civil Discovery Act which expressly allows for such an award for their specific misdeeds, such as a specific provision in California Code of Civil Procedure

[7] The Opening Brief does not address *Muller*, even though it was at the center of the City's supplemental letter brief filed with the Court of Appeal. (B310118, City Ltr. Br. on 7/18/2022.)

section 2034 relating to expert disclosures and discovery." (City's Request for Judicial Notice ["RJN"], Ex. A, Appellants' Reply Brief, *Muller v. Daniel Freeman Hosps., Inc.* (Cal.App.Ct. Aug. 19, 2008) No. B199316, at p. *11.)[8] Meanwhile, the plaintiffs/appellants—like PwC, here—claimed that "[Section 2023] and its subparts specifically provide for sanctions, including monetary sanctions, for the misuse of the discovery process." (City's RJN, Ex. A at pp. *10-11.) They argued that "[i]t is self-evident from a reading of the Civil Discovery Act, and, in particular, California Code of Civil Procedure section 2023 that the legislature did not intend to identify every misuse of discovery which creative lawyers and their clients might come up with." (*Id.*, Ex. A at p. *11.) Rather, they claimed, in Section 2023.010, "the *legislature gave to the trial court authority to award sanctions, including monetary sanctions*, for discovery abuses which were not specifically described in the Discovery Act itself"; and "*Section 2023.030 goes on to itself provide authority*

[8] This document is also published on Westlaw. (Appellants' Reply Brief, *Muller v. Daniel Freeman Hosps., Inc.* (Cal.App.Ct. Aug. 19, 2008) No. B199316, 2008 WL 5232053.)

for sanctions, including monetary sanctions, for the misuse of the discovery process." (*Id.*, Ex. A at pp. *11-12 [emphases added].)

The *Muller* court rejected the plaintiffs/appellants' interpretation of the Civil Discovery Act. It concluded that, to determine whether a specific sanction could be imposed in the face of a specific type of discovery abuse, "we must look to section 2034.300, subdivision (b) and not the general provisions providing for sanctions for 'conduct that is a misuse of the discovery process' found in Code of Civil Procedure section 2023.030." (*Muller*, *supra*, 172 Cal.App.4th at p. 906.) The *Muller* court relied on this Court's "'well settled'" instruction that "'a general provision is controlled by one that is special, the latter being treated as an exception to the former.'" (*Ibid.* [quoting *Rose*, *supra*, 19 Cal.2d at pp. 723-724].)

Other courts have similarly interpreted the Civil Discovery Act to mandate that sanctions described in Section 2023.030 are only available to the extent another method-specific provision authorizes them. (E.g., *Moofly Prods.*, *supra,* 46 Cal.App.5th at pp. 10-11; *New Albertsons, supra*, 168 Cal.App.4th at pp. 1422-1423; *London*, *supra*, 117 Cal.App.4th at pp. 1005-1006; see also Op. at pp. 47-48.)

B. PwC's Interpretation Is Unsupported

The Opening Brief contorts the Civil Discovery Act to argue that Sections 2023.010 and 2023.030—on their own—authorize courts to impose monetary sanctions for discovery misconduct. According to PwC, Sections 2023.010 and 2023.030 lack any language that "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." (OBM at p. 42 [emphases in original].)

In addition to having been previously rejected, see *Muller*, such a reading abandons the plain language of the statute and is legally unsupported. PwC inserts sanctioning authority into definitional provisions and, at the same time, effectively renders superfluous the language in Section 2023.030 that limits sanctions "[t]o the extent authorized by" another provision of the Civil Discovery Act. (See also Reporter's Note to Section 2023, subd. (b); 2 Hogan & Weber, *supra*, § 15.2 ["Indeed, Section 2023.030 states that a court may impose any of the sanctions it defines only '[t]o the extent authorized by the section governing any particular discovery method.'"].) None of the three

arguments PwC asserts in favor of its misinterpretation withstands scrutiny.[9]

First, PwC contends that the Court of Appeal has "abrogate[d] . . . entirely" and "completely obliterate[d]" the "operative, independent clause" in Section 2023.030's "introductory paragraph" by recognizing that Section 2023.030's "[t]o the extent authorized" language limits when sanctions for discovery abuse can be imposed. (OBM at pp. 43-46 [emphasis omitted].) Not so. The plain language in Section 2023.030 recognizes that sanctions, including monetary sanctions, can still be imposed for misuse of the discovery process "[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.) This limitation based on the method-specific provisions of the Civil Discovery Act does not render any language surplusage—the clauses, rather, work together. (Cf. OBM at p. 46.)

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[9] PwC also incorrectly claims Section 2023.030's "[t]o the extent authorized by" language "appears immediately before a sentence that does actually use the word 'if.'" (OBM at pp. 47-48.) A cursory review of the statute shows that is untrue. (See Code Civ. Proc., § 2023.030, subd. (a).)

PwC claims it relies on a "well-established canon of statutory interpretation" to support its interpretation. (*Id.* at p. 44 [citing *Williams v. SBE Ent't Grp.* (C.D. Cal. Oct. 2, 2008), 2008 WL 11343070, at *2; *Aydin Corp. v. First State Ins. Co.* (1998) 18 Cal.4th 1183, 1222].) But no such canon is found in the cited cases. *Williams*—not a California state case, and not applying California law—does not concern the interpretation of a statute, and it certainly does not rely on any "well-established canon." (*Williams*, *supra*, 2008 WL 11343070, at p. *2 [interpreting a litigant's declaration].) And *Aydin Corp.* concerns the interpretation of an insurance contract—specifically, a policy's "qualified pollution exclusion"—not the interpretation of a statute. (*Aydin Corp.*, *supra*, 18 Cal.4th at pp. 1187, 1196.) To the contrary, California's canons of statutory interpretation concerning general and specific provisions support the Court of Appeal's decision. (*Muller*, *supra*, 172 Cal.App.4th at p. 906 ["Thus, we must look to section 2034.300, subdivision (b) and not the general provisions providing for sanctions for 'conduct that is a misuse of the discovery process' found in Code of Civil Procedure section 2023.030."].)

Relatedly, PwC also claims that "[e]very Court of Appeal to consider" the issue on appeal has held that "section 2023.030 independently authorizes courts to sanction the full range of misuses of the discovery process defined in section 2023.010."[10] The cases that PwC cites do not so hold. For example, in *Kwan*, the court did not engage in any discussion as to whether Section 2023.030 required monetary sanctions to be authorized by another provision of the Civil Discovery Act or could, standing alone, support a sanctions award. (*Kwan*, *supra*, 58 Cal.App.5th at pp. 65, 73-78.) *Kwan* cannot stand for a proposition that it never addressed or, that it appears, the litigants and the court never even considered. "It is axiomatic that cases are not authority for propositions that are not considered." (*Cal. Bldg. Indus. Ass'n v. State Water Res. Control Bd.* (2018) 4 Cal.5th 1032, 1043; see also *Madrigal*, *supra*, 90 Cal.App.5th at pp. 405-406.)

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[10] (OBM at pp. 38-39 [citing *Kwan Software Eng'g, Inc. v. Hennings* (2020) 58 Cal.App.5th 57; *Pratt v. Union Pac. R.R. Co.* (2008) 168 Cal.App.4th 165; *Dep't of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154, disapproved on another ground in *Presbyterian Camp & Conference Ctrs., Inc. v. Super. Ct.* (2021) 12 Cal.5th 493, 516 fn. 17; *Cornerstone Realty Advisors, LLC v. Summit Healthcare Reit, Inc.* (2020) 56 Cal.App.5th 771].)

The other cases PwC cites similarly did not interpret the "[t]o the extent authorized" language in Section 2023.030. (*Pratt*, *supra*, 168 Cal.App.4th 165 [not interpreting the "[t]o the extent authorized" language]; *Howell*, *supra*, 18 Cal.App.5th 154 [same]; *Cornerstone Realty*, *supra*, 56 Cal.App.5th 771 [same]; *Cedars-Sinai Med. Ctr. v. Super. Ct.* (1998) 18 Cal.4th 1 [same]; see also Op. at pp. 52-53, 57.)[11] These cases did not discuss whether the express language of Section 2023.030 required monetary sanctions to be authorized by another provision of the Civil Discovery Act, and they most certainly did not discuss whether monetary sanctions can be imposed under Sections 2023.010 and 2023.030 alone.

Second, PwC contends that the Court of Appeal's interpretation of "[t]o the extent authorized by" in Section 2023.030 is improperly equivalent to "if" or "only if." (OBM at pp. 47-53.) California courts already have, however, explained that as used here, the clause "'means that the statutes governing the particular discovery methods limit the permissible

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

sanctions to those sanctions provided under the applicable governing statutes.'" (Op. at p. 48 [quoting *New Albertsons*, *supra*, 168 Cal.App.4th at pp. 1422-1423].)[12] PwC's esoteric argument, aimed to manufacture ambiguity in the statute, lacks merit. (E.g., *Cole*, *supra*, 38 Cal.4th at p. 985 [statute allowing services to be provided "to the extent permitted by law" did not mean service providers were no longer subject to legal restrictions]; see also *First Chicago Int'l v. United Exch. Co. Ltd.* (S.D.N.Y. 1989) 125 F.R.D. 55, 60 [denying employee's request for indemnification because he was not a director or officer; courts could only award indemnification "to the extent authorized under" certain statutes that applied to directors and officers].) Indeed, it violates the first step of statutory interpretation: "examining the statutory language, giving it a plain and commonsense meaning." (*Cole*, *supra*, 38 Cal.4th at p. 975.)

At the same time, the Opening Brief appears to advocate *for* the Court of Appeal's interpretation of the Civil Discovery Act.

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[12] PwC relies on two cases that do not apply California law or interpret California statutes. (OBM at p. 47 [citing *John Hancock Mutual Life Ins. Co. v. Harris Trust & Sav. Bank* (1993) 510 U.S. 86, 104-105; *In re Duvall* (W.D. Tex. 1998) 218 B.R. 1008, 1013].)

PwC acknowledges that specific statutory provisions prevail over general ones (OBM at p. 52), and it concedes that the method-specific provisions govern when sanctions, including monetary sanctions, can be imposed. (*Id.* at pp. 51-53.) Nevertheless, PwC's claim that the Court of Appeal erred appears to be premised on the misunderstanding that "principal clauses of section 2023.030's introductory paragraph and the first sentence of subdivision (a)" "broad[ly]" and "general[ly]" authorize courts to impose sanctions. (*Id.* at pp. 51-52.) But, again, the statutory language, legislative history, and extrinsic aids confirm that PwC's premise lacks any basis. (Supra §§ I.B, I.C.)

They also undercut PwC's reliance on *Reyna v. McMahon* (1986) 180 Cal.App.3d 220. (OBM at pp. 48-49.) That decision turned heavily on the legislative history surrounding the purpose, proposal, and passage of the statute at issue. (*Reyna*, *supra,* 180 Cal.App.3d at pp. 222, 225-227 [relying on "the legislation itself and the legislative history surrounding passage of [the statute]"].) The legislative history of the Civil Discovery Act and Sections 2023.010 and 2023.030 remove any doubt that the Court of Appeal should be affirmed.

Third, PwC incorrectly contends that the Court of Appeal's decision makes Section 2023.030's introductory paragraph and subdivision (a) "internally inconsistent and self-contradictory." (OBM at pp. 53-54.) This argument relies on the Opening Brief's claim that no provision in the Civil Discovery Act, other than Section 2023.030, subdivision (a), could possibly authorize a court to impose monetary sanctions for "unsuccessfully asserting that another has engaged in misuse of the discovery process." (*Id.* at p. 53 [quoting Code Civ. Proc., § 2023.030, subd. (a)] [emphasis omitted].) That is false. The Legislature ensured that other sections of the Civil Discovery Act could authorize monetary sanctions in such circumstance. For example, Section 2030.090, subdivision (d) authorizes monetary sanctions against "any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order under this section," absent substantial justification, including where the adverse party propounded written interrogatories that amounted to misuse of the discovery process. (Code Civ. Proc., § 2030.090, subd. (d); see also, e.g., *id.,* § 2031.310, subd. (h) [authorizing monetary sanctions against one who "unsuccessfully makes or opposes a motion to compel further response to a demand [for inspection]"].)

In that circumstance, for example, the method-specific provision would authorize monetary discovery sanctions.

Accordingly, PwC has not shown that the Court of Appeal incorrectly applied Sections 2023.010 and 2023.030.

C. To Reverse The Court Of Appeal Would Frustrate And Undermine The Legislature's Intent

PwC's interpretation of Sections 2023.010 and 2023.030 would undermine the policies that the Legislature intended the Civil Discovery Act to promote. As Professor Hogan—the reporter to the joint commission charged with drafting the statute at issue—explains, trial courts should look to the "[method-specific sanctions] provisions, and not to Section 2023.010, when a party brings any particular discovery misuse or abuse to its attention." (2 Hogan & Weber, *supra*, § 15.1.) This statutory structure "offers two major advantages": (1) more "convenience and coherence" because "the applicable sanctions are set forth in the midst of the procedures that govern the individual discovery methods," and (2) a "repeated[ ] remind[er] [to] counsel that failure to follow the required procedures has specific consequences." (*Id.*, § 15.2.) Adopting PwC's interpretation that focuses only on Sections 2023.010 and

2023.030 would abandon these "major advantages" that the Legislature implemented.

Even worse, PwC's misinterpretation would undermine the Civil Discovery Act's purpose by injecting uncertainty into civil discovery and increasing discovery disputes. "[O]ne of the purposes of the Civil Discovery Act of 1986 was to reduce the voluminous litigation generated by the existing law." (*Beverly Hosp.*, *supra*, 19 Cal.App.4th at p. 1296.) Reversing the Court of Appeal—despite the statute's plain language and legislative history—would substantially change California law. It would leave attorneys and trial courts confused, forcing them to determine which sanctions provisions in the Civil Discovery Act are still applicable and binding and which can be ignored because monetary sanctions can now be sought—like in PwC's Sanctions Motion—and imposed—like in the trial court's Sanctions Order—solely under Sections 2023.010 and 2023.030. (See, e.g., *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1104 ["[c]haos could ensue if courts were generally able to pick and choose which provisions of the Code of Civil Procedure to follow"].)

This will certainly result in an increase in discovery disputes, especially because of how often monetary sanctions are

imposed—they are the initial step in the Civil Discovery Act's "incremental approach to discovery sanctions." (*Creed-21 v. City of Wildomar* (2017) 18 Cal.App.5th 690, 701 [internal quotations omitted]; see also *Moofly Prods.*, *supra*, 46 Cal.App.5th at p. 11.) This increase in motion practice also will not be cabined to trial courts, either: appellate litigation will certainly increase, given that parties can immediately appeal any monetary sanction so long as it is in excess of $5,000. (Code Civ. Proc., § 904.1, subd. (a)(11), (12).) Reversing the Court of Appeal would most certainly "plunge the trial and appellate courts back into a sea of discovery disputes when their dockets are already at flood stage." (*Beverly Hosp.*, *supra*, 19 Cal.App.4th at p. 1296.)

At the same time, none of PwC's policy-based arguments supports its position. PwC claims that affirming the Court of Appeal would make the Civil Discovery Act less than comprehensive and unduly burdensome for parties to comply with when seeking monetary discovery sanctions. (E.g., OBM at pp. 58-60.) Not only are these arguments unfounded, but more importantly, they are not grounds for this Court to disregard the Legislature's intent and the Civil Discovery Act's plain language. (*Equilon Enters.*, *supra*, 29 Cal.4th at p. 59 ["This court has no

power to rewrite the statute so as to make it conform to a presumed intention which is not expressed."] [internal quotations omitted]; *Cal. Teachers Ass'n*, *supra*, 14 Cal.4th at pp. 632-633; *Metromedia, Inc. v. City of San Diego* (1982) 32 Cal.3d 180, 187 ["[T]his court cannot . . . in the exercise of its power to interpret, rewrite the statute."] [internal quotations omitted].) This Court's "holding [must be] based on the [Civil Discovery] Act as it is written, not on a different, perhaps broader, version that could have been, or still may be, enacted." (*Cole*, *supra*, 38 Cal.4th at p. 992 [internal quotations omitted]; see also *Cal. Fed. Sav. & Loan*, *supra*, 11 Cal.4th at p. 349.)

Further, PwC's reliance on inapposite cases in the Opening Brief confirms that its arguments lack support. (E.g., OBM at pp. 56, 59.) PwC cites *Fairmont* for a general proposition about the Civil Discovery Act eliminating discovery abuse when, in fact, *Fairmont* only concerned a specific type of discovery abuse—"parties seeking continuances or postponements of trial for the sole purpose of extending the time for discovery"—that is not relevant in this case. (*Fairmont Ins. Co. v. Super. Ct.* (2000) 22 Cal.4th 245, 251.) PwC also relies on *People v. Hill* even though that case concerned prosecutorial misconduct during trial and the

penalty phase of a criminal case. It has nothing to do with discovery abuse in a civil action. (*People v. Hill* (1998) 17 Cal.4th 800, 847.)

III. The Court Of Appeal Correctly Concluded That Trial Courts Lack Inherent Authority To Impose Monetary Discovery Sanctions

To bypass the Legislature, as well as the Civil Discovery Act's plain language and purpose, PwC urges this Court to drastically change California law by holding that trial courts possess inherent authority to impose monetary discovery sanctions—regardless of the governing statute—whenever a court believes "the sound administration of justice has been threatened." (OBM at p. 63.) Trial courts, PwC contends, have "the inherent authority under the Constitution to impose monetary sanctions . . . even if that misconduct was not expressly sanctionable under the Discovery Act." (*Id.* at p. 60.)

Not so. The Court of Appeal correctly rejected PwC's contention that "the trial court's inherent power to control the litigation includes the authority to impose monetary sanctions for discovery violations." (Op. at p. 59.) PwC's argument contradicts California law and would lead to severe, negative consequences.

A. California Law Has Long Recognized That Courts Lack Inherent Authority To Impose Monetary Discovery Sanctions

The Court of Appeal correctly recognized that, in California, "trial courts may award attorney fees as a sanction for misconduct only when authorized by statute or an agreement of the parties." (*Id.* at p. 60 [citing *Olmstead v. Arthur J. Gallagher & Co.* (2004) 32 Cal.4th 804, 809].) They do not have inherent authority to impose monetary sanctions for discovery violations. (See *id.* at pp. 59-60.) PwC claims that the Court of Appeal's decision amounts to an "artificial distinction between monetary and nonmonetary sanctions [that] finds no support in precedent, history, practice, or reason." (OBM at p. 68.) California law overwhelmingly disproves this contention.

"[T]rial courts may not award attorney fees as a sanction for misconduct unless they do so pursuant to statutory authority or an agreement of the parties." (*Olmstead*, *supra*, 32 Cal.4th at p. 809 [citing *Bauguess v. Paine* (1978) 22 Cal.3d 626, 634-639]; see also *Yarnell & Assocs. v. Super. Ct.* (1980) 106 Cal.App.3d 918, 923 ["The theory of *Bauguess* is that it would be unnecessary and unwise to permit trial courts to use fee awards as sanctions where not authorized by statute."].)

Thus, "a trial court must be mindful that . . . its inherent authority to sanction for egregious misconduct does not include the power to award attorney fees to punish that misconduct." (*Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 764 fn. 19; see also *Sagonowsky v. Kekoa* (2016) 6 Cal.App.5th 1142, 1153 fn. 9 ["A trial court has inherent authority to punish for contempt and control its own proceedings, but a court does not have inherent power to impose monetary sanctions payable to an opposing party or counsel."]; *Vidrio v. Hernandez* (2009) 172 Cal.App.4th 1443, 1454-1455; *Clark v. Optical Coating Lab., Inc.* (2008) 165 Cal.App.4th 150, 165-166.)

B. PwC's Inherent-Authority Argument Is Unsupported

The Opening Brief fails to cite any authorities that advance PwC's call for a drastic change to California law. Rather, the cited authorities merely give background, are inapposite, or highlight how unsupported PwC's argument is.

PwC cites two U.S. Supreme Court decisions, both of which are inapposite. (OBM at p. 61 [quoting *United States v. Hudson* (1812) 11 U.S. 32, 34]; *id.* at 67 [quoting *Chambers v. NASCO, Inc.* (1991) 501 U.S. 32, 50-51].) They do not interpret the

California Constitution, the Civil Discovery Act, or California law. *Hudson* is cited for the unremarkable proposition that courts have inherent powers—a point that is not in dispute. (E.g., *Sagonowsky*, *supra*, 6 Cal.App.5th at p. 1153 fn. 9 [acknowledging that trial courts have "inherent authority," but "not . . . to impose monetary sanctions payable to an opposing party or counsel"].)

And California courts have recognized that *Chambers* contradicts longstanding California law. Although *Chambers* provides that federal courts, in certain circumstances, can resort to inherent power to impose attorney's fees as a sanction for bad-faith conduct (*Chambers*, *supra*, 501 U.S. at pp. 50-51), California has reached the opposite result to avoid an "'unnecessary and unwise'" conclusion that would result in "'serious due process problems'" and "'may imperil the independence of the bar and thereby undermine the adversary system.'" (*Sheller v. Super. Ct.* (2008) 158 Cal.App.4th 1697, 1711-1712 ["The California Supreme Court has reached the opposite result [of *Chambers*]."] [quoting *Bauguess*, *supra*, 22 Cal.3d at pp. 637-639].) Indeed, the difference between California and federal law on this point is unsurprising when the lengthy and exact sanctions provisions the

Legislature enacted throughout the Civil Discovery Act are compared with the less-extensive Federal Rule of Civil Procedure 37. (See *Sheller*, *supra*, 158 Cal.App.4th at p. 1712 [recognizing that "the California Supreme Court concluded that the power to impose such sanctions must be created by the Legislature with appropriate safeguards"]; cf. Fed. R. Civ. P. 37 ["Failure to Make Disclosures or to Cooperate in Discovery; Sanctions"].)

PwC claims that a trial court can impose monetary discovery sanctions under its inherent authority because the Civil Discovery Act is not a "legislatively-enacted limit[ ]." (OBM at pp. 71-72.) That is incorrect. The Civil Discovery Act is such a limitation—it prescribes the "specific situations" when monetary discovery sanctions can be awarded. (*Bauguess*, *supra*, 22 Cal.3d at p. 639.)[13]

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[13] At the same time, PwC argues that the City Discovery Act is too stringent a legislatively enacted limit on a court's sanctioning power, leaving courts insufficiently capable to sanction certain conduct allegedly out of the Civil Discovery Act's reach. (OBM at pp. 58-59.) This argument is entirely speculative. This case has not yet been remanded to the trial court for PwC to have another opportunity to seek sanctions, and the trial court never concluded that any discovery misuse was beyond the Civil Discovery Act's reach.

PwC fails to demonstrate that the Legislature would have been required to specifically address inherent authority in the Civil Discovery Act or in any other sanctions statute generally. (See OBM at pp. 71-72.) It is, in fact, unsurprising that the Civil Discovery Act does not specifically address inherent authority. When the Legislature revised the Civil Discovery Act in 1986, it would have accounted for this Court's clear 1978 holding in *Bauguess*, which recognized that courts lack inherent authority to award attorneys' fees as any monetary sanction. (*Collins v. Dep't of Transp.* (2003) 114 Cal.App.4th 859, 868 [recognizing that the Legislature "is presumed to know of case law"—including "the 1978 *Bauguess* case"—when it later amended statutes concerning "attorney's fees . . . awarded as sanctions"]; see also *In re W.B.* (2012) 55 Cal.4th 30, 57.) PwC also fails to show that the Civil Discovery Act "substantially impairs the efficiency of" the trial court or is otherwise unconstitutional. (See *Walker v. Super. Ct.* (1991) 53 Cal.3d 257, 267 ["Regarding the Legislature's role in enacting statutes affecting the administration of the courts, we have said: '[T]he legislature may at all times aid the courts and may even regulate their operation

so long as their efficiency is not thereby impaired.'"] [quoting *Millholen v. Riley* (1930) 211 Cal. 29, 34] [emphasis omitted].)

PwC relies on cases where courts imposed sanctions based on their inherent authority (OBM at pp. 63-66); however, these cases are all inapposite.[14] For example, the court's analysis of the "intrinsic limitation on the court's inherent power" in *Peat Marwick* was limited to the evidentiary sanction of "evidence preclusion." (*Peat, Marwick, Mitchell & Co. v. Super. Ct.* (1988) 200 Cal.App.3d 272, 287 fn. 8, 289; see also OBM at pp. 63, 68.) Similarly, *Conn* concerned the use of "contempt powers" to order the return of misappropriated documents. (*Conn v. Super Ct.* (1987) 196 Cal.App.3d 774, 784-785.) And *Howell* and *Slesinger* concerned terminating sanctions (*Howell*, *supra*, 18 Cal.App.5th at pp. 166, 197; *Slesinger*, *supra*, 155 Cal.App.4th p. 761); they do not, as PwC suggests, concern monetary sanctions or "[s]anctions" generally (OBM at pp. 63, 65). *Slesinger* undermines PwC's argument even further by reiterating that a "trial court cannot impose monetary sanctions" pursuant to any

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[14] Trial courts' inherent authority to impose sanctions was not an issue on appeal in *Kwan*. (*Kwan*, *supra*, 58 Cal.App.5th at pp. 72-73.)

"inherent authority to sanction for egregious misconduct." (*Slesinger*, *supra*, 155 Cal.App.4th at p. 764 fn. 19.)[15]

Great Lakes also is inapposite as it only concerns motions for disqualification and "[t]he important right to counsel of one's choice [that] must yield to ethical considerations that affect the fundamental principles of our judicial process." (*Great Lakes Constr., Inc. v. Burman* (2010) 186 Cal.App.4th 1347, 1355.) That is not an issue here. And *United Auburn* is not about "[inherent judicial] power" as PwC claims. (OBM at p. 72 [citing *United Auburn Indian Cmty. of Auburn Rancheria v. Newsom* (2020) 10 Cal.5th 538, 565].) Rather, it concerned a voter-made change to the Constitution, and it focused on "how California law applies to the delicate juncture of executive power, federalism, and tribal sovereignty." (*United Auburn Indian Cmty.*, *supra*, 10

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[15] Although *Padron* relies on *Slesinger* in its discussion of inherent authority and monetary sanctions, it appears to have overlooked the court's clear recognition in *Slesinger* that trial courts cannot impose monetary sanctions based on their inherent authority. (Compare *Padron v. Watchtower Bible & Tract Soc'y of New York, Inc.* (2017) 16 Cal.App.5th 1246, 1264 [quoting *Slesinger*, *supra*, 155 Cal.App.4th at p. 762-763] with *Slesinger*, *supra*, 155 Cal.App.4th at p. 764 fn. 19.)

Cal.5th at p. 543].) That has no bearing on the issue on this appeal, either.[16]

Nor can PwC minimize the relevance of this Court's decision in *Bauguess* on the grounds that it is limited only to attorneys' fees intended to punish misconduct. (OBM at p. 69.) This Court made clear in *Bauguess* that its decision applies to "fee awards as sanctions," which would include the monetary discovery sanctions that PwC seeks here. (*Bauguess*, *supra*, 22 Cal.3d at p. 637 ["It would be both unnecessary and unwise to permit trial courts to use fee awards as sanctions apart from those situations authorized by statute."].) Courts have repeatedly recognized that *Bauguess* applies to any monetary sanctions based on attorneys' fees. (E.g., *Yarnell & Assocs.*, *supra*, 106 Cal.App.3d at p. 921 ["Clear Supreme Court authority, in *Bauguess v. Paine* . . ., precludes an award of attorney's fees as sanctions unless specifically authorized by statute, such as by certain discovery statutes . . . ."]; see also *Sino Century Dev. Ltd.*

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[16] Further, *Rutherford* and *Le Francois* are inapposite because they do not concern the imposition of any type of sanctions, and *Townsend* does not concern courts' inherent authority. (OBM at pp. 62, 64, 65 [citing *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953; *Le Francois v. Goel* (2005) 35 Cal.4th 1094; *Townsend v. Super. Ct.* (1998) 61 Cal.App.4th 1431].)

v. Farley (2012) 211 Cal.App.4th 688, 694 fn. 6 ["*Bauguess* is not limited to those cases in which a court imposes sanctions based upon its inherent authority; *Bauguess* establishes a broad rule that there must be specific statutory authority to impose attorney fees as sanctions for misconduct."].)

Nor can PwC avoid *Bauguess* by mischaracterizing the $2.5 million sanctions award here. The Opening Brief argues that the sanctions award was not for attorneys' fees because it was only a fraction of the amount of money PwC allegedly incurred in attorneys' fees "as a direct result of the City's serial discovery abuse." (OBM at pp. 69-71.) This is misleading. PwC has acknowledged that the sanctions award was for attorneys' fees it incurred. (E.g., *id.* at p. 10 [recognizing the sanctions award "defray[ed] some of the more than $8 million in expenses incurred by PwC"]; *id.* at pp. 75-76 [describing the fees incurred "for counsel's expenditure of" hours worked]; *id.* at p. 77 ["PwC incurred at least $2.5 million in fees and costs"].) This does not change merely because PwC was awarded less than the full amount demanded in the Sanctions Motion.

Bauguess has carried, and continues to carry, "the weight the Court of Appeal majority foisted on it." (See *id.* at p. 69.)

And none of the inapposite authorities and arguments PwC raises warrants a sharp departure from well-established California law.

C. The Consequences Of Granting Courts New Inherent Authority To Impose Monetary Sanctions Would Be Grave

To rely on inherent authority to reverse the Court of Appeal would violate long-standing California policy. This Court has long disapproved of broad statements about the inherent power to order monetary sanctions. (See *Bauguess*, *supra*, 22 Cal.3d at pp. 637-638; see also *Yarnell & Assocs.*, *supra*, 106 Cal.App.3d at pp. 922-923 [recognizing this Court's disapproval of "broad statements about the inherent power to order monetary sanctions"].) "The use of courts' inherent power to punish misconduct by awarding attorney's fees may imperil the independence of the bar and thereby undermine the adversary system." (*Bauguess*, *supra*, 22 Cal.3d at p. 638; see also *Yarnell & Assocs.*, *supra*, 106 Cal.App.3d at p. 923.) There is no reason to believe that this would be any less true since *Bauguess*.

Further, reversing the Court of Appeal would effectively give trial courts authority to impose monetary sanctions without considering the plain language of the Civil Discovery Act. This

Court has warned about the dangers of this type of picking and choosing of statutory language. "Chaos could ensue if courts were generally able to pick and choose which provisions of the Code of Civil Procedure to follow and which to disregard as infringing on their inherent powers." (*Le Francois*, *supra*, 35 Cal.4th at p. 1104.) This chaos would also breed more questions, uncertainty, and litigation for all parties and courts throughout the state in pending and future cases. Among others, these new issues would include what, under a trial court's inherent authority, constitutes discovery abuse subject to monetary sanctions—particularly as the courts would be unmoored from the method-specific provisions in the Civil Discovery Act. These questions will certainly increase discovery disputes and litigation in trial and appellate courts. (Supra § II.C.)

In an effort to cloud the issue, the Opening Brief claims that unless the trial court has inherent authority to impose monetary discovery sanctions, it will be powerless to do so. (OBM at pp. 65-67.) That is not the case. Trial courts can impose monetary sanctions that comply with the Civil Discovery Act. Further, the Court of Appeal has given PwC the opportunity to

seek monetary sanctions again in the trial court—PwC is not being deprived.

Moreover, it is entirely speculative for PwC to argue that, absent inherent authority, "[several] forms of litigation abuse" that the Legislature intended to stop will be able to persist. (*Id.* at p. 68.) PwC never relied on the method-specific provisions of the Civil Discovery Act in its Sanctions Motion. The trial court never had an opportunity to assess or determine whether the "forms of litigation abuse" the City allegedly engaged in fall outside the scope of the Civil Discovery Act. PwC cannot now—on this record—claim that trial courts must have unfettered discretion and power to impose monetary sanctions pursuant to an inherent authority whenever they believe "the sound administration of justice has been threatened." (*Id.* at p. 63.) Indeed, the only thing that is certain is that there will be substantial negative consequences if California law is abruptly changed in a manner that this Court has previously determined "may imperil the independence of the bar and thereby undermine the adversary system." (*Bauguess*, *supra*, 22 Cal.3d at p. 638.)

IV. As Directed By The Court Of Appeal, This Case Should Be Remanded To The Trial Court To Determine Monetary Sanctions Based On The Method-Specific Provisions Of The Civil Discovery Act

PwC contends that, even if the Court of Appeal correctly interpreted Sections 2023.010 and 2023.030, the trial court's $2.5 million sanctions award should still be affirmed. (OBM at pp. 73-76.) According to PwC, there is no need to remand this case "for a new determination on the issue of discovery sanctions" (Op. at p. 3) because the trial court "already made sufficient findings to uphold its sanctions award under these subsequent, discovery-method-specific provisions of the Act" (OBM at p. 73). This could not be further from the truth.

Remand can be unnecessary "[w]here the result . . . is foreordained from the record." (*Harlow v. Carleson* (1976) 16 Cal.3d 731, 739; see also OBM at p. 73.) In *People v. Flores*, for example, this Court concluded that remand was "not required" because the record "demonstrate[d] with unusual clarity that remand would be an idle act." (*People v. Flores* (2020) 9 Cal.5th 371, 432; see also OBM at p. 73.) There is no "unusual clarity" or "foreordained" results in this case. Instead, the record here is devoid of the information and factual findings that would be

necessary for this Court to even begin to evaluate the $2.5 million award.

The trial court awarded $2.5 million in discovery sanctions "[b]ased upon consideration of all the evidence and the totality of the circumstances." (8 AA 4012.) As the Court of Appeal acknowledged, the trial court "did not allocate amounts to different categories [of misconduct], nor explain what the total amount included or excluded." (Op. at p. 36.) The trial court also did not identify or explain which method-specific provision of the Civil Discovery Act was the basis for the monetary sanction. (See 8 AA 4011-4012.) Nor did the trial court state whether the sanction was based in part or in whole on inherent power outside the Civil Discovery Act. (See *ibid.*)

The lack of explanation based on the method-specific provisions is unsurprising given how PwC drafted and presented its Sanctions Motion. As the Court of Appeal recognized, "[PwC] presented its costs in the motion below based on the general categories of misconduct described in section 2023.010, rather than on [PwC's] reasonable expenses incurred as a result of sanctionable conduct under discovery provisions other than sections 2023.010 and 2023.030." (Op. at p. 3; see also *id.* at

p. 28.) The Sanctions Motion sought over $9 million in monetary sanctions without a workable breakdown; more than $8 million was based on attorneys' fees divided into three broad categories, and the last $1 million was sought merely because the misconduct was allegedly egregious, *i.e.*, as an improper punishment. (Op. at pp. 28-29.) Also, "[t]he attorney time records submitted in support of the sanctions motion commingled fees that PWC incurred in connection with its effort to obtain discovery with fees incurred in connection with PWC's investigation of the class action fraud, assessment of the documents produced, and litigation strategies." (*Id.* at p. 29.) Thus, the Court of Appeal concluded it "cannot evaluate on this record whether the sanctions awarded may have been an appropriate exercise of the trial court's discretion under other discovery provisions[.]" (*Id.* at pp. 2-3.)

The record's dearth of necessary information makes it impossible for this Court to evaluate the $2.5 million sanctions award in light of, among other things, causation and reasonableness of the sanctions award. Monetary discovery sanctions may only be imposed based on "the *reasonable* expenses, including attorney's fees, incurred by anyone *as a*

result of that conduct." (Code Civ. Proc., § 2023.030, subd. (a) [emphases added].)

Here, PwC's Sanctions Motion did not show, and the trial court did not find, what amount of attorneys' fees were incurred as a result of each of the City's specific forms of alleged misconduct. Instead, PwC lumped the City's conduct into general categories that did not correspond to the Civil Discovery Act's method-specific sanctions provisions.

Further, the trial court did not evaluate or find that the fees and expenses PwC incurred were reasonable. It did not do any such analysis at all. Without factual findings regarding the specific work performed as it relates to specific alleged abuses, it would be speculative to conclude, as PwC contends, that the $2.5 million sanctions award was not punitive simply because it was less than the amount the Sanctions Motion sought. (OBM at pp. 14, 70.) (*Williams v. Russ* (2008) 167 Cal.App.4th 1215, 1223 ["Discovery sanctions are intended to remedy discovery abuse, not to punish the offending party."].)

PwC cannot overcome this failure. The Opening Brief cites two method-specific provisions of the Civil Discovery Act that PwC argues are a legal basis to impose monetary discovery

sanctions given the discovery abuse the trial court found. (OBM at pp. 74-75 [citing Code Civ. Proc., §§ 2025.450, 2031.320].) The Sanctions Motion, however, was not brought under either statute. Even if it were, the record lacks any insight into whether the trial court tailored the $2.5 million sanction to those forms of misconduct. PwC essentially argues that the sanctions award is factually supported because the trial court found misconduct and awarded less than the amount sought in the Sanctions Motion. Not so. The record does not indicate that the trial court's decision even considered these statutes.

So, PwC resorts to misrepresenting the record. It avers that "the trial court expressly found that" PwC incurred a total of $8,211,383.53 in fees for "counsel's expenditure" of 9,804.98 hours. (OBM at pp. 75-76.) That is inaccurate. The Sanctions Order clearly states that this was merely the amount of fees and hours that "counsel for PwC assert[ed] by way of" declarations filed in support of the Sanctions Motion. (8 AA 4010-4011.) This was not an express finding—it merely acknowledged PwC's evidence of "billing rates," "billing entries," and "time summaries." (8 AA 4011.)

At bottom, PwC's contention is unsupported and unnecessary. The Court of Appeal did not give the City a free pass. Instead, it remanded the case so that PwC could seek monetary sanctions in the trial court. The parties should have an opportunity to brief the issues as identified by the Court of Appeal, and the trial court should have an opportunity to make the necessary factual findings, to ensure compliance with the Civil Discovery Act.

CONCLUSION

For all of the foregoing reasons, the Court should affirm the Court of Appeal's decision and remand to the trial court to enter a new and different order on the issue of monetary sanctions based on the method-specific provisions of the Civil Discovery Act authorizing the imposition of sanctions for discovery misconduct.

DATED: June 23, 2023

ANNAGUEY MCCANN LLP

By: _____
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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.520(c)(1) of the California Rules of Court, the enclosed Answer Brief on the Merits is produced using 13-point or greater Roman type, including footnotes, and contains 12,774 words, which is less than the total words permitted by the rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

DATED: June 23, 2023

ANNAGUEY MCCANN LLP

By: _____

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