

**Case No. S277211**

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

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**CITY OF LOS ANGELES,**  
*Plaintiff and Appellant,*

v.

**PRICEWATERHOUSECOOPERS, LLC,**  
*Defendant and Respondent.*

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After a Decision of the Court of Appeal of the State of California  
Second Appellate District, Division Five, Case No. B310118  
Appeal from the Los Angeles County Superior Court, Case No. BC574690

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**APPLICATION FOR PERMISSION TO FILE *AMICI CURIAE*  
BRIEF AND *AMICI BRIEF* OF SOUTHWESTERN LAW STUDENT  
JOSHUA D. CAHN, PROFESSORS WARREN  
S. GRIMES AND MICHAEL M. EPSTEIN, IN ASSOCIATION  
WITH THE AMICUS PROJECT AT SOUTHWESTERN LAW  
SCHOOL, THE HONORABLE MARTIN J. TANGEMAN  
(RETIRED), AND DEAN ERWIN CHEMERINSKY IN SUPPORT  
OF DEFENDANT AND RESPONDENT**

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Orly Ravid (SBN# 299443)  
Amicus Project at Southwestern Law School  
3050 Wilshire Blvd., Los Angeles, CA 90010  
(213) 738-6774 | amicusproject@swlaw.edu  
*Counsel of Record for Proposed Amici Curiae*

JOSHUA D. CAHN, Southwestern Law Student  
WARREN S. GRIMES, Professor of Law at Southwestern Law School  
MICHAEL M. EPSTEIN, Professor of Law and Director of  
the Amicus Project at Southwestern Law School  
MARTIN J. TANGEMAN, Retired Associate Justice, Court of Appeal,  
Second Appellate District, Div. 6 and Retired Superior Court Judge  
in San Luis Obispo County  
ERWIN CHEMERINSKY, Dean of University of California, Berkeley,  
School of Law

## APPLICATION FOR PERMISSION TO FILE

Pursuant to rule 8.520(f) of the California Rules of Court, amici curiae respectfully seek permission to file the attached *amici curiae* brief in support of Defendant and Respondent.

Joshua D. Cahn is an upper-division J.D. candidate at Southwestern Law School. Warren S. Grimes is the Irving D. and Florence Rosenberg Professor of Law at Southwestern Law School. Michael M. Epstein is a Professor of Law and the Director of the pro bono Amicus Project at Southwestern Law School.

Hon. Martin J. Tangeman (Ret.) was a Superior Court Judge in San Luis Obispo County from 2001 to 2016, when he was appointed to the Court of Appeal, Second Appellate District, Div. 6. He retired in 2022. He served on the California Judicial Council from 2014-2016 and was Vice-Chair of the Trial Court Presiding Judges Advisory Committee for two terms in 2008-2010. He also served for sixteen years on the California Jury Instructions Advisory Committee, including eight years as Chair (2006-2022). He served as faculty or planning group member for several judicial educational conferences at both the trial court and appellate justice levels. He joins this amici brief based on his experience as a trial court judge.

Dean Erwin Chemerinsky is Dean and Jesse H. Choper Distinguished Professor of Law at University of California, Berkeley, School of Law. Dean Chemerinsky previously was the founding Dean at the

University of California, Irvine School of Law, and before that, served on the law faculty at Duke Law School and the University of Southern California Law School. A past president of the Association of American Law Schools, Dean Chemerinsky is an expert on constitutional law and civil liberties and the author of sixteen books, including leading casebooks and treatises about constitutional law, criminal procedure, and federal jurisdiction.

Pursuant to California Rule of Court 8.520(f), no party or counsel for a party has authored any part of the attached brief. Likewise, no party or counsel for any party has made a monetary contribution intended to fund the preparation or submission of this brief. Amici share a strong interest in the interpretation and application of sections 2023.030 and 2023.010 under the California Civil Discovery Act, and derived from its inherent authority, as authorizing a trial court to sanction against egregious discovery abuse and prevent such misconduct.

DATED: September 15, 2023

Respectfully Submitted,

By: /s/ Orly Ravid  
Orly Ravid

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**AMICI CURIAE BRIEF IN SUPPORT OF DEFENDANT  
AND RESPONDENT**

**SUMMARY OF THE ARGUMENT**

The principal question in this case is whether a court's authority to impose monetary sanctions for misuse of the discovery process is limited to circumstances expressly delineated in a method-specific provision of the California Civil Discovery Act, or whether courts have more flexible authority to impose monetary sanctions for discovery misconduct pursuant to the Code of Civil Procedure sections 2023.030 and 2023.010 or, alternatively, based upon their inherent authority to carry out constitutionally assigned judicial functions. The resolution of this question will depend on whether the Court of Appeal's narrow statutory interpretation is consistent with the statute itself and/or with the separation of powers doctrine that protects the integrity and independence of California courts and their inherent authority to shield the judicial process from a litigant's abusive conduct.

This case involves extraordinarily pervasive and sophisticated abuse of the discovery process. The conduct amounted to fraud on the court and a grave injustice to the opposing litigant forced to spend millions of dollars to expose and overcome the abuse. This Court should provide clear guidance to trial courts to follow when confronted with such egregious misconduct. Here, the Court of Appeal's novel statutory interpretation contradicts the

plain meaning of sections 2023.030 and 2023.010 and promotes the deployment of such misconduct for strategic advantage. The Court of Appeal's narrow interpretation of these statutes also deprives trial courts of their necessary power to control such extraordinary abuses of the discovery process, and, to the extent it is based on an interpretation of the statute, raises a consequential separation of powers issue. Because the core function of California courts is to ensure the orderly administration of justice, trial courts must have authority to control judicial proceedings and protect litigants from the abusive behaviors that permeate this litigation.

Separation of powers principles protect the inherent powers of a court duly established under article VI, section 1 of the California Constitution. Recognition of these powers needed to address abusive conduct is consistent with fundamental principles of judicial process, as recognized under both English common law and federal law. In this case of persistent and pervasive misconduct amounting to a fraud on the court, this Honorable Court should find that a trial court has the power, both pursuant to statutory authority under sections 2023.030 and 2023.010, and derived from its inherent authority, to issue monetary sanctions to both dissuade and to remediate such conduct.

### **BACKGROUND**

In this case, the City of Los Angeles ("City") and its outside special counsel engaged in pervasive and elaborate discovery abuses for a period of

almost two and a half years. (Dis. Op. at 2, 3, 11.) In ordering monetary sanctions against the City's years-long pattern of continuous discovery abuses and outright lies, the trial court relied on both its statutory authority and its inherent powers. (*Id.* at 17-18.) These extraordinary facts reveal an extensive and sophisticated pattern of abuse by the City that does not fit into a cookie cutter mold.

The City and its special counsel's fraudulent conduct began at the inception of this litigation, as early as February 2017. (Dis. Op. at 2, 3, 11.) However, the extent of the City's misconduct only became apparent much later. (*Id.* at 2.) For years PricewaterhouseCoopers ("PwC") faced the City's lies, deception, and tactical obstacles designed to hide the truth from the trial court. (*Ibid.*) PwC sought sanctions for discovery abuses on multiple occasions, but the trial court reasonably deferred decision on these motions pending clarification of the scope of the misconduct. (*Id.* at 2-3.) Rather than ordering "sanctions on a motion-by-motion basis[,]" the court "await[ed] PwC's development of the necessary evidence for the terminating sanctions it hoped to obtain." (*Id.* at 13.)

On August 27, 2018, the trial court stated that the court would "allow the parties at a later date to make further request for sanctions if the conduct of refusing to produce documents continues." (Dis. Op. at 3.) The court further stated that it would "evaluate the request for sanctions based

upon the entirety of the discovery process in this case.” (*Ibid.* [internal quotations and citations omitted].)

On December 5, 2018, in denying a motion for sanctions, the court stated that it would defer any decision “until we conclude this issue to determine all the facts and circumstances with regard to the matters in dispute.” (Dis. Op. at 3 [internal quotations and citations omitted].) The court encouraged continued discovery, directing PwC to uncover “all the facts and circumstances with regard to the matters in dispute” (*Ibid.*) However, “the City’s years-long course of obstruction, obfuscation and outright lies continued” until the City abruptly dismissed its complaint on September 26, 2019 in an effort to avoid the consequences of its misconduct. (Maj. Op. at 26; Dis. Op. at 2, 12.)

As Justice Grimes’ dissent explained, the sophistication and extensiveness of the City’s discovery abuse was “unmatched” in her decades-long experience. (Dis. Op. at 1.) The process ultimately revealed a “story of collusion, lies, and coverups[,]” leading the court to “conclude that PwC had made a prima facie showing of fraud on the court by the City.” (*Id.* at 2, 12.)

On June 29, 2020, PwC filed a motion for monetary sanctions under sections 2023.030 and 2023.010<sup>1</sup> pursuing compensation for millions of

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<sup>1</sup> Further unspecified statutes refer to the California Code of Civil Procedure.

dollars of legal costs arising from the City’s repeated noncompliance with court orders and prolonged delays and misrepresentations. (Maj. Op. at 36; Dis. Op. at 16.) In ordering the sanctions, the court cited various episodes of the City’s extensive and highly sophisticated discovery abuses. (Dis. Op. at 17.) Because the extreme and pervasive misconduct did not fit easily in the discrete violations of the method-specific discovery tools, the trial court needed flexibility and relied on both its statutory powers as delineated in the Civil Discovery Act and the inherent powers of a constitutionally established court. (Dis. Op. at 33-34.)

The trial court ultimately ordered the City to pay monetary sanctions of \$2.5 million of the over \$8 million PwC requested (Maj. Op. at 2, 29; Dis. Op. at 17.) The court ordered these sanctions under Code of Civil Procedure section 2023.030 (Maj. Op. at 35). The court determined “there was a serious abuse of discovery by the City and its counsel; PwC has been required to expend a substantial number of hours because of the abuse in discovery; and [t]his serious abuse merits considerable sanctions.” (Dis. Op. at 18 [internal quotations omitted].) On appeal, both the majority and the dissent agreed that the City’s conduct constituted egregious discovery abuse (Maj. Op. at 51; Dis. Op. at 1, 26.) The majority nonetheless reversed the sanctions order. Based on a rationale neither party raised in its principal brief, the Court dismissed sections 2023.030 and 2023.010 as “definitional statutes” and held that a court’s inherent authority does not include the

power to order monetary sanctions under the circumstances of this case. (Maj. Op. at 2, 37, 39, 59.)<sup>2</sup> PwC appealed, and this Court granted review.

### **ARGUMENT**

This Court should reverse the Court of Appeal’s unusual statutory interpretation because the decision is contrary to the plain meaning of sections 2023.030 and 2023.010. Additionally, the Court of Appeal’s narrow interpretation of these statutes, which deprives the trial court of the power to control the sophisticated and extraordinary abuses of the discovery process which occurred here, raises a consequential separation of powers issue. Separation of powers principles protect the inherent powers of a court duly established under article VI, section 1 of the California Constitution. Recognition of these inherent powers to remedy abusive misconduct by noncompliant parties is consistent with fundamental principles of judicial process, as recognized under both English common law and federal law.

#### **I. The Court Of Appeal’s Novel Interpretation is Contrary to the Plain Meaning of the Statute.**

California courts have long recognized that statutory interpretation begins with discerning the “plain meaning” of the text. (See e.g., *Segal v. ASICS America Corp.* (2022) 12 Cal.5th 651, 662.) Courts begin with the

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<sup>2</sup> Less than one month before oral argument, the Court of Appeal issued a letter to the parties requesting that they submit letter briefs addressing the statutory interpretation issue. OBM at 33.

text, “giving it a plain and commonsense meaning...in the context of the statutory framework as a whole.” (*Coalition of Concerned Cmty's., Inc. v. City of Los Angeles* (2014) 34 Cal.4th 733, 737.) “If the statute’s text evinces an unmistakable plain meaning, [the Court] need go no further.” (*In re C.H.* (2011) 54 Cal.4th 94, 100.) “The plain meaning controls if there is no ambiguity in the statutory language.” (*People v. Cornett* (2012) 53 Cal.4th 1261, 1265.)

The Court of Appeal’s interpretation of the trial court’s authority to issue monetary sanctions pursuant to sections 2023.030 and 2023.010 of the Civil Discovery Act is contrary to the plain meaning of the statute. A trial court needs discretion to deal with unusual and egregious behavior, and the California legislature plainly granted that authority in the Civil Discovery Act. Code of Civil Procedure section 2023.030 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), emphasis added.) Section 2023.030 thus unequivocally endows trial courts with discretionary authority to impose monetary sanctions in cases involving a proven “misuse of the discovery process.” Section 2023.010 provides a list of “misuses of the discovery process” subject to sanctions. (*Id.* § 2023.010.) Included in that list are the very abuses that occurred here. On multiple occasions, the trial court ordered the

City to comply with discovery requests, but the City ignored and circumvented the trial court's directives throughout the costly two and half years of discovery.

Justice Grimes' dissent explained that sections 2023.030 and 2023.010 expressly authorize a trial court to order monetary sanctions against the City and its special counsel based on their extensive, continuous, and sophisticated discovery abuses. (Dis. Op. at 19-26.) In her dissent, Justice Grimes thoroughly discusses the significant body of precedent that cuts against the majority's unprecedented interpretation of sections 2023.030 and 2023.010. (*Ibid.*) As Justice Grimes put it, "just as other courts, up to now, have universally done," the trial court could impose sanctions based upon sections 2023.030 and 2023.010. (*Id.* at 19.) In fact, Justice Grimes characterized the majority opinion as "announc[ing a principle] 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.*) In this case of such "deeply disturbing" abuses by the City, amounting to a fraud on the court, legal precedent and the plain meaning of the statutory text support the trial court's sanctions order. (*Id.* at 20.)



## **II. The Court of Appeal’s Narrow Interpretation of the Statute Raises Serious and Consequential Separation of Powers Issues.**

Interpretations of a statute typically do not implicate the separation of powers doctrine. This constitutionally based doctrine is squarely raised, however, when in offering its interpretation of the statute, the Court of Appeal sharply limited the trial court’s authority to impose monetary sanctions for egregious discovery abuses.<sup>3</sup>

The Court of Appeal misinterpreted the Discovery Act to impermissibly restrict California courts’ ability to deal with litigation abuses, undermining the judiciary’s ability to carry out its core constitutional responsibilities. A plain meaning interpretation of sections 2023.030 and 2023.010 gives a court the needed flexibility to deal with litigation abuses. The Court of Appeal’s novel interpretation assumes the legislature ignored these fundamental needs of a court of law.

The Constitution establishes three branches of California’s government and requires “[p]ersons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.” (Cal. Const., art. III, § 3.) This Court has consistently

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<sup>3</sup> It is unclear whether the majority opinion concluded that no trial court has inherent power to impose monetary sanctions for discovery abuse or that whatever inherent power to impose monetary sanctions might exist was limited based on the legislature’s approval of sections 2023.030 and 2023.010. Under either interpretation, the decision unlawfully restricts the inherent powers of a court of law.

recognized that the separation of powers doctrine’s primary purpose “is to prevent the combination in the hands of a single person or group of the basic or fundamental powers of government.” (*Manduley v. Super. Ct.* (2002) 27 Cal.4th 537, 557 [quoting *Parker v. Riley* (1941) 18 Cal.2d 83, 89].) The doctrine “not only guards against the concentration of power in a single branch of government; it also protects one branch against the overreaching of the others.” (*Kasler v. Lockyer* (2000) 23 Cal.4th 472, 495.)

The California Constitution establishes courts vested with broad discretion,<sup>4</sup> and instructs that “courts have and should maintain vigorously all the inherent and implied powers necessary to properly and effectively function” as independent departments within the California government. (See *Brydonjack v. State Bar of Cal.* (1929) 208 Cal. 439, 442.) Courts have inherent power over particular subject matters and functions, irrespective of express constitutional or legislative grant. (*Super. Ct. v. Cnty. of Mendocino* (1996) 13 Cal.4th 45, 57.) The legislature cannot “arrogate to itself the core functions of another branch.” (See, e.g., *Steen v. App. Div. Super. Ct.* (2014) 59 Cal.4th 1045, 1053). For example, as a core constitutional function, this Court has the inherent authority to regulate legal practice.<sup>5</sup> While the legislature may put reasonable restrictions on the

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<sup>4</sup> Cal. Const., article VI, § 1.

<sup>5</sup> See *In re Att’y Discipline Sys.*, (1998) 19 Cal.4th 582, 592-93 (reasoning that the Supreme Court’s inherent powers over lawyer regulation, admission, and discipline constitute core judicial functions.)

courts' constitutional functions, it cannot "defeat or materially impair the exercise of those functions." (*People v. Engram* (2010) 50 Cal.4th 1131, 1147 [internal quotes and citations omitted].)

The legislature cannot overstep its authority and materially impair the judiciary's core functions by legislating restrictions or changes to a court's inherent authority. (See, e.g., *People v. Thomas* (2005) 35 Cal.4th 635, 638 [holding a statute's prosecutorial consent provision invalid because it violated California's separation of powers doctrine]; *Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 339-41 [holding that the legislature's vesting attorney discipline powers to the Worker's Compensation Appeals Board materially impaired the judiciary's constitutional powers and violated the separation of powers doctrine]; accord *People v. Super. Ct. (Romero)* (1996) 13 Cal.4th 497, 512 [reasoning that a statute must be construed to preserve the independence of the judiciary and a court's historic power of dismissal, free from interference by the executive branch].)

Most critically, a court can protect the judicial process by removing "all obstructions to its successful and convenient operation" independent of any interference from other branches. (See *Millholen v. Riley* (1930) 211 Cal. 29, 33 [reasoning that the legislature "may at all times aid the courts and may even regulate their operation, so long as their efficiency is not thereby impaired"].) The Court of Appeal's unprecedented interpretation

does just that – it restricts the trial court’s ability to perform its core constitutional functions in administering justice and controlling the proceedings before it.

This Court can avoid the separation of powers issues created by the Court of Appeal’s novel statutory interpretation by upholding the trial court’s plain meaning interpretation of sections 2023.030 and 2023.010. The Court of Appeal’s narrow statutory reading creates unreasonable barriers for the trial court in maintaining control over its proceedings. Here, the City’s extensive and highly sophisticated misconduct of delays, coverups, and disobedience to court orders led to two and a half years of unnecessary discovery, costing millions to the adverse party and burdening the court with extensive and unnecessary proceedings.

**A. The Court of Appeal’s Statutory Interpretation Implicates the Separation of Powers Doctrine Because It Failed to Respect the Inherent Authority of Constitutionally Authorized California Courts.**

Article VI, section 1 of the California Constitution grants broad powers to establish California courts and accord them inherent powers to control litigation and issue sanctions. (Cal. Const., art. VI, § 1; see *Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 758 (*Slesinger*)). All “judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts.” (Cal. Const., art. VI, § 1.) By grant of the California Constitution, “California courts received broad

inherent power” independent of statute. (*Slesinger, supra*, 155 Cal.App.4th at 758.) These powers include “the inherent power to dismiss civil cases for unreasonable, inexcusable delay in prosecution” and “the inherent authority to dismiss cases that are fraudulent or vexatious.” (See *id.* at 589-60 [internal quotation marks omitted].)

The Court of Appeal's novel statutory interpretation of sections 2023.030 and 2023.010 conflicts with the trial court’s powers under the California Constitution, article VI, section 1, and the court’s inherent power to control proceedings before it. California courts, including this Court, have repeatedly held that the California Constitution grants broad powers to California courts, including inherent powers to control judicial proceedings. (Cal. Const., art. VI, § 1; see, e.g., *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967.) The California Constitution establishes courts without any restrictions, and thus “the courts have and should maintain vigorously all the inherent and implied powers necessary to properly and effectively function” as independent departments within the California government. (*Brydonjack*, 208 Cal. at 442.) This Court has repeatedly recognized the court’s inherent powers “to insure the orderly administration of justice.” (See, e.g., *Hays v. Super. Ct.* (1940) 16 Cal.2d 260, 264.)

California courts have consistently recognized that trial court powers are derived from their historic powers of courts of equity, and as such, trial courts are inherently authorized to control, supervise, and administer the

proceedings before them. (See e.g., *Peat, Marwick, Mitchell & Co. v. Super. Ct.* (1988) 200 Cal.App.3d 272, 287-88.) Significantly, the inherent power of the courts “may demand more than the Legislature has required.” (See *In re Lavine*, 2 Cal.2d 324, 328.)

Trial courts have inherent powers to prevent abuses of their proceedings and adhere to the basic principles of judicial process. (See *People v. Super. Ct. (Schomer)* (1970) 13 Cal.App.3d 672, 682 [quoting *People v. Clark* (1968) 264 Cal.App.2d 44, 46].) While California’s discovery statutes provide a wide range of sanctions for misuse of discovery, they do not provide an exhaustive list. (See *Cedars-Sinai Med. Ctr. v. Super. Ct.* (1998) 18 Cal.4th 1, 12 [reasoning that a court can sanction a party for destroying evidence in response to a discovery request under Code of Civil Procedure section 2023].)<sup>6</sup> A court’s inherent powers even include the authority to terminate litigation in limited circumstances. (See *Lyons v. Wickhorst* (1986) 42 Cal.3d 911, 915-16.) “There is nothing novel in the concept that the trial court has the power to exercise reasonable

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<sup>6</sup> In *Cedars-Sinai*, this Court cited examples of sanctionable conduct under section 2023 including “failing to respond or to submit to an authorized method of discovery” and “making evasive responses[.]” 18 Cal.4th at 12 (citing Code Civ. Proc., § 2023 subd. (a)(4), (a)(6).) From these examples it logically follows that spoliation of evidence, a much more extreme form of discovery misconduct, must be subject to sanction authority under section 2023.

control over all proceedings connected with the litigation before it.” (*Hays*, 16 Cal.2d at 264.)<sup>7</sup>

California courts have uniformly upheld a wide range of inherent powers. (See, e.g., *Elkins v. Super. Ct.* (2007) 41 Cal.4th 1337, 1351.) “California courts retain flexibility to exercise historic inherent authority in modern circumstances, fashioning procedures and remedies as necessary to protect litigants’ rights.” (See *Slesinger, supra*, 155 Cal.App.4th at 764 [reasoning that a court has inherent power to dismiss a case when, after reviewing all relevant evidence, the court determined that a party’s conduct was “fraudulent or ‘vexatious,’ “deliberate and egregious” or “pervasive misconduct”].)<sup>8</sup> California appellate courts have widely held that trial courts possess broad inherent supervisory and administrative powers to carry out litigation before them and safeguard parties from potential abuse,<sup>9</sup> “prevent

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<sup>7</sup> California’s Second Appellate District has also repeatedly recognized such inherent powers of a court of law. See, e.g., *People v. Nesbitt* (2010) 191 Cal.App.4th 227, 239-41 (reasoning that trial courts have inherent power including the power to reconsider their own orders and correct its errors to ensure the orderly administration of justice); *Conn v. Super. Ct.* (1987) 196 Cal.App.3d 774, 785-86 (reasoning that a court has inherent power to control litigation proceedings includes the authority to hold a party in contempt for repeated failures to turn over documents according to discovery requests).

<sup>8</sup> Accord *Huang v. Hanks* (2018) 23 Cal.App.3d 179, 181-82 (reasoning that a court’s dismissal of “frivolous” claims was within the court’s historic inherent authority to protect litigants’ rights, control litigation, achieve justice, and prevent procedural abuse.)

<sup>9</sup> See, e.g., *Hernandez v. Vitamin Shoppe Indus., Inc.* (2009) 174 Cal.App.4th 1441, 1454.

misuse of processes,”<sup>10</sup> sanction against discovery abuse and refusal to comply with court orders,<sup>11</sup> and adopt any suitable procedure that best conforms to the spirit of the statute under which they operate.<sup>12</sup>

In *Cedars-Sinai*, the court exercised its power to sanction a party for spoliating evidence (See *Cedars-Sinai Med. Ctr.*, *supra*, 18 Cal.4th at 12.) In this case, the City engaged in conduct with the same effect by misleading the court, blocking disclosure of key facts, and causing significant delays that justify the court’s issuing of monetary sanctions. The court may impose reasonable sanctions on parties like the City that flagrantly abused the discovery process and defied the court’s rightful authority to supervise litigation proceedings.

This Court should find that the trial court appropriately exercised its inherent power to order the City to pay monetary sanctions for its disruptive and deceitful conduct, costly discovery abuse, and years of delays. As in *Huang*, where the trial court exercised its inherent authority to protect litigants’ rights and achieve justice, the trial court here properly exercised

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<sup>10</sup> See *Venice Canals Resident Home Owners Ass’n v. Super. Ct.* (1977) 72 Cal.App.3d 675, 679.

<sup>11</sup> See *Padron v. Watchtower Bible & Tract Soc’y of New York, Inc.* (2017) 16 Cal.App.5th 1246, 1264-65 (reasoning that a trial court has inherent authority to order monetary sanctions for a party that “refuses to acknowledge the authority of the court and repudiates the procedures and rules all litigants are supposed to follow[.]”)

<sup>12</sup> See *Daws v. Super. Ct.* (2019) 42 Cal.App.5th 81, 86; *People v. Uribe* (2011) 199 Cal.4th 836, 882-83.



its inherent authority to protect PwC’s rights and achieve justice by ordering the City to pay monetary sanctions for its egregious misconduct.

**B. The Inherent Powers of California Courts Echo Those of English and Federal Courts.**

Modern American discovery rules trace back to the equity bill of discovery in English Chancery practice. (See *Hickman v. Taylor* (1947) 329 U.S. 495, 515.) While most modern practices and technologies did not exist at the time, their underlying purpose did.<sup>13</sup> However, courts still often rely on inherent power to “circumscribe, expand, or altogether supersede written rules of discovery.”<sup>14</sup> The authority of a court to supervise and control its proceedings necessarily derives from the essential purpose of a court of law: to fairly administer justice and to sanction conduct that interferes with the court’s proceedings.

A court’s inherent power to supervise and control its proceedings, issue orders, and enforce them is deeply rooted in both common law and the American judicial system.<sup>15</sup> “Long before the American Revolution, English courts assumed the authority to prevent abuses of their processes

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<sup>13</sup> See Dobbins, *The Inherent And Supervisory Power* (2020) 54 Ga. L.Rev. 411, 442 (noting that while many of the discovery methods and technologies did not exist at the time of the historical courts of equity, the purpose for these tools existed, many of which were codified in the procedural rules while others are available as implied and inherent to a court’s authority.)

<sup>14</sup> *Ibid.*

<sup>15</sup> See Meador, *Inherent Judicial Authority in the Conduct of Civil Litigation* (1995) 73 Tex. L.Rev. 1805, 1806; Dobbins, *supra*, at 417.

and procedures and to control the conduct of persons appearing before them or interfering with their business.”<sup>16</sup> American federal courts have adopted these powers, including both powers to take action “in the absence of clear written rules” and the power to ignore written rules.<sup>17</sup> “While current written [federal] rules provide for sanctions, the scope of inherent power [supplements] the authority explicitly set forth in the rules.”<sup>18</sup> Courts have long recognized their historic power to sanction parties for contempt and other sanction powers, such as ordering parties to pay costs or fees without a finding of contempt.<sup>19</sup>

The United States Supreme Court has long endorsed a court’s use of inherent authority to fill in gaps in existing statutes or procedural rules, or if essential for a court to effectively carry out its fundamental duties.<sup>20</sup> In 1792, the United States Supreme Court invoked “the practice of the courts of King’s Bench and Chancery in England” to provide the court, “from time to time, [the authority to] make alterations[... ]as circumstances may render necessary.” (*Case of Hayburn* (1792) 2 U.S. 408, 410.) Eleven years later, in the landmark case *Marbury v. Madison* (1803) 5 U.S. 137, 177, the

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<sup>16</sup> See Meador, *supra*, at 1806.

<sup>17</sup> See Dobbins, *supra*, at 431.

<sup>18</sup> Dobbins, *supra*, at 435.

<sup>19</sup> See generally Landis, Annot., *Inherent Power of Federal District Court to Impose Monetary Sanctions on Counsel in Absence of Contempt of Court* (1986) 77 A.L.R. Fed. 789.

<sup>20</sup> See Francis IV & Mandel, *Limits on Limiting Inherent Authority: Rule 37(e) and the Power to Sanction* (2016) 17 Sedona Conf. J. 613, 667.

United States Supreme Court cemented the judicial review doctrine as an implied and necessary inherent power under the Constitution's separation of powers.<sup>21</sup>

Since *Marbury*, courts have strived for a balance between safeguarding fundamental constitutional principles while respecting the actions of democratically elected legislatures. (See, e.g., *United States v. Hudson* (1812) 11 U.S. 32, 34 [holding that federal courts' inherent powers are those which "are necessary to the exercise of all others"].) The Federal Rules of Civil Procedure, which served as a model for the California Discovery Act, reflect that balance with much influence from both common law and federal law.<sup>22</sup>

In this case, the City and its special counsel engaged in bad faith conduct in an elaborate scheme to conceal their collusion in the *Jones* case, deny discovery requests, and falsely assert privilege. A trial court must have the authority to both dissuade and remedy such bad faith conduct in its courtroom.

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<sup>21</sup> See generally *Marbury v. Madison* (1803) 5 U.S. 137, 177 (Marshall, C.J. wrote, "it is emphatically the province and duty of the judicial department to say what the law is.")

<sup>22</sup> See Weber, *Potential Innovations in Civil Discovery: Lessons for California from the State and Federal Courts* (2001) 32 McGeorge L.Rev. 1051, 1052.

## CONCLUSION

This Court should reverse the decision below and restore the trial court's monetary sanctions order. The Court of Appeal's decision is contrary to the plain meaning of sections 2023.030 and 2023.010. Additionally, the Court of Appeal's narrow interpretation of sections 2023.030 and 2023.010, by handcuffing a trial court's ability to deal with sophisticated and egregious discovery abuse, raises serious and consequential separation of powers issues. The separation of powers doctrine is implicated because the Court of Appeal's interpretation of the statute and the inherent powers of a court of law would prevent a court from justly and efficiently carrying out its core constitutional function as a matter of unwarranted deference to legislative rule-making, thereby surrendering its own powers to control judicial proceedings.

DATED: September 15, 2023

Respectfully Submitted,

By: /s/ Orly Ravid  
Orly Ravid

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I certify that, pursuant to rule 8.204(c)(1) of the California Rules of Court, the attached Amici Curiae Brief is proportionally spaced, uses a typeface of 13 points, and contains 5,856 words, excluding this certificate, according to the word count generated by the computer program used to produce the brief.

DATED: September 15, 2023

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WITH THE AMICUS PROJECT AT SOUTHWESTERN LAW  
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<p>Hydee F. Soto Kathleen A. Kenealy Joseph A. Brajevich OFFICE OF THE CITY ATTORNEY 200 North Main Street, Suite 966 Los Angeles, CA 90012 Telephone: (213) 978-8100 hydee.feldsteinsoto@lacity.org kathleen.kenealy@lacity.org joseph.brajevich@ladwp.com</p>	<p>Attorneys for Plaintiff and Appellant City of Los Angeles (Via TrueFiling only)</p>
<p>Kathryn L. McCann Jason Y. Kelly ANNAGUEY MCCANN LLP 10880 Wilshire Boulevard Suite 1101 Los Angeles, CA 90024 Telephone: (424) 431-0078 kathryn@annagueymccann.com jason@annagueymccann.com</p>	<p>Attorneys for Plaintiff and Appellant City of Los Angeles (Via TrueFiling only)</p>
<p>Eric M. George Guy C. Nicholson ELLIS GEORGE CIPOLLONE O'BRIEN ANNAGUEY LLP 2121 Avenue of the Stars, Suite 2800 Los Angeles, CA 90067 Telephone: (310) 274-7100 egeorge@egcfirm.com gnicholson@egcfirm.com</p>	<p>Attorneys for Plaintiff and Appellant City of Los Angeles (Via TrueFiling only)</p>

<p>Julian W. Poon  Casey J. McCracken  Samuel Eckman  Ryan Azad  GIBSON, DUNN &amp;  CRUTCHER LLP  333 South Grand Avenue  Los Angeles, CA 90071-3197  Telephone: (213) 229-7000  JPoon@gibsondunn.com  SEckman@gibsondunn.com  RAzad@gibsondunn.com</p>	<p>Attorneys for Defendant  and Respondent  PricewaterhouseCoopers  (Via TrueFiling only)</p>
<p>Clerk  Court of Appeal  Second Appellate District  Division Five  Ronald Reagan State Building  300 S. Spring Street  2nd Floor, North Tower  Los Angeles, CA 90013  Telephone: (213) 830-7000</p>	<p>(Automatically served  via TrueFiling only)</p>
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Lauren Elliot Gibson, Dunn & Crutcher LLP	lelliot@gibsondunn.com	e-Serve	9/15/2023 5:20:30 PM
Julie Riley Office Of City Attorney 197407	julie.riley@ladwp.com	e-Serve	9/15/2023 5:20:30 PM
Kathryn Mccann Ellis George Cipollone O'Brien Annaguey LLP 245198	kmccann@egcfirm.com	e-Serve	9/15/2023 5:20:30 PM
Julian Poon Gibson Dunn & Crutcher LLP 219843	jpoon@gibsondunn.com	e-Serve	9/15/2023 5:20:30 PM
Kathryn Mccann Annaguey & McCann LLP 245198	kathryn@annagueymccann.com	e-Serve	9/15/2023 5:20:30 PM
Hydee F. Soto	hydee.feldsteinsoto@lacity.org	e-Serve	9/15/2023 5:20:30 PM
Kathleen A. Kenealy	kathleen.kenealy@lacity.org	e-	9/15/2023

		Serve	5:20:30 PM
Joseph A. Brajevich	joseph.brajevich@ladwp.com	e-Serve	9/15/2023 5:20:30 PM
Guy C. Nicholson	gnicholson@egcfirm.com	e-Serve	9/15/2023 5:20:30 PM
Ryan Azad	RAzad@gibsondunn.com	e-Serve	9/15/2023 5:20:30 PM
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