

No.

In The
Supreme Court of the United States

Sergei Vinkov,
Petitioner,
v.

Mark Smith et al.,
Respondents

On Petition for Writ of Certiorari
to California Supreme Court,
Case Nos. S261198 & S263745

APPENDIX, Volume 2
to the
PETITION FOR A WRIT OF CERTIORARI
[Appendices-B-R; pages 86a-151a,
Excerpts of Records]

Sergei Vinkov
Pro Se
40795 Nicole Court,
Hemet, California,
92544
(951) 380 53 39
vinjkov@gmail.com

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SUPREME COURT FILED
SEP 16 2020
Jorge Navarrete Clerk
Deputy

Court of Appeal, Fourth Appellate District, Division Two - No.
E075396

S263745

Order:

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SERGEI VINKOV, Petitioner,

v.

SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent,

MARK SMITH, Real Party in Interest

The petition for review is denied.

CANTIL-SAKAUYE
Chief of Justice

**APPENDIX-D. California Supreme Court's
Denial (*en banc*) 05/13/20**

SUPREME COURT FILED
MAY 13 2020
Jorge Navarrete Clerk
Deputy

Court of Appeal, Fourth Appellate District, Division Two - No.
E074567

S261198

Order:

IN THE SUPREME COURT OF CALIFORNIA

En Banc

Sergei Vinkov, Petitioner,

v.

Superior Court of Riverside County, Respondent,

Mark Smith, Real Party in Interest

MCC1900188

The petition for review is denied.

CANTIL-SAKAUYE
Chief of Justice

**APPENDIX-E. California Court of Appeal
(4/2)'s Denial 07/29/20**

Court of Appeal, Fourth Appellate
District, Division Two
Kevin J Lane, Clerk/Executive
Officer
Electronically FILED on 7/29/2020
by B. Ramirez, Deputy Clerk

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

SERGEI VINKOV, E075396
Petitioner,
v. (Super.Ct.No. MCC1900188)
THE SUPERIOR COURT OF
RIVERSIDE COUNTY, The County of Riverside
Respondent;
MARK SMITH et al.,
Real Parties in Interest.

THE COURT

The petition for writ of mandate, request for immediate
stay, and request for judicial notice are DENIED.

RAPHAEL
Acting P.J.

Panel: Raphael
Menetrez
Ramirez

cc: See attached list

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MAILING LIST FOR CASE: E075396
Sergei Vinkov v. The Superior Court, Mark Smith et. al.

Superior Court Clerk
Riverside County
P.O. Box 431 - Appeals

Riverside, CA 92502

Sergei Vinkov
40795 Nicole Court
Hemet, CA 92544

Paul Aaron Levine
Angeloff & Angeloff & Levine
910 N State St
Suite C
Hemet, CA 92543

Bret David Lewis
Law Offices of Bret D. Lewis
12304 Santa Monica Blvd.,
107A
Los Angeles, CA 90025

**APPENDIX-F. California Court of Appeal
(4/2)'s Denial 03/05/20**

Court of Appeal, Fourth Appellate
District, Division Two Kevin J. Lane,
Clerk/Executive Officer
Electronically FILED on 3/5/2020 by
C. Daniels, Deputy Clerk

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

SERGEI VINKOV, E074567
Petitioner,
v. (Super.Ct.No. MCC1900188)
THE SUPERIOR COURT OF
RIVERSIDE COUNTY, The County of Riverside
Respondent
MARK SMITH,
Real Party in Interest.

THE COURT

The petition for writ of mandate and request for
immediate stay are DENIED. The request for judicial notice
filed on February 26, 2020, by petitioner is DENIED.

McKINSTER
Acting P.J.

Panel: McKinster
Miller
Raphael

cc:

Superior Court Clerk Paul Aaron Levine
Riverside County Angeloff & Angeloff & Levine
P.O. Box 431 - Appeals 910 N State St
Riverside, CA 92502 Suite C
Hemet, CA 92543

Sergei Vinkov
40795 Nicole Court
Hemet, CA 92544

**APPENDIX-G. California Court of Appeal
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Court of Appeal, Fourth Appellate District, Division Two
Kevin J. Lane, Clerk/Executive Officer
Electronically FILED on 2/27/2020 by
C. Daniels, Deputy Clerk

**COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO**

ORDER

SERGEI VINKOV, E074567
Petitioner,
(Super.Ct.No. MCC1900188)
v.
The County of Riverside
THE SUPERIOR COURT OF
RIVERSIDE COUNTY,
Respondent
MARK SMITH,
Real Party in Interest.

THE COURT

The court has considered petitioner's request filed February 26, 2020, for judicial notice. Ruling is RESERVED for consideration with the writ petition on the request for judicial notice. The parties may discuss the matters of which judicial notice is requested in any documents remaining to be filed. However, if the court does not take judicial notice of the requested matters, any discussion of them in the documents will be disregarded.

RAMIREZ

Presiding Justice

cc:

Superior Court Clerk
Riverside County
P.O. Box 431 - Appeals
Riverside, CA 92502
Sergei Vinkov
40795 Nicole Court
Hemet, CA 92544

Paul Aaron Levine
Angeloff & Angeloff & Levine
910 N State St Suite C
Hemet, CA 92543

**APPENDIX-H.California Court of Appeal
(4/2)'s Dismissal 01/31/20**

Court of Appeal, Fourth Appellate
District, Division Two Kevin J. Lane,
Clerk/Executive Officer
Electronically FILED on 1/31/2020 by
R. Hance, Deputy Clerk

COURT OF APPEAL -- STATE OF CALIFORNIA
FOURTH DISTRICT
DIVISION TWO

ORDER

MARK SMITH et al., E074263
Plaintiffs and Respondents,
(Super.Ct.No. MCC1900188)
v.
The County of Riverside
SERGEI VINKOV,
Defendant and Appellant.

THE COURT

This court has reviewed the civil case information statement received on December 18, 2019, from appellant, which states that the order appealed from was entered July 10, 2019, and notice of entry of judgment was served on July 23, 2019. A motion for reconsideration was filed July 22, 2019 and denied October 1, 2019. The notice of appeal was filed in the superior court on December 6, 2019. Because the appeal is untimely, it must be and is DISMISSED.

California Rules of Court, rule 8.104(a) provides that a notice of appeal must be filed within 60 days following the service of notice of entry. In this case, the notice of appeal was filed 136 days following service of notice of entry of judgment. The timeliness requirement is absolutely jurisdictional. There are no exceptions other than those provided in California Rules of Court, rule 8.108. (*Hollister Convalescent Hosp., Inc v. Rico* (1975) 15 Cal.3d 660, 666-667; *Estate of Hanley* (1943) 23 Cal.2d 120, 122.) Because appellant filed a motion for reconsideration, the time to appeal was extended until the earliest of: (1) 30 days after the service of an order denying the motion, (2) 90 days after the

motion to reconsider is filed, or (3) 180 days after the entry of the appealable order. (Cal. Rules of Court, rule 8.108(e).) The motion for reconsideration was filed July 22, 2019 and denied on October 1, 2019, and the civil case information statement indicates that notice of entry of that denial was served on October 1, 2019.

Under California Rules of Court, rule 8.108(e)(2), the notice of appeal was due on or before October 20, 2019. Thus, the notice of appeal was untimely filed more than 90 days after the motion to reconsider was filed, and this court has no jurisdiction over this appeal.

FIELDS

Acting P.J.

cc: See attached list

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MAILING LIST FOR CASE: E074263
Mark Smith et. al. v. Sergei Vinkov

Superior Court Clerk
Riverside County
P.O. Box 481 - Appeals
Riverside, CA 92502

Paul Aaron Levine
Angeloff & Angeloff & Levine
910 N State St
Suite C
Hemet, CA 92543

Sergei Vinkov
40795 Nicole Court
Hemet, CA 92544

**APPENDIX-I. Superior Court's Written Denial of
Judicial Recusal, 07/14/2020**

Sergei Vinkov
40795 Nicole Court, Hemet,
CA 92544
Mobile 951.380.5339
E-mail vinjkov@gmail.com
Defendant / Cross-
Complainant, In Pro Per

FILED
Superior Court of California
County of Riverside
07/14/2020
s/
A. True

**SUPERIOR COURT OF THE STATE OF
CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

Mark Smith, Solar Forward,	Case No.: MCC1900188 SMITH VS VINKOV Unlimited Jurisdiction
Plaintiffs vs.	SERGEI VINKOV'S PEREMPTORY CHALLENGE
Sergei Vinkov, Defendant	[Judicial Disqualification under §170.6 CCP] Department: S302 Judge: Hon. Judge Angel M. Bermudez Case Management Conference: 09/09/2020 Time: 8.30 am Trial date: not set

I, Sergei Vinkov, declare:

1. I am a party to the civil action in the Superior Court of the State of California for County of Riverside - Southwest Justice Center, case # MCC1900188, case name "Smith vs. Vinkov", action filed on 02/20/2019, the state jurisdiction was terminated on 06/03/2020.

2. The case returned to the state court and re-assigned to Department S-302, Judge Angel M. Bermudez.

Page 2

3. Judge Angel M. Bermudez before whom the action is re-assigned is prejudiced against me, or interests of mine, and I cannot believe I can have a fair and impartial trial or hearing before Hon. judge Angel M. Bermudez.

4. This declaration of prejudice is made at least 15 court days before the scheduled hearing on 09/09/2020 (Case Management Conference) and within 4 days of my first appearance after this case remanded (filed notice of the district court on 07/10/2020) from the federal jurisdiction and the reassignment to the same judge, Hon. Angel Manuel Bermudez (Department S-302). The federal court order to remand the case issued and certified on 07/07/2020.

5. I did not find any specific authorities which regulate application of California Code of Civil Procedure §170.6 (CCP §170.6) to the cases which were returned to the state court from the federal jurisdiction. I used <https://www.lexisnexis.com/> accessible via the website of California Supreme Court to conduct my legal research. I have no any prior successful preemptory challenges in this court under CCP §170.6.

6. Based on the foregoing, pursuant to the provisions of CCP §170.6 I request that this case be assigned to another judicial officer for further proceedings

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

Executed July 14, at Hemet, California.

s/

Sergei Vinkov, Pro Se, Defendant

The Request for disqualification of judicial officer pursuant to CCP 170.6 has been reviewed and is hereby:

Approved

Not Approved, Reason: The challenge is denied as untimely

s/

By: judicial officer A. Bermudez

**APPENDIX-J. The Superior Court's Minutes Order
striking Judicial Disqualification dated 01/23/2020**

**Superior Court of California, County of Riverside
Superior Court of California
Minute Order/Judgment**

Case No: MCC1900188 Date: 01/23/20 DEPT: S302

Case Name: SMITH VS VINKOV

Case Category: Defamation-Over \$25,000 (Southwest)

Action Description: Court on its Own Motion: Statement of Disqualification filed on 01/21/20 is Stricken

Honorable Judge Angel M. Bermudez, Presiding

Clerk: A. Behrman

Court Reporter: None

No appearance made by either party.

On Court's Own Motion:

Defendant Sergei Vinkov has filed his fifth statement of disqualification which he has erroneously entitled "Sergei Vinkov's Forth (sic) Verified Statement of Disqualification of Judge Angel Bermudez." Defendant's fifth statement of disqualification fails to set forth facts constituting new grounds for disqualification and is repetitive of his prior challenges. In addition, defendant's fifth statement of disqualification fails to state facts which constitute grounds for disqualification of this court. Accordingly, defendant's fifth statement of disqualification, erroneously entitled "Sergei Vinkov's Forth (sic) Verified Statement of Disqualification of Judge Angel Bermudez" is hereby stricken pursuant to Code of Civil Procedure section 170.4, subdivisions (b) and (c).

Notice to be given by Clerk

Hearing held: Pre-disposition hearing.

**APPENDIX-K. Superior Court's Minute Order
Denying Vinkov's Motion for Judgment on the
Pleadings 08/15/19**

**Superior Court of California, County of Riverside
Superior Court of California
Minute Order/Judgment**

Case No: MCC1900188 Date: 08/15/19 DEPT: S302

Case Name: SMITH VS VINKOV

Case Category: Defamation-Over \$25,000 (Southwest)

HEARING: Hearing re: Motion to/for Judgment on the
Pleadings by SERGEI VINKOV

Honorable Judge Angel M. Bermudez, Presiding

Clerk: A. True

Court Reporter: J. Fogleman

MARK SMITH, SOLAR FORWARD represented by
ANGELOFF, ANGELOFF & LEVINE - Paul L. LeVine
present.

SERGEI VINKOV represented by/in Daniel L. Ferguson
specially appearing At 9:01, the following proceedings were
held:

Court has read and considered documents relating to this
matter.

Court's tentative is issued.

There is request for oral argument.

Court inquires of defense counsel regarding limited scope of
representation.

Argument presented by Daniel L. Ferguson.

Tentative Ruling shall become the Ruling of the Court.

The Motion is denied.

The Motion is DENIED. All three causes of action appear to be
sufficiently alleged. Challenges raised in this motion go to the
merits of the case, not the defects in pleading. Although
allusions to defects are made, the defects in the pleading are
not identified.

Notice waived.

**APPENDIX-L. Superior Court's Minute Order
Granting Plaintiff's Anti-SLAPP motion 07/10/19**

**Superior Court of California, County of Riverside
Superior Court of California
Minute Order/Judgment**

Case No: MCC1900188 Date: 07/10/19 Time: 8:30 DEPT: S302

Case Name: SMITH VS VINKOV

Case Category: Defamation-Over \$25,000 (Southwest)

HEARING: Hearing re: Motion to/for Strike Under CCP

425.16 (Anti-Slapp Statute) by MARK SMITH, SOLAR
FORWARD

Honorable Judge Angel M. Bermudez, Presiding

Clerk: A. Behrman

Court Reporter: None

At 8:30, the following proceedings were held:

No appearance made by either party.

Court has read and considered documents relating to this matter.

Court's tentative is issued.

There is no request for oral argument

Tentative Ruling shall become the Ruling of the Court.

The Motion is granted.

The motion to strike the cross-complaint under Code of Civil Procedure section 425.16 filed by cross-defendants is GRANTED.

Cross Complaint of VINKOV dismissed

Analysis:

The court finds that cross-defendants meet the first prong of the analysis under section 425.16(e)(1)(2) because the cross-complaint arises from cross-defendants' complaint they filed in this action. See paragraphs 41, 44, 49 and 55 of the Cross-Complaint.

Cross-complainant fails to meet his burden on the second prong of the analysis because he has failed to present admissible evidence that he has a reasonable probability of prevailing on his claims. The claims raised against defendants in plaintiff's first amended complaint are also subject to the litigation privilege under Civil Code section 47. (Flatley v. Mauro (2006) 39 Cal.4th 299, 322-23 litigation privilege as an aid in construing the scope of subdivision (e) (1) and (2) with respect to the first step of the two-step anti-SLAPP inquiry—that is, by examining the scope of the litigation privilege to

determine whether a given communication falls within the ambit of subdivisions (e) (1) and (2). ")).

Notice of ruling to be prepared, served and submitted by prevailing party.

**APPENDIX-M. Superior Court's Minute Order
Awarding Attorney's Fees for Anti-SLAPP motion
07/10/19**

**Superior Court of California, County of Riverside
Superior Court of California
Minute Order/Judgment**

Case No: MCC1900188 Date: 08/19/19 Time: 8:30 DEPT: S302
Case Name: SMITH VS VINKOV

Case Category: Defamation-Over \$25,000 (Southwest)

HEARING: Hearing re: Motion to/for Mandatory fees and
costs under California's Anti-SLAPP law by MARK
SMITH, SOLAR FORWARD

Honorable Judge Angel M. Bermudez, Presiding

Clerk: A. True

Court Reporter: None

MARK SMITH, SOLAR FORWARD represented by
ANGELOFF, ANGELOFF & LEVINE - Paul A. LeVine
present.

SERGEI VINKOV represented by BORTON PETRINI LLP -
Daniel L. Ferguson present.

Sergei Vinkov-present appearing via CourtCall.

At 8:30, the following proceedings were held:

Court has read and considered documents relating to this
matter.

Court's tentative is issued.

There is no request for oral argument.

Tentative Ruling shall become the Ruling of the Court.

The Motion is granted.

The Motion is GRANTED and Attorneys' Fees and Costs of
\$9,185.00 is awarded.

"(A) prevailing defendant on a special motion to strike shall be
entitled to recover his or her attorney's fees and costs." (C.C.P.
section 425.16(c) (1)). Counsel's billable rate was \$350.00.
There is also a legal assistant rate of \$150.00. Both of these
rates appear reasonable. The amount of time spent by
Plaintiffs' counsel appears reasonable given the complexity of
a special motion to strike. In this age of legal practice legal
assistants and paralegals are integral to the practice. As such,
the legal assistant's time of 3.6 hours is reasonable. Notice of
ruling to be prepared, served and submitted by prevailing
party.

**APPENDIX-N. Superior Court's Notice of Case
Management Conference 07/13/20**

**SUPERIOR COURT OF CALIFORNIA COUNTY OF
RIVERSIDE**

30755-D Auld Road Murrieta, CA 92563

www.riverside.courts.ca.gov

NOTICE OF CASE MANAGEMENT CONFERENCE

MARK SMITH

vs CASE NO. MCC1900188

SERGEI VINKOV

TO: SERGEI VINKOV 40795 NICOLE COURT

HEMET CA 92544

The above entitled case has been scheduled for a Case Management Conference for 09/09/20 at 8:30 in Department S302. at the above address.

The clerk's office shall notice all parties having appeared in this case. The plaintiff/cross-complainants shall serve a copy of this notice on all defendants subsequently added to the complaint and/or cross-complaints and file proof of service thereof.

Any challenge pursuant to Section 170.6 of the Civil Code of Procedure shall be made within twenty (20) days (15 days pursuant to 68616(I) GC plus 5 days pursuant to 1013(a) CCP from the date of this notice of assignment, or if the party has not yet appeared, then within fifteen (15) days after the party's first appearance.

Requests for accommodations can be made by submitting Judicial Council form MC-410 no fewer than five court days before the hearing. See CA Rules of Court, rule 1.100.

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence.

Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same

day in the ordinary course of business. I certify that I served a copy of the foregoing notice on this date, by depositing said copy as stated above.

Court Executive Officer / Clerk

Dated: 07/13/20

By _____ s/
DIANNE ROMO, Deputy Clerk

No.

In The
Supreme Court of the United States

Sergei Vinkov,
Petitioner,
v.

Mark Smith et al.,
Respondents

On Petition for Writ of Certiorari
to California Supreme Court,
Case Nos. S261198 & S263745

APPENDIX, Volume 1
to the
PETITION FOR A WRIT OF CERTIORARI
[Appendix-A; pages 1a-85a; Constitutional,
Statutory Provisions, Treaties and other
Regulations]

Sergei Vinkov
Pro Se
40795 Nicole Court,
Hemet, California,
92544
(951) 380 53 39
vinjkov@gmail.com

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APPENDIX-A. CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitutional Provisions

CA Const., art. VI, §18.1

The Commission on Judicial Performance shall exercise discretionary jurisdiction with regard to the oversight and discipline of subordinate judicial officers, according to the same standards, and subject to review upon petition to the Supreme Court, as specified in Section 18.

No person who has been found unfit to serve as a subordinate judicial officer after a hearing before the Commission on Judicial Performance shall have the requisite status to serve as a subordinate judicial officer.

This section does not diminish or eliminate the responsibility of a court to exercise initial jurisdiction to discipline or dismiss a subordinate judicial officer as its employee.

CA Const., art. VI, §19

The Legislature shall prescribe compensation for judges of courts of record.

A judge of a court of record may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision.

CA Const., art. XX Misc. Subj., Sec. 3

Members of the Legislature, and all public officers and employees, executive, legislative, and judicial, except such inferior officers and employees as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

“I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and

that I will well and faithfully discharge the duties upon which I am about to enter.

"And I do further swear (or affirm) that I do not advocate, nor am I a member of any party or organization, political or otherwise, that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means; that within the five years immediately preceding the taking of this oath (or affirmation) I have not been a member of any party or organization, political or otherwise, that advocated the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means except as follows:

_____ (If no affiliations, write in the words "No Exceptions")

_____ and that during such time as I hold the office of _____ (name of office) _____

I will not advocate nor become a member of any party or organization, political or otherwise, that advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means."

And no other oath, declaration, or test, shall be required as a qualification for any public office or employment.

"Public officer and employee" includes every officer and employee of the State, including the University of California, every county, city, city and county, district, and authority, including any department, division, bureau, board, commission, agency, or instrumentality of any of the foregoing.

US Const., amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

US Const., amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or

indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

US Const., amend. XIV, §1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

US Const., art. III, §2, cl.1

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

US Const., art. IV, §2, cl.1

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

US Const., art. VI

All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Statutes

26 USC §501(c)(3)

(c) List of exempt organizations. The following organizations are referred to in subsection (a):

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

28 USC §2403(b)

(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

28 USC §1254(1)

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

28 USC §1257(a)

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 USC §1447(c)

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees,

incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

28 USC §1447(d)

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

42 USC §14503(a)(1)

(a) Liability protection for volunteers Except as provided in subsections (b), (c), and (e), no volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if—

(1) the volunteer was acting within the scope of the volunteer's responsibilities in the nonprofit organization or governmental entity at the time of the act or omission;

47 USC §230(c)(2)

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

California Civil Code §§ 45, 46

§ 45 LIBEL, WHAT. Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

§ 46 Slander is a false and unprivileged publication, orally uttered, and also communications by radio or any mechanical or other means which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;
2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;
3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits;
4. Imputes to him impotence or a want of chastity; or
5. Which, by natural consequence, causes actual damage.

California Code of Civil Procedure §116.430

(a) If the plaintiff operates or does business under a fictitious business name and the claim relates to that business, the claim shall be accompanied by the filing of a declaration stating that the plaintiff has complied with the fictitious business name laws by executing, filing, and publishing a fictitious business name statement as required.

(b) A small claims action filed by a person who has not complied with the applicable fictitious business name laws by executing, filing, and publishing a fictitious business name statement as required shall be dismissed without prejudice.

(c) For purposes of this section, "fictitious business name" means the term as defined in Section 17900 of the Business and Professions Code, and "fictitious business name statement" means the statement described in Section 17913 of the Business and Professions Code.

California Code of Civil Procedure §170.1(a)(7)

(7) By reason of permanent or temporary physical impairment, the judge is unable to properly perceive the evidence or is unable to properly conduct the proceeding.

California Code of Civil Procedure §170.3(c)(1)

(c) (1) If a judge who should disqualify himself or herself refuses or fails to do so, any party may file with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the grounds for disqualification of the judge. The statement shall be presented at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification. Copies of the statement shall be served on each party or his or her attorney who has appeared and shall be personally served on the judge alleged to be disqualified, or on his or her clerk, provided that the judge is present in the courthouse or in chambers.

California Code of Civil Procedure §170.3(c)(4)

(4) A judge who fails to file a consent or answer within the time allowed shall be deemed to have consented to his or her disqualification and the clerk shall notify the presiding judge or person authorized to appoint a replacement of the recusal as provided in subdivision (a).

California Code of Civil Procedure §170.3(d)

(d) The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding. The petition for the writ shall be filed and served within 10 days after service of written notice of entry of the court's order determining the question of disqualification. If the notice of entry is served by mail, that time shall be extended as provided in subdivision (a) of Section 1013.

California Code of Civil Procedure §170.1(6)(A)

(6) (A) For any reason:

(i) The judge believes his or her recusal would further the interests of justice.

(ii) The judge believes there is a substantial doubt as to his or her capacity to be impartial.

(iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.

California Code of Civil Procedure §1775.5

The court shall not order a case into mediation where the amount in controversy exceeds fifty thousand dollars (\$50,000). The determination of the amount in controversy shall be made in the same manner as provided in Section 1141.16 and, in making this determination, the court shall not consider the merits of questions of liability, defenses, or comparative negligence.

California Code of Civil Procedure §410.10

A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

California Code of Civil Procedure §425.16(b)(1)

(b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

California Code of Civil Procedure §425.16(c)(2)

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney's fees and costs pursuant to subdivision (d) of Section 6259, or Section 11130.5 or 54960.5, of the Government Code.

California Code of Civil Procedure §425.17(c)

(c) Section 425.16 does not apply to any cause of action brought against a person primarily engaged in the business of selling or leasing goods or services, including, but not limited to, insurance, securities, or financial instruments, arising from any statement or conduct by that person if both of the following conditions exist:

(1) The statement or conduct consists of representations of fact about that person's or a business competitor's business operations, goods, or services, that is made for the purpose of obtaining approval for, promoting, or securing sales or leases of, or commercial transactions in, the person's goods or services, or the statement or conduct was made in the course of delivering the person's goods or services.

(2) The intended audience is an actual or potential buyer or customer, or a person likely to repeat the statement to, or otherwise influence, an actual or potential buyer or customer, or the statement or conduct arose out of or within the context of a regulatory approval process, proceeding, or investigation, except where the statement or conduct was made by a telephone corporation in the course of a proceeding before the California Public Utilities Commission and is the subject of a lawsuit brought by a competitor, notwithstanding that the conduct or statement concerns an important public issue.

California Code of Civil Procedure §430.20(a)

A party against whom an answer has been filed may object, by demurrer as provided in Section 430.30 , to the answer upon any one or more of the following grounds:

(a) The answer does not state facts sufficient to constitute a defense.

California Code of Civil Procedure §430.20(b)

A party against whom an answer has been filed may object, by demurrer as provided in Section 430.30 , to the answer upon any one or more of the following grounds:

(b) The answer is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible.

California Code of Civil Procedure §438

438.

(a) As used in this section:

(1) "Complaint" includes a cross-complaint.

(2) "Plaintiff" includes a cross-complainant.

(3) "Defendant" includes a cross-defendant.

(b) (1) A party may move for judgment on the pleadings.

(2) The court may upon its own motion grant a motion for judgment on the pleadings.

(c) (1) The motion provided for in this section may only be made on one of the following grounds:

(A) If the moving party is a plaintiff, that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint.

(B) If the moving party is a defendant, that either of the following conditions exist:

(i) The court has no jurisdiction of the subject of the cause of action alleged in the complaint.

(ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant.

(2) The motion provided for in this section may be made as to either of the following:

(A) The entire complaint or cross-complaint or as to any of the causes of action stated therein.

(B) The entire answer or one or more of the affirmative defenses set forth in the answer.

(3) If the court on its own motion grants the motion for judgment on the pleadings, it shall be on one of the following bases:

(A) If the motion is granted in favor of the plaintiff, it shall be based on the grounds that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint.

(B) If the motion is granted in favor of the defendant, that either of the following conditions exist:

- (i) The court has no jurisdiction of the subject of the cause of action alleged in the complaint.
- (ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant.
- (d) The grounds for motion provided for in this section shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. Where the motion is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit.
- (e) No motion may be made pursuant to this section if a pretrial conference order has been entered pursuant to Section 575, or within 30 days of the date the action is initially set for trial, whichever is later, unless the court otherwise permits.
- (f) The motion provided for in this section may be made only after one of the following conditions has occurred:
 - (1) If the moving party is a plaintiff, and the defendant has already filed his or her answer to the complaint and the time for the plaintiff to demur to the answer has expired.
 - (2) If the moving party is a defendant, and the defendant has already filed his or her answer to the complaint and the time for the defendant to demur to the complaint has expired.
- (g) The motion provided for in this section may be made even though either of the following conditions exist:
 - (1) The moving party has already demurred to the complaint or answer, as the case may be, on the same grounds as is the basis for the motion provided for in this section and the demurrer has been overruled, provided that there has been a material change in applicable case law or statute since the ruling on the demurrer.
 - (2) The moving party did not demur to the complaint or answer, as the case may be, on the same grounds as is the basis for the motion provided for in this section.

(h) (1) The motion provided for in this section may be granted with or without leave to file an amended complaint or answer, as the case may be.

(2) Where a motion is granted pursuant to this section with leave to file an amended complaint or answer, as the case may be, then the court shall grant 30 days to the party against whom the motion was granted to file an amended complaint or answer, as the case may be.

(3) If the motion is granted with respect to the entire complaint or answer without leave to file an amended complaint or answer, as the case may be, then judgment shall be entered forthwith in accordance with the motion granting judgment to the moving party.

(4) If the motion is granted with leave to file an amended complaint or answer, as the case may be, then the following procedures shall be followed:

(A) If an amended complaint is filed after the time to file an amended complaint has expired, then the court may strike the complaint pursuant to Section 436 and enter judgment in favor of that defendant against that plaintiff or a plaintiff.

(B) If an amended answer is filed after the time to file an amended answer has expired, then the court may strike the answer pursuant to Section 436 and proceed to enter judgment in favor of that plaintiff and against that defendant or a defendant.

(C) Except where subparagraphs (A) and (B) apply, if the motion is granted with respect to the entire complaint or answer with leave to file an amended complaint or answer, as the case may be, but an amended complaint or answer is not filed, then after the time to file an amended complaint or answer, as the case may be, has expired, judgment shall be entered forthwith in favor of the moving party.

(i) (1) Where a motion for judgment on the pleadings is granted with leave to amend, the court shall not enter a judgment in favor of a party until the following proceedings are had:

(A) If an amended pleading is filed and the moving party contends that pleading is filed after the time to file

an amended pleading has expired or that the pleading is in violation of the court's prior ruling on the motion, then that party shall move to strike the pleading and enter judgment in its favor.

(B) If no amended pleading is filed, then the party shall move for entry of judgment in its favor.

(2) All motions made pursuant to this subdivision shall be made pursuant to Section 1010.

(3) At the hearing on the motion provided for in this subdivision, the court shall determine whether to enter judgment in favor of a particular party.

California Code of Civil Procedure §581d

A written dismissal of an action shall be entered in the clerk's register and is effective for all purposes when so entered.

All dismissals ordered by the court shall be in the form of a written order signed by the court and filed in the action and those orders when so filed shall constitute judgments and be effective for all purposes, and the clerk shall note those judgments in the register of actions in the case.

California Code of Civil Procedure §904.1(a)13

(13) From an order granting or denying a special motion to strike under Section 425.16 .

California Corporations Code §§9240-9247

9240. (a) Any duties and liabilities set forth in this article shall apply without regard to whether a director is compensated by the corporation.

(b) Part 4 (commencing with Section 16000) of Division 9 of the Probate Code does not apply to the directors of any corporation.

(c) A director, in making a good faith determination, may consider what the director believes to be:

(1) The religious purposes of the corporation; and

(2) Applicable religious tenets, canons, laws, policies, and authority.

(Amended by Stats. 1987, Ch. 923, Sec. 1.4. Operative January 1, 1988, by Sec. 103 of Ch. 923.)

9241. (a) A director shall perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation and with such care, including reasonable inquiry, as is appropriate under the circumstances.

(b) In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matters presented;

(2) Counsel, independent accountants, or other persons as to matters which the director believes to be within that person's professional or expert competence;

(3) A committee upon which the director does not serve that is composed exclusively of any or any combination of directors, persons described in paragraph (1), or persons described in paragraph (2), as to matters within the committee's designated authority, which committee the director believes to merit confidence; or

(4) Religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented, so long as, in any case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances, and without knowledge that would cause that reliance to be unwarranted.

(c) The provisions of this section, and not Section 9243, shall govern any action or omission of a director in regard to the compensation of directors, as directors or officers, or any loan of money or property to or guaranty of the obligation of any director or officer. No obligation, otherwise valid, shall be voidable merely because

directors who benefited by a board resolution to pay such compensation or to make such loan or guaranty participated in making such board resolution.

(d) Except as provided in Section 9243, a person who performs the duties of a director in accordance with subdivisions (a) and (b) shall have no liability based upon any alleged failure to discharge his or her obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat any purpose to which the corporation, or assets held by it, may be dedicated.

(Amended by Stats. 2009, Ch. 631, Sec. 33. (AB 1233)
Effective January 1, 2010.)

9242. (a) Section 9241 governs the duties of directors as to any acts or omissions in connection with the election, selection, or nomination of directors.

(b) This section shall not be construed to limit the provisions of Section 9241.

(Added by Stats. 1979, Ch. 681.)

9243. (a) Except as provided in subdivision (b), for the purpose of this section, a self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest and which does not meet the requirements of paragraph (1), (2), (3), or (4) of subdivision (d). Such a director is an "interested director" for the purpose of this section.

(b) This section does not apply to any of the following:

(1) An action of the board fixing the compensation of a director as a director or officer of the corporation or making any loan of money or property to, or guaranteeing the obligation of, any director or officer.

(2) A transaction which is part of a public, charitable or religious program of the corporation if it (A) is approved or authorized by the corporation in good faith and without unjustified favoritism, and (B) results in a benefit to one or more directors or their families because they are in the class of persons intended to be benefited by the public, charitable or religious program.

(3) A transaction, of which the interested director or directors have no actual knowledge, and which does not exceed the lesser of 1 percent of the gross receipts of the corporation for the preceding fiscal year or one hundred thousand dollars (\$100,000).

(c) Any of the following may bring an action in the superior court of the proper county for the remedies specified in subdivision (h):

(1) The corporation, or a member asserting the right in the name of the corporation; however, for the purpose of this paragraph the provisions of Section 5710 shall apply to the action.

(2) A director of the corporation.

(3) An officer of the corporation.

(4) Any person authorized by the bylaws to bring an action.

(d) In any action brought under subdivision (c) the remedies specified in subdivision (h) shall not be granted if:

(1) The Attorney General, or the court in an action in which the Attorney General is an indispensable party, has approved the transaction before or after it was consummated; or

(2) The transaction is approved or ratified in good faith by the members (Section 5034) other than the directors, after notice and disclosure to the members of the material facts concerning the transaction and the director's interest in the transaction; or

(3) The following facts are established:

(A) The corporation entered into the transaction for its own benefit or for the benefit of the religious organization;

(B) The transaction was fair and reasonable as to the corporation or was in furtherance of its religious purposes at the time the corporation entered into the transaction;

(C) Prior to consummating the transaction or any part thereof, the board authorized or approved the transaction in good faith by a vote of a majority of the directors then in office without counting the vote of the interested director or directors, and with knowledge of

the material facts concerning the transaction and the director's interest in the transaction. Except as provided in paragraph (4), action by a committee of the board shall not satisfy this paragraph; and

(D) (i) Prior to authorizing or approving the transaction, the board considered and in good faith determined after reasonable investigation under the circumstances that either the corporation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances or the transaction was in furtherance of the corporation's religious purposes or (ii) in fact, either the corporation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances or the transaction was in furtherance of the corporation's religious purposes; or

(4) The following facts are established:

(A) A committee or person authorized by the board approved the transaction in a manner consistent with the standards set forth in paragraph (3).

(B) It was not reasonably practicable to obtain approval of the board prior to entering into the transaction; and

(C) The board, after determining in good faith that the conditions of subparagraphs (A) and (B) were satisfied, ratified the transaction at its next meeting by a vote of the majority of the directors then in office without counting the vote of the interested director or directors.

(e) Except as provided in subdivision (f), an action under subdivision (c) or Section 9230 shall be commenced within two years after written notice setting forth the material facts of the transaction is filed with the Attorney General in accordance with such regulations, if any, as the Attorney General may adopt or if no such notice is filed, five years after the cause of action has accrued.

(f) In any action for breach of an obligation of the corporation owed to an interested director, where the obligation arises from a self-dealing transaction which has not been approved as provided in subdivision (d), the court may, by way of offset only, make any order

authorized by subdivision (h), notwithstanding the expiration of the applicable period specified in subdivision (e).

(g) Interested directors may be counted in determining the presence of a quorum at a meeting of the board which authorizes, approves or ratifies a contract or transaction.

(h) If a self-dealing transaction has taken place, the interested director or directors shall do such things and pay such damages as in the discretion of the court will provide an equitable and fair remedy to the corporation, taking into account any benefit received by the corporation and whether the interested director or directors acted in good faith and with intent to further the best interest of the corporation. Without limiting the generality of the foregoing, the court may order the director to do any or all of the following:

(1) Account for any profits made from the transaction, and pay them to the corporation.

(2) Pay the corporation the value of the use of any of its property used in the transactions.

(3) Return or replace any property lost to the corporation as a result of the transaction, together with any income or appreciation lost to the corporation by reason of the transaction, or account for any proceeds of sale of the property, and pay the proceeds to the corporation together with interest at the legal rate.

The court may award prejudgment interest to the extent allowed in Sections 3287 and 3288 of the Civil Code. In addition, the court may, in its discretion, grant exemplary damages for a fraudulent or malicious violation of this section.

(Amended by Stats. 1984, Ch. 812, Sec. 14.)

9244. (a) No contract or other transaction between a corporation and any domestic or foreign corporation, firm or association of which one or more of its directors are directors is either void or voidable because such director or directors are present at the meeting of the board or a committee thereof which authorizes, approves or ratifies the contract or transaction, if:

(1) The material facts as to the transaction and as to such director's other directorship are fully disclosed or known to the board or committee, and the board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common director or directors; or

(2) As to contracts or transactions not approved as provided in paragraph (1) of this subdivision, the contract or transaction is just and reasonable as to the corporation, taking into account its religious purposes, or is in furtherance of its religious purposes at the time it is authorized, approved or ratified.

(b) This section does not apply to transactions covered by Section 9243.

(Added by Stats. 1979, Ch. 681.)

9245. (a) Subject to the provisions of Section 9241, directors of a corporation who approve any of the following corporate actions shall be jointly and severally liable to the corporation for:

(1) The making of any distribution.

(2) The distribution of assets after institution of dissolution proceedings of the corporation, without paying or adequately providing for all known liabilities of the corporation, excluding any claims not filed by creditors within the time limit set by the court in a notice given to creditors under Section 9680 and those sections made applicable to this part by Section 9680.

(3) The making of any loan or guaranty contrary to Section 9241.

(b) Suit may be brought in the name of the corporation to enforce the liability:

(1) Under paragraph (1) of subdivision (a) against any or all directors liable by the persons entitled to sue under subdivision (b) of Section 9610;

(2) Under paragraph (2) or (3) of subdivision (a) against any or all directors liable by any one or more creditors of the corporation whose debts or claims arose prior to the time of the corporate action who have not consented to the corporate action, whether or not they have reduced their claims to judgment.

(c) The damages recoverable from a director under this section shall be the amount of the illegal distribution, or if the illegal distribution consists of property, the fair market value of that property at the time of the illegal distribution, plus interest thereon from the date of the distribution at the legal rate on judgments until paid, together with all reasonably incurred costs of appraisal or other valuation, if any, of that property, or the loss suffered by the corporation as a result of the illegal loan or guaranty.

(d) Any director sued under this section may implead all other directors liable and may compel contribution, either in that action or in an independent action against directors not joined in that action.

(e) Directors liable under this section shall also be entitled to be subrogated to the rights of the corporation as follows:

(1) With respect to paragraph (1) of subdivision (a), against members who received the distribution.

(2) With respect to paragraph (2) of subdivision (a), against the members who received the distribution.

(3) With respect to paragraph (3) of subdivision (a), against the person who received the loan or guaranty.

Any director sued under this section may file a cross-complaint against the person or persons who are liable to the director as a result of the subrogation provided for in this subdivision or may proceed against them in an independent action.

(Amended by Stats. 1999, Ch. 453, Sec. 21. Effective January 1, 2000.)

9246. (a) For the purposes of this section, "agent" means any person who is or was a director, officer, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the corporation or of another enterprise at the request of that predecessor corporation;

“proceeding” means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative or investigative; and “expenses” includes without limitation attorneys’ fees and any expenses of establishing a right to indemnification under subdivision (d) or paragraph (3) of subdivision (e).

(b) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation to procure a judgment in its favor, an action brought under Section 9243, or an action brought by the Attorney General pursuant to Section 9230) by reason of the fact that the person is or was an agent of the corporation, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding if the person acted in good faith and in a manner the person believed to be in the best interests of the corporation and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person believed to be in the best interests of the corporation or that the person had reasonable cause to believe that the person’s conduct was unlawful.

(c) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action by or in the right of the corporation, or brought under Section 9243, or brought by the Attorney General pursuant to Section 9230, to procure a judgment in its favor by reason of the fact that the person is or was an agent of the corporation, against expenses actually and reasonably incurred by the person in connection with the defense or settlement of the action if the person acted in good faith, in a manner in which the person believed to be in the best interests of the corporation and with that care, including reasonable inquiry, as an ordinary

prudent person in a like position would use under similar circumstances. No indemnification shall be made under this subdivision:

(1) In respect of any claim, issue, or matter as to which the person shall have been adjudged to be liable to the corporation in the performance of the person's duty to the corporation, unless and only to the extent that the court in which the proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses which the court shall determine;

(2) Of amounts paid in settling or otherwise disposing of a threatened or pending action, with or without court approval; or

(3) Of expenses incurred in defending a threatened or pending action which is settled or otherwise disposed of without court approval unless it is settled with the approval of the Attorney General.

(d) To the extent that an agent of a corporation has been successful on the merits in defense of any proceeding referred to in subdivision (b) or (c) or in defense of any claim, issue or matter therein, the agent shall be indemnified against expenses actually and reasonably incurred by the agent in connection therewith.

(e) Except as provided in subdivision (d), any indemnification under this section shall be made by the corporation only if authorized in the specific case, upon a determination that indemnification of the agent is proper in the circumstances because the agent has met the applicable standard of conduct set forth in either subdivision (b) or (c) by:

(1) A majority vote of a quorum consisting of directors who are not parties to the proceeding;

(2) Approval of the members (Section 5034), with the persons to be indemnified not being entitled to vote thereon; or

(3) The court in which the proceeding is or was pending upon application made by the corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not the

application by the agent, attorney, or other person is opposed by the corporation.

(f) Expenses incurred in defending any proceeding may be advanced by the corporation prior to the final disposition of the proceeding upon receipt of an undertaking by or on behalf of the agent to repay the amount unless it shall be determined ultimately that the agent is entitled to be indemnified as authorized in this section.

(g) No provision made by a corporation to indemnify its or its subsidiary's directors or officers for the defense of any proceeding, whether contained in the articles, bylaws, a resolution of members or directors, an agreement or otherwise, shall be valid unless consistent with this section. Nothing contained in this section shall affect any right to indemnification to which persons other than the directors and officers may be entitled by contract or otherwise.

(h) No indemnification or advance shall be made under this section, except as provided in subdivision (d) or paragraph (3) of subdivision (e), in any circumstance where it appears that:

(1) It would be inconsistent with a provision of the articles, bylaws, a resolution of the members or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the proceeding in which the expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

(2) It would be inconsistent with any condition expressly imposed by a court in approving a settlement.

(i) A corporation shall have power to purchase and maintain insurance on behalf of any agent of the corporation against any liability asserted against or incurred by the agent in that capacity or arising out of the agent's status as such whether or not the corporation would have the power to indemnify the agent against that liability under the provisions of this section; provided, however, that a corporation shall have no power to purchase and maintain insurance to indemnify

any agent of the corporation for a violation of Section 9243.

(j) This section does not apply to any proceeding against any trustee, investment manager, or other fiduciary of a pension, deferred compensation, saving, thrift, or other retirement, incentive, or benefit plan, trust, or provision for any or all of the corporation's directors, officers, employees, and persons providing services to the corporation or any of its subsidiary or related or affiliated corporations, in the person's capacity as such, even though the person may also be an agent as defined in subdivision (a) of the employer corporation. A corporation shall have power to indemnify the trustee, investment manager or other fiduciary to the extent permitted by subdivision (f) of Section 9140.

(Amended by Stats. 2012, Ch. 61, Sec. 3. (AB 2668)
Effective January 1, 2013.)

9247. (a) There shall be no personal liability for monetary damages to a third party on the part of a volunteer director or volunteer executive officer of a nonprofit corporation subject to this part, caused by the director's or officer's negligent act or omission in the performance of that person's duties as a director or officer, if all of the following conditions are met:

- (1) The act or omission was within the scope of the director's or executive officer's duties.
- (2) The act or omission was performed in good faith.
- (3) The act or omission was not reckless, wanton, intentional, or grossly negligent.

(4) Damages caused by the act or omission are covered pursuant to a liability insurance policy issued to the corporation, either in the form of a general liability policy or a director's or officer's liability policy, or personally to the director or executive officer. In the event that the damages are not covered by a liability insurance policy, the volunteer director or volunteer executive officer shall not be personally liable for the damages if the board of directors of the corporation and the person had made all reasonable efforts in good faith to obtain available liability insurance.

(b) "Volunteer" means the rendering of services without compensation. "Compensation" means remuneration whether by way of salary, fee, or other consideration for services rendered. However, the payment of per diem, mileage, or other reimbursement expenses to a director or executive officer does not affect that person's status as a volunteer within the meaning of this section.

(c) "Executive officer" means the president, vice president, secretary, or treasurer of a corporation, or other individual serving in like capacity, who assists in establishing the policy of the corporation.

(d) Nothing in this section shall limit the liability of the corporation for any damages caused by acts or omissions of the volunteer director or volunteer executive officer.

(e) This section does not eliminate or limit the liability of a director or officer for any of the following:

(1) As provided in Section 9243 or 9245.

(2) In any action or proceeding brought by the Attorney General.

(f) Nothing in this section creates a duty of care or basis of liability for damage or injury caused by the acts or omissions of a director or officer.

(g) This section is only applicable to causes of action based upon acts or omissions occurring on or after January 1, 1988.

California Corporations Code §9224(c)

9224. (c) Any director may resign effective upon giving written notice to the chairman of the board, the president, the secretary or the board of directors of the corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

California Evidence Code §452(d)

(d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.

California Evidence Code §452(h)

(h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

California Government Code §87100

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Miscellaneous

Order List: 589 U.S. 3/19/2020

(ORDER LIST: 589 U.S.)

THURSDAY, MARCH 19, 2020

ORDER

In light of the ongoing public health concerns relating to COVID-19, the following shall apply to cases prior to a ruling on a petition for a writ of certiorari:

IT IS ORDERED that the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. See Rules 13.1 and 13.3.

IT IS FURTHER ORDERED that motions for extensions of time pursuant to Rule 30.4 will ordinarily be granted by the Clerk as a matter of course if the grounds for the application are difficulties relating to COVID-19 and if the length of the extension requested is reasonable under the circumstances. Such motions should indicate whether the opposing party has an objection.

IT IS FURTHER ORDERED that, notwithstanding Rules 15.5 and 15.6, the Clerk will entertain motions to delay distribution of a petition for writ of certiorari where the grounds for the motion are that the petitioner needs additional time to file a reply due to difficulties

**Additional material
from this filing is
available in the
Clerk's Office.**