

No. \_\_\_\_  
In the  
Supreme Court of the United States

Sergei Vinkov, a Congregational Council Member of  
the Trinity Lutheran Church of Hemet, California,  
ELCA (2018-2019),  
Petitioner,

v.

Brotherhood Mutual Insurance Company, an  
Indiana corporation, Respondent

**APPENDIX**  
to the  
**PETITION FOR WRIT OF CERTIORARI**  
to the United States Court of Appeals for the  
Ninth Circuit (No. 21-55857)  
[Appendices A-E; pages **1a-21a**]

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**APPENDIX-A. 9th Circuit Denial of En Banc  
Petition in Case 21-55857 dated 01/25/2023.2.**

Case: 21-55857, 01/25/2023, ID: 12637914, DktEntry:  
44, Page 1 of 1

FILED  
JAN 25 2023  
MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

BROTHERHOOD MUTUAL INSURANCE COMPANY, an Indiana corporation,  Plaintiff-Appellee,  v.  SERGEI VINKOV, an individual,  <u>Defendant-Appellant.</u>	No. 21-55857  D.C. No. 5:19-cv-01821-SB-SP Central District of California, Riverside  ORDER
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Before: WALLACE, FERNANDEZ, and SILVERMAN,  
Circuit Judges.

Judges Wallace, Fernandez, and Silverman  
recommend to deny the petition for rehearing en banc.  
The full court has been advised of the petition for  
rehearing en banc, and no active judge has requested a  
vote on whether to rehear the matter en banc. Fed. R.  
App. P. 35. The petition for rehearing en banc is  
**DENIED.**

**APPENDIX-B. 9th Circuit Unpublished  
Memorandum in Case 21-55857 dated  
10/03/2022.**

**NOT FOR PUBLICATION**

FILED  
OCT 3 2022  
MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

BROTHERHOOD MUTUAL INSURANCE COMPANY, an Indiana corporation,  Plaintiff-Appellee,  v.  SERGEI VINKOV, an individual,  <u>Defendant-Appellant.</u>	No. 21-55857  D.C. No. 5:19-cv-01821-SB-SP Central District of California, Riverside  MEMORANDUM*
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Appeal from the United States District Court  
for the Central District of California  
Stanley Blumenfeld, Jr., District Judge, Presiding

Submitted September 30, 2022\*\*  
San Francisco, California

Before: WALLACE, FERNANDEZ, and SILVERMAN,  
Circuit Judges.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Sergei Vinkov appeals from the district court's summary judgment and motions to dismiss order in favor of Brotherhood Mutual Insurance Company (BMIC) in BMIC's action alleging it does not have a duty to defend or indemnify

Page 1 ends

Vinkov in a separate lawsuit. We have jurisdiction under 28 U.S.C. § 1291. We review summary judgment de novo and a district court order under Federal Rule of Civil Procedure 37(b)(2) for abuse of discretion. *Edgerly v. City & Cnty. of San Francisco*, 599 F.3d 946, 960 (9th Cir. 2010); *Fjelstad v. Am. Honda Motor Co.*, 762 F.2d 1334, 1337 (9th Cir. 1985). We affirm.

The district court properly granted summary judgment in favor of BMIC because Vinkov failed to establish a triable issue as to whether he is covered by BMIC's insurance policy. Vinkov failed to genuinely dispute any material fact that his social media posts were not "leadership activity undertaken on the church's behalf," as required to be a covered person under BMIC's policy. See *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993) (holding that a conclusory affidavit lacking detailed facts and any supporting evidence is insufficient to create a genuine issue of material fact).

The district court properly dismissed Vinkov's counterclaims for insurance bad faith and prompt payment. The district court did not abuse its discretion

because when a party fails to obey an order to provide discovery, a trial court may, in its discretion, "make such orders in regard to the failure as are just." *David v. Hooker, Ltd.*, 560 F.2d 412, 418–19 (9th Cir. 1977). The district did not abuse its discretion in concluding that by disregarding multiple court orders and providing only evasive responses, Vinkov sufficiently failed to abide by discovery orders and

that such obstructive behavior warranted dismissal of his counterclaims. *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007).

The district court properly exercised subject matter jurisdiction. The action is between citizens of different states and the amount in controversy exceeds \$75,000, as required by 28 U.S.C. § 1332.

All pending motions are denied

**AFFIRMED.**

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**APPENDIX-C. The District Court Judgment  
in Case 5: 19-cv-01821 SB (SPx) dated  
08/10/2021.**

**JS-6**

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1 of 2 Page ID #:5799

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

BROTHERHOOD MUTUAL INSURANCE COMPANY, an Indiana corporation,	Case No.: 5: 19-cv-01821 SB (SPx)
Plaintiff, v.	<b>JUDGMENT IN FAVOR OF PLAINTIFF BROTHERHOOD MUTUAL INSURANCE COMPANY'S MOTIONS FOR SUMMARY JUDGMENT AND TO DISMISS</b>
SERGEI VINKOV, an individual; ROES 1 through 10,	
Defendants.	Date: April 23, 2021 Time: 8:30 a.m. Courtroom: 6C Judge: Hon. Stanley Blumenfeld, Jr.
AND RELATED CROSS ACTIONS.	

Plaintiff Brotherhood Mutual Insurance Company filed a Complaint for Declaratory Relief against Defendant Sergei Vinkov on September 23, 2019. Dkt. No. 1.

On February 26, 2021, Plaintiff Brotherhood Mutual Insurance Company filed a Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56(a) as to Plaintiffs Complaint and Defendant/Cross-Complainant Sergei Vinkov's Counter-Claim. Dkt No. 207.

Also on February 26, 2021, Plaintiff Brotherhood Mutual Insurance Company filed a Motion to Dismiss Defendant

Sergei Vinkov's Cross-Claim

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Case No. 5:19-cv-01821 SB (SPx)

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2 of 2 Page ID #:5800

pursuant to Federal Rule of Civil Procedure 37(b)(2)(A)(ii)(v).  
Dkt. No. 207.

After reading and considering Plaintiffs Motion for  
Summary Judgment 3 and Motion to Dismiss, and the papers  
filed in support and in opposition to those 4 Motions, IT IS  
HEREBY ORDERED THAT:

1. Plaintiffs Motion for Summary Judgment is  
**GRANTED**;
2. Plaintiffs Motion to Dismiss is **GRANTED**;
3. Pursuant to Federal Rule of Civil Procedure 54(d)(1)  
and Local Rules 54-2 and 54-3, Plaintiff is deemed the  
prevailing party in this action and is 9 entitled to recover the  
costs it incurred in this action.
4. Any request by Plaintiff for an award of attorneys' fees  
and related nontaxable expenses under Federal Rule of Civil  
Procedure 54( d)(2) shall be made pursuant to Local Rule 54-  
10.

**IT IS SO ORDERED.**

/s

Dated: August 10, 2021 By: \_\_\_\_\_  
Honorable Stanley Blumenfeld, Jr.  
U.S. DISTRICT COURT JUDGE

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Case No. 5:19-cv-01821 SB (SPx)

**APPENDIX-D. [Proposed] Judgment dated  
06/19/2020**

Case 5:19-cv-01821-SB-SP Document 70-5 Filed 06/19/20  
Page 1 of 3 Page ID #:1903

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Brotherhood Mutual Insurance Company, an Indiana corporation,	Case No.: 5:19-cv-01821 CJC (SPx)
Plaintiff / Counter- Defendant	<b>[PROPOSED] JUDGMENT</b>
v.	Action filed: Monday, 09/23/2019
Sergei Vinkov, an individual	Bench trial: Tuesday, July 6, 2021 at 09:00 AM
Defendant / Counter- claimant	

Pursuant to the Court's ORDER GRANTING  
SERGEI VINKOV'S MOTION FOR JUDGMENT ON  
THE PLEADINGS dated \_\_\_\_\_,

IT IS ORDERED, ADJUDGED AND DECREED  
that Judgment against Plaintiff and Counter-Defendant  
Brotherhood Mutual Insurance Company, an Indiana  
corporation, is entered in the amount of

\_\_\_\_\_ (\_\_\_\_\_), inclusive of any and  
all claims and issues against Plaintiff and Counter-  
Defendant Brotherhood Mutual Insurance Company, an  
Indiana corporation, arising out of, alleged in, or related  
to, the facts and transactions alleged in the Complaint  
and the First Amended Counterclaim in this action.

IT IS FURTHER ORDERED that every and each, in  
whole and in part, Plaintiff Brotherhood Mutual

Insurance Company, an Indiana corporation's claims for "Declaratory Relief re: No Duty to Defend; No Duty to Indemnify; Recoupment of Defense Expenses" is DENIED with prejudice.

IT IS FURTHER ORDERED that Counter-Defendant Brotherhood Mutual Insurance Company, an Indiana corporation, is ordered to pay punitive damages to Counter-Claimant Sergei Vinkov in the amount of \_\_\_\_\_ (\_\_\_\_\_).

IT IS FURTHER ORDERED that Counter-Defendant Brotherhood Mutual Insurance Company, an Indiana corporation, shall issue a check made payable to "Sergei Vinkov" for the total of the above-listed amounts of \_\_\_\_\_ (\_\_\_\_\_), which represents the entire sum to which Sergei Vinkov is entitled pursuant to this Judgment, inclusive of possible attorneys' fees, and potential expert witness fees, and any and all other costs, inclusive of any and all proceedings in the Underlying Action – case # MCC1900188 action Smith v Vinkov in Riverside County Superior Court of California. This check shall be sent to Sergei Vinkov directly within fourteen (14) calendar days after the entry in force of this Judgment. The proof of payment must be submitted by Brotherhood Mutual Insurance Company, an Indiana corporation, to this court 5 days after issuing the check.

IT IS FURTHER ORDERED that Counter-Defendant Brotherhood Mutual Insurance Company, an Indiana corporation, shall write and publish at its own expense apologies for the inappropriate maintenance of insurance coverage claim in the following newspapers: (a) THE VALLEY CHRONICLE (227 E. Florida Ave, Hemet, CA 92543); (b) THE SAN DIEGO UNION-TRIBUNE (600 B St #1201, San Diego, CA 92101); (c) THE JOURNAL GAZETTE (600 W. Main St. Fort Wayne, IN 46802) within 30 days from this judgment and file a proof of the publication with this court within 14 days after submitting each publication.

IT IS FURTHER ORDERED that the above-captioned case in the federal jurisdiction is dismissed with prejudice in its entirety.

IT IS SO ADJUDGED.

Dated: \_\_\_\_\_

CORMAC J. CARNEY  
UNITED STATES  
DISTRICT JUDGE

## APPENDIX-E. CONSTITUTIONAL AND STATUTORY PROVISIONS

### Constitutional Provisions

#### 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, cl.2

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.

#### 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. VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

US Const. amend. XI

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

US Const. amend. XIV, cl.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. 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**

##### **18 USC § 242**

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

##### **18 USC § 371**

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

##### **22 USC § 6401(b)(1)(A)**

(b)Policy

(1) In general

The following shall be the policy of the United States:

(A) To condemn violations of religious freedom, and to promote, and to assist other governments in the promotion of, the fundamental right to freedom of religion.

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 § 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;

26 USC § 7428(b)(1)

(b) Limitations

(1) Petitioner

A pleading may be filed under this section only by the organization the qualification or classification of which is at issue.

28 USC § 1332(a)

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

28 USC § 1350

The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.

**28 USC § 1651(a)**

(a)The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

**28 USC § 2071(a)**

(a)The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.

**28 USC § 2072(b)**

(b)Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

**28 USC § 2201(a)**

(a)In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(9) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

**28 USC § 2022**

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable

notice and hearing, against any adverse party whose rights have been determined by such judgment.

**28 USC §2283**

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

**28 USC §453**

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, \_\_\_\_, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as \_\_\_\_ under the Constitution and laws of the United States. So help me God."

**28 USC § 636(b)(1)(A)**

(b)

(1)Notwithstanding any provision of law to the contrary—

(A)a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

**28 USC § 636(b)(3)**

(3)A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

**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;

42 USC § 2000bb-1(c)

(c) Judicial relief

A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

42 USC § 2000cc(a)

(a) Substantial burdens

(1) General rule

No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) Scope of application

This subsection applies in any case in which—

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C)the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

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.

10 Cal. Code Regs. § 2695.7(d)

(d) Every insurer shall conduct and diligently pursue a thorough, fair and objective investigation and shall not persist in seeking information not reasonably required for or material to the resolution of a claim dispute.

Cal. Bus. & Prof. Code § 6068 (a),(b);(d)

Section 6068 - Duties of attorney

It is the duty of an attorney to do all of the following:

(a) To support the Constitution and laws of the United States and of this state.

(b) To maintain the respect due to the courts of justice and judicial officers.

(d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

California Corporations Code § 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. 14. Operative January 1, 1988, by Sec. 103 of Ch. 923.)

California Corporations Code § 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

(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 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.