

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,

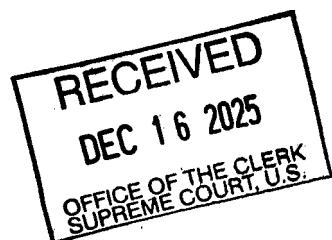
v.

Brotherhood Mutual Insurance Company, an  
Indiana corporation, Respondent.

**APPENDIX**  
to the  
**PETITION FOR WRIT OF CERTIORARI**  
to the Court of Appeal of California,  
Fourth Appellate District, Division Two  
(CA 4/2, Case No: E082818)  
[Appendices A-F; pages 1a-25a]

*Sergei Vinkov, Pro Se*  
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Hemet, California, 92544  
(951) 260 17 13  
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November 6, 2025



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**APPENDIX-A. CALIFORNIA SUPREME  
COURT'S DENIAL TO REVIEW THE CASE  
#S289802, DATED MAY 14, 2025.**

**SUPREME COURT  
FILED  
MAY 14 2025  
Jorge Navarrete Clerk**

---

**Deputy**

Court of Appeal, Fourth Appellate District, Division  
Two - No. E082818

**S289802**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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SERGEI VINKOV, Plaintiff and Appellant,

v.

Brotherhood Mutual Insurance Company,  
Defendant and Respondent

---

The petition for review is denied.

**GUERRERO**  
*Chief of Justice*

**APPENDIX-B. CA 4/2 ORDER DENYING  
REHEARING, FILED FEBRUARY 27, 2025.**

Court of Appeal, Fourth Appellate District, Division  
Two  
Brandon L. Henson, Clerk/Executive Officer  
Electronically FILED on 2/27/2025 by B. Frey,  
Deputy Clerk

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

**ORDER**

SERGEI VINKOV,	E082818
Plaintiff and	
Appellant,	(Super.Ct.No.
v.	CVSW230608)
BROTHERHOOD	
MUTUAL	The County of Riverside
INSURANCE	
COMPANY,	
Defendant and	
Respondent.	

---

**THE COURT**

Appellant Petition for rehearing is DENIED.

**MILLER**

Acting Presiding Justice

cc: See attached list

**Page 2**

**MAILING LIST FOR CASE: E082818**  
**Sergei Vinkov v. Brotherhood Mutual Insurance**  
**Company**

**Superior Court Clerk**  
**Riverside County**  
**P.O. Box 431 - Appeals**  
**Riverside, CA 92502**

**Sergei Vinkov**  
**40795 Nicole Court**  
**Hemet, CA 92544**

**Rachel B. Kushner**  
**Brockman Quayle Bennett, Attorneys at Law**  
**12481 High Bluff Drive, Suite 301**  
**San Diego, CA 92130**

**APPENDIX-C. CA 4/2 UNPUBLISHED  
OPINION, FILED FEBRUARY 6, 2025**

Court of Appeal, Fourth Appellate District, Division  
Two Brandon L. Henson, Clerk/Executive Officer  
Electronically FILED on 2/6/2025 by L. De La  
Torre, Deputy Clerk

**NOT TO BE PUBLISHED IN OFFICIAL  
REPORTS**

**California Rules of Court, rule 8.1115(a),  
prohibits courts and parties from citing or  
relying on opinions not certified for  
publication or ordered published, except as  
specified by rule 8.1115(b). This opinion has  
not been certified for publication or ordered  
published for purposes of rule 8.1115.**

**IN THE COURT OF APPEAL OF THE STATE  
OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

SERGEI VINKOV,

Plaintiff and  
Appellant,

v.

BROTHERHOOD  
MUTUAL INSURANCE

E082818

(Super.Ct.No.  
CVSW2307608)

OPINION

COMPANY,

Defendant and  
Respondent.

APPEAL from the Superior Court of  
Riverside County. Raquel A. Marquez, Judge.  
Affirmed.

Sergei Vinkov, in pro. per., for Plaintiff and  
Appellant.

Brockman Quayle Bennett and Rachel B.  
Kushner for Defendant and Respondent.

In 2021, the United States District Court,  
Central District of California (the federal court),  
concluded that defendant and respondent  
Brotherhood Mutual Insurance Company  
(Brotherhood) did not have a duty to defend plaintiff  
and appellant Sergei

Page 2

Vinkov (Vinkov) in a libel lawsuit brought by Solar  
Forward Electric, Inc. (Solar Forward) because  
Vinkov was not covered under the relevant  
insurance policy.

In 2023, in the Superior Court of California,  
County of Riverside (the trial court), Vinkov sought  
to compel arbitration against Brotherhood, under  
the same insurance policy, for the purpose of  
arbitrating Brotherhood's alleged duty to defend  
Vinkov in the same libel lawsuit brought by Solar  
Forward. The trial court found Vinkov was  
precluded from seeking to compel arbitration due to

the federal court's ruling on the same issue. Vinkov contends the trial court erred. We affirm.\*

## FACTS

### A. BACKGROUND

The following quote is taken from the ruling by the federal court: “[Vinkov] was a volunteer member of the Church Council for the Trinity Lutheran Church of Hemet. [Citation.] The church has a general liability policy through [Brotherhood] that, under certain circumstances, covers the actions of church employees and volunteers. [Citation.] In 2018, a company called Solar Forward installed solar panels at the church. [Citation.] Dissatisfied with the purported lack of savings in the church’s energy bills promised by Solar Forward, [Vinkov] began investigating the church’s energy usage. [Citation.] After Solar Forward was not sufficiently responsive to [Vinkov’s] inquiries, [Vinkov] began posting critical reviews of Solar Forward on social

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media. [Citation.] In particular, [Vinkov] posted a one-star review on the website Yelp.com, stating Solar Forward’s products caused the church’s energy bills to increase. [Citation.]

“After [Vinkov] refused to remove the posts, Solar Forward sued [Vinkov] in state court for libel, slander, and trade libel. [Citation.] [Vinkov] tendered his defense in the state-court action to

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\* Vinkov requests this court take judicial notice of dictionary excerpts and the insurance policy. We deny both requests because the documents are not relevant to issue preclusion. (*Ross v. Seyfarth Shaw LLP* (2023) 96 Cal.App.5th 722, 745.)

[Brotherhood] based on his membership on the Church Council. [Citation.] [Brotherhood] initially provided [Vinkov] with a defense but withdrew it after it concluded no coverage existed. [Citation.] [Brotherhood] reinstated its defense under a reservation of rights after the California Department of Insurance asked [Brotherhood] to review its coverage determination. [Citation.] [Brotherhood] sued in [the federal court], seeking (1) a declaratory judgment that it has no duty to defend, (2) a declaratory judgment that it has no duty to indemnify, and (3) recovery of its fees and costs in the underlying action. [Citation.] [Vinkov] brought a series of counterclaims, of which only claims for bad faith and prompt payment remain[ed]. [Citation.]”

In ruling on Brotherhood's motion for summary judgment, the federal court noted that Brotherhood was required to defend church volunteers when their activities related “‘to any leadership activity undertaken on [the church's] behalf.’ [Citations.] ‘Leadership activity’ is . . . defined by the policy to mean ‘the decision making acts of [the church's] leaders regarding the operation of [the church].’” The federal court determined that none of the church's leaders “authorize[d] [Vinkov] to make social

Page 4

media posts on behalf of the church and [Vinkov's] duties . . . did not relate to ‘the Church's contracts and relationships with third party contractors.’”

The federal court granted Brotherhood's motion for summary judgment, concluding Brotherhood had no duty to defend or indemnify Vinkov in the libel case brought by Solar Forward. The federal court also granted summary judgment

in favor of Brotherhood on Vinkov's counterclaims: Because Brotherhood did not have a duty to defend Vinkov, Brotherhood could not have breached a duty to defend Vinkov, thus causing Vinkov's counterclaims to fail. The federal court's judgment was filed on August 10, 2021. Vinkov appealed to the Ninth Circuit Court of Appeals and petitioned for review in the United States Supreme Court, but did not prevail in either.

B. CURRENT CASE

On September 19, 2023, in the trial court, Vinkov filed a petition to compel arbitration against Brotherhood. Vinkov asserted, "A dispute has arisen between the parties to the said written agreement regarding [a] duty to defend, reimbursements [of] the costs of litigation to support [Brotherhood's] legal battle. This Court has not entered any final judgment proving the liability of the alleged claims within Case MCC1900188." Riverside County Superior Court case No. MCC1900188 is the libel case against Vinkov brought by Solar Forward. Vinkov attached a copy of Brotherhood's policy information for the church, which included an arbitration clause requiring "[a]ny dispute between us and any covered person regarding the existence or application of coverage under the terms of this endorsement . . . be submitted to the American Arbitration Association."

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Brotherhood asserted the arbitration issue was res judicata because the federal court had already determined that Vinkov's acts of posting on social media are not covered by the church's insurance policy, which means Vinkov could not invoke the arbitration clause within the policy. Brotherhood contended that if Vinkov wanted to

pursue arbitration, then he would have to seek revocation of the judgment in the federal court.

In its ruling, the trial court set forth the law regarding issue preclusion and concluded that Vinkov was precluded from seeking to compel arbitration under the insurance policy because the federal court had already ruled that Vinkov's act of posting online was not covered by the insurance policy.

## DISCUSSION

### A. ISSUE PRECLUSION

Vinkov contends the trial court erred by denying his petition to compel arbitration. Issue preclusion "prevents 'relitigation of previously decided issues' . . . . It applies only '(1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit.'" (*Samara v. Matar* (2018) 5 Cal.5th 322, 327.)

First, the federal court's entry of judgment was a final adjudication. (*Lumpkin v. Jordan* (1996) 49 Cal.App.4th 1223, 1230.) " 'A federal judgment "has the same effect in the courts of this state as it would have in a federal court."'" (*Ibid.*)

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Second, the issue in the federal court was whether Brotherhood had a duty to defend Vinkov against Solar Forward's libel claims. In order to resolve that issue, the federal court had to determine if Vinkov was covered by the church's insurance policy. In the instant case, Vinkov is seeking to compel arbitration under the church's insurance policy. If a court were to address the merits of that issue, the court would again have to determine if Vinkov is covered by the church's insurance policy such that he can invoke the arbitration clause. The issue in both cases is identical because they both turn on whether Vinkov's actions were covered by the church's insurance policy.

Vinkov contends, "The federal court ruling does not reveal that a breach of duty-to-arbitrate has been adjudicated." The federal court concluded that Vinkov's actions are not covered by the church's insurance policy. That decision means Vinkov cannot use the insurance policy's arbitration provision to compel arbitration related to the same actions.

Vinkov contends the issue before the federal court was not identical because it pertained to the original complaint filed by Solar Forward, rather than the first amended complaint. Vinkov does not explain what substantive differences, if any, exist between the original and amended complaints that might have caused a different result in the issue preclusion ruling, and we do not see a copy of the original and amended complaints in the record.

Third, the issue was actually litigated because it was decided on the merits by the federal court via a motion for summary judgment. (*Barker v. Hull* (1987) 191

Cal.App.3d 221, 226 [“actually litigated” includes summary judgment].) Fourth, Vinkov and Brotherhood were the parties in the federal court and the trial court.

In sum, all the criteria for issue preclusion have been satisfied. The trial court properly denied Vinkov’s petition to compel arbitration because the federal court had already determined that Vinkov’s actions are not covered by the church’s insurance policy, which means he cannot invoke the arbitration clause in the church’s insurance policy.

#### B. LACK OF OPPOSITION

##### 1. *PROCEDURAL HISTORY*

Brotherhood missed the deadline to file an opposition to the petition to compel arbitration. Brotherhood sought relief via an *ex parte* application. The trial court requested supplemental points and authorities on the issue of its jurisdiction over the petition to compel arbitration. In Brotherhood’s supplemental memo, it set forth its opposition to the petition to compel arbitration, i.e., it argued issue preclusion. On November 3, 2023, during the hearing on the petition, Brotherhood requested to give the trial court a copy of the federal court’s judgment, and the trial court authorized Brotherhood to file it. In a single written ruling, the trial court denied Vinkov’s petition and concluded that Brotherhood’s *ex parte* application was moot.

##### 2. *ANALYSIS*

Vinkov contends the trial court erred by not granting his petition because it was unopposed. Vinkov’s petition was opposed because Brotherhood presented its arguments in the supplemental memo, during the hearing on the petition, and by filing the federal court’s judgment in the trial court.

Vinkov contends the trial court erred by converting the hearing on Brotherhood's ex parte application into a hearing on Vinkov's petition to compel arbitration. Vinkov is mistaken. The November 3, 2023, hearing was set as a combined hearing on (1) Brotherhood's ex parte application, and (2) Vinkov's petition to compel arbitration.

Vinkov contends the trial court erred by permitting Brotherhood to file the federal court's judgment at the hearing on the petition to compel arbitration. After permitting Brotherhood to file the judgment, the trial court repeatedly asked Vinkov if he wanted to file a two- or three-page memo arguing that the issue of arbitration fell outside of the federal court's judgment. After the trial court's repeated questions, Vinkov said, "I believe any additional briefing will only untimely delay submission of this case to [the] appellate court." The trial court did not err because it gave Vinkov notice and the opportunity to respond to the evidence submitted by Brotherhood. (*Weiss v. Chevron, U.S.A., Inc.* (1988) 204 Cal.App.3d 1094, 1098-1099 ["the court should consider all admissible evidence of which the opposing party has had notice and the opportunity to respond"].)

C. "JURISDICTIONAL BARS"

1. *ELEVENTH AMENDMENT*

Vinkov contends that Brotherhood "fraudulently obtained relief barred by the Eleventh Amendment. States have police power over insurance business[es], which the federal government is barred from revoking under the federal Constitution."

The Eleventh Amendment to the United States Constitution provides, “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.” (U.S. Const., 11th Amend.) “[T]he Eleventh Amendment acknowledges and preserves, as against federal judicial intrusion, the states’ historic sovereign immunity rooted in the common law.” (*Pierce v. San Matro County Sheriff’s Dept.* (2014) 232 Cal.App.4th 995, 1012.)

Vinkov’s and Brotherhood’s cases do not involve a violation of a state’s immunity because a state is not a party in either case. Accordingly, there has not been a violation of the 11th Amendment.

## 2. 47 U.S.C.A. SECTION 230

Vinkov contends “47 U.S.C. § 230 operates as a jurisdictional bar.” That law provides, in part, “No provider or user of an interactive computer service shall be held liable on account of—[¶] any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.” (47 U.S.C.A. § 230(c)(A).)

The lawsuits between Vinkov and Brotherhood concern whether Vinkov’s actions are covered by the church’s insurance policy. Laws related to restricting access to lewd online material are not relevant to that issue.

3. *42 U.S.C.A. SECTION 14503*

Vinkov asserts 42 U.S.C.A. § 14503 “operates as a jurisdictional bar for [Brotherhood’s] claim because [Vinkov] was a volunteer director and was engaged in . . . protected speech.” That law provides, in part, “[N]o volunteer of a nonprofit organization . . . shall be liable for harm caused by an act . . . of the volunteer on behalf of the organization or entity if—[¶] 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.” (42 U.S.C.A. § 14503(a)(1).)

Brotherhood’s lawsuit in the federal court concerned whether it was obligated to defend Vinkov in the suit brought by Solar Forward. The instant case also concerns whether Brotherhood has a duty to defend Vinkov in the suit brought by Solar Forward. Because Brotherhood has not alleged that it was harmed by Vinkov, the law giving immunity to volunteers for harm they cause is not relevant in this case.

D. *STATEMENT OF DECISION*

Vinkov contends the trial court erred by not issuing a statement of decision following the November 3, 2023, hearing on the petition to compel arbitration. Vinkov is mistaken. The trial court did issue a statement of decision.

E. *JUDICIAL AND ATTORNEY ETHICS*

Vinkov asserts that (1) the trial court violated judicial ethics by acting with bias in favor of Brotherhood, and (2) Brotherhood’s counsel violated attorney ethics by misleading the trial court. We have reviewed the record and do not see any indication of ethical violations by the trial court or Brotherhood’s counsel.

**DISPOSITION**

The order denying the petition to compel arbitration is affirmed. Brotherhood is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

**NOT TO BE PUBLISHED IN OFFICIAL  
REPORTS**

MILLER

J.

We concur:

RAMIREZ

P. J.

RAPHAEL

J.

**APPENDIX-D. CALIFORNIA TRIAL  
COURT'S JUDGMENT DENYING  
ARBITRATION, FILED JANUARY 3, 2024**

Electronically FILED by Superior Court of California, County of Riverside on 01/03/2024 08:52 AM  
Case Number CVSW230760B J0000055208469 - Jason B. Galkin, Executive Officer/Clerk of the Court By A. Alvarado, Clerk

**SUPERIOR COURT OF THE STATE OF  
CALIFORNIA  
COUNTY OF RIVERSIDE, SOUTHWEST  
JUSTICE CETNER**

SERGEI V. VINKOV, an individual and as a Congregational Council Member of the Trinity Lutheran Church of Hemet, California, ELCA (2018- 2019)	Case No.: CVSW 2307608 [Related Case No. MCC1900188]
Petitioner, and Brotherhood Mutual Insurance Company, an Indiana Corporation, Insurer for the Trinity Lutheran Church of Hemet, California, ELCA (2016-2019)	<b>[PROPOSED] JUDGMENT ORDER RE: PETITIONER'S PETITION TO COMPEL ARBITRATION AND RESPONDENT'S EX PARTE FOR AN EXTENSION OF TIME TO FILE RESPONDENT'S OPPOSITION</b> Dept: S303 Judge: Hon. Raquel A. Marquez

Respondent.

Petition Filed:  
September 19, 2023  
Trial Date: None Set

**WHEREAS**, Petitioner Sergei V. Vinkov filed a Motion to Compel Arbitration as

against Respondent Brotherhood Mutual Insurance Company on September 19, 2023, to induce

arbitration based on an insurance policy issued, to the Trinity Lutheran Church of Hemet by

Respondent Brotherhood Mutual Insurance Company. This motion came on for hearing on

November 3, 2023 at 8:30 a.m., in Department S303 of the above-entitled court, located at

30755-D Auld Road, Murrieta, California, before the Honorable Raquel A. Marquez, presiding.

Robert W. Brockman, Jr. appeared on behalf of Respondent Brotherhood Mutual Insurance

Company. Petitioner Sergei V. Vinkov appeared on behalf of himself.

**WHEREAS**, Respondent Brotherhood Mutual Insurance Company's Ex Parte

application for an extension of time to file Respondent's Opposition to Petitioner's Petition to

Page 2

Compel Arbitration came on for hearing concurrently with the Motion to Compel Arbitration under the aforementioned conditions.

The Court, having reviewed the papers, considered argument and evidence presented by Petitioner and Respondent's counsel, and taking the matter under submission, served its Minute Order and Ruling on December 5, 2023 ( attached hereto as Exhibit "A").

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. Petitioner Sergei V. Vinkov's Motion to Compel Arbitration is DENIED;
2. The federal court already adjudicated this matter in *Brotherhood Mutual Insurance Company v. Sergei Vinkov* Case No. 5:19-cv-01821-SB-SP, ruling on the issue of coverage in Respondent Brotherhood Mutual Insurance Company's favor, and thus Petitioner Sergei V. Vinkov is barred from seeking to compel arbitration
3. Respondent Brotherhood Mutual Insurance Company's Ex Parte application for an extension of time to file Respondent's Opposition to Petitioner's Petition to Compel Arbitration is rendered moot.

**IT IS SO ORDERED.**

DATED: 01/02/2024

s/

Hon. Raquel A. Marquez  
Judge OF THE Superior  
Court

Page 3  
Exhibit "A"

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**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF RIVERSIDE**  
Southwest Justice Center  
30755-D Auld Road, Murrieta, CA 92563

**Case Number: CVSW2307608**

**Case Name: VINKOV vs BROTHERHOOD  
MUTUAL INSURANCE COMPANY**

**MONDONA M. ROSTAMI  
12481 High Bluff Drive, Suite 301  
San Diego, CA 92130**

**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.

Notices Mailed:

Dated: 12/05/2023 Jason B. Galkin  
Court Executive Officer/Clerk of  
the Court

by: \_\_\_\_\_ s/  
S. Rivera, Deputy Clerk

**CW-CCM  
(Rev. 08/24/17)**

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**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF RIVERSIDE  
Southwest Justice Center  
Ruling on Matter Submitted**

12/05/2023  
1:13 PM  
Department S303

**CVSW2307608**  
**VINKOV vs BROTHERHOOD MUTUAL**  
**INSURANCE COMPANY**

Honorable Raquel A. Marquez, Judge  
S. Rivera, Courtroom Assistant  
Court Reporter: None

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**APPEARANCES:**  
No Appearances

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Court subsequently rules on matter taken under submission on: 11/03/2023 for Hearing on Petition to Compel Arbitration.  
Petition denied - entire case dispositioned.  
Court's ruling attached to Minute Order and incorporated herein by reference.  
Court's ruling sent to SERGEI VINKOV;  
BROTHERHOOD MUTUAL INSURANCE COMPANY by mail on 12/05/23.

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**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF RIVERSIDE**  
Southwest Justice Center  
Ruling on Matter Submitted

12/05/2023  
1:15 PM  
Department S303

**CVSW2307608**  
**VINKOV vs BROTHERHOOD MUTUAL**  
**INSURANCE COMPANY**

Honorable Raquel A. Marquez, Judge  
S. Rivera, Courtroom Assistant  
Court Reporter: None

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**APPEARANCES:**  
No Appearances

---

Court subsequently rules on matter taken under submission on: 11/03/2023 for Ex Parte Hearing re: FOR AN EXTENSION OF TIME TO FILE RESPONDENT'S OPPOSITION TO PETITIONER'S PETITION TO COMPEL ARBITRATION.

Court's ruling attached to Minute Order and incorporated herein by reference.

Court's ruling sent to SERGEI VINKOV; BROTHERHOOD MUTUAL INSURANCE COMPANY by mail on 12/05/23.

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**Vinkov v. Brotherhood Mutual Insurance Company, Case No. CVSW2307608**

Petition to Compel Arbitration

Ruling: The petition is denied. The federal court has already adjudicated this matter, and Petitioner has failed to establish that he is entitled to arbitration under the insurance policy. Respondent's ex parte application for leave to file a late opposition is moot.

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**A. Facts and Procedural Context**

Sergei V. Vinkov ("Petitioner") was a volunteer Church Council Member of the Trinity Lutheran Church of Hemet (the "Church"), in 2018, Solar Forward installed solar panels at the Church. Dissatisfied with their service, Petitioner posted critical reviews of Solar Forward on social media websites. Solar Forward sued Petitioner in Case No. MCC1900188. Petitioner tendered his defense to Brotherhood Mutual Insurance Company ("Respondent") based on the Church's insurance policy (the "Policy") and his status as a volunteer member of the Church Council. Respondent filed a federal action seeking, among other causes of action, a declaratory judgment that it has no duty to defend Petitioner. On August 2, 2021, the federal court granted Respondent's motion for summary judgment, finding, in part, that there is no potential for coverage or duty Respondent has to Petitioner to defend. *Brotherhood Mutual Insurance Company v. Sergei Vinkov* Case No. 5:19-cv-01821-SB-Sp, pg. 3-6.

Nevertheless, Petitioner filed this action to compel Respondent to arbitration on the insurance policy, Petitioner also asks that judgment be entered against Respondent alleging that the Policy protects its members from defamation lawsuits and contending that under the Policy any dispute regarding coverage with Respondent must go to arbitration, Petitioner argues that Respondent has refused to defend Petitioner in case MCC1900188. No opposition was timely filed. However, Respondent sought leave to file a late opposition via an *ex parte* application.

On November 3, 2023, the Court permitted Respondent to file the federal court's Civil Minutes in Case No, S:19-cv-01821-SB SP. Petitioner objected, Petitioner also requested a Statement of Decision (SOD). There are no controverted facts, and Petitioner failed to specify the issues to be

addressed in the SOD, Nevertheless, the court issues the following SOD.

### **B. Ruling**

Petitioner is barred from seeking to compel arbitration by a prior federal lawsuit. Respondent filed a federal lawsuit on the issue of coverage, which has gone to final judgment. (See *Brotherhood Mutual Insurance Company v. Sergei Vinkov* Case No. 5:19-cv-01821-SB-Sp; see also Declaration of Sergei Vinkov, ¶8.) Specifically, the federal lawsuit pertained to Respondent's duty to Petitioner under the insurance policy, which was resolved in Respondent's favor. The federal court concluded:

1

Page 8

Defendant's conduct of making allegedly defamatory social media posts was undertaken on his own and without authorization of any church leader. Consequently ... Defendant is not a "covered person" for purposes of the church's insurance policy with Plaintiff, and thus Defendant falls outside the scope of coverage, .. Defendant offers nothing to show that his actions placed him within the scope of the insurance policy's coverage. Thus, there is no potential for coverage or, by extension, a duty for Plaintiff to Defendant in the underlying action, Accordingly, the Court **GRANTS** summary judgment as to Plaintiffs declaratory relief claim concerning the absence of duty to defend.

**23a**

"[A] federal court judgment has the same effect in California courts as it would in a federal court. That is, once a federal order or judgment is rendered, as for instance in district court, that judgment is final for purposes of res judicata until it is reversed on appeal or set aside or modified in the court rendering the order or judgment." *Gamble v. General Foods Corp.* (1991) 229 Cal.App.3d 893, 898. Issue preclusion, part of res judicata, prevents relitigating issues argued and decided in a previous case, *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 823-824. "Under issue preclusion, the prior judgment conclusively resolved an issue actually litigated and determined in the first action." *Id.* at 824. The federal lawsuit found that Respondent did not have a duty to defend the claims in MCC1900188. Hence, Petitioner is barred from seeking to compel arbitration of his contention that Respondent failed to defend him.

Additionally, Petitioner failed to establish that the Policy applies to him. The court must grant a petition to compel arbitration unless it finds either no written agreement to arbitrate exists, the right to compel arbitration has been waived, grounds exist for revocation of the agreement, or litigation is pending that may render the arbitration unnecessary or create conflicting rulings on common issues. CCP §1281.2. A proceeding to compel arbitration is, in essence, a suit in equity to compel specific performance of a contract. *Freeman v. State Farm Mutual Auto Insurance Co.* (1975) 14 Cal.3d 473, 479. The petition to compel must set forth the provisions of the written agreement and the arbitration clause verbatim, or such provisions must be attached and incorporated by reference. Cal. R. Ct. 3.1330; see *Candee v. Longwood Mgmt. Corp.* (2001) 88 Cal.App.4th 215, 218-219.

In this petition, Petitioner contends two arbitration provisions in the Policy pertain to him. One provision states: "[a]ny dispute between us and any covered person regarding the existence or application of coverage under the terms of this endorsement must be submitted to the American Arbitration Association ... for a determination of coverage by a three person arbitration panel appointed by the arbitration organization." The second provision states: "[a]ny dispute between us and any insured or covered person regarding the existence or application of coverage under the terms of any liability or medical (GL or BGL) coverage form of this policy must be submitted to the American Arbitration Association ... for a determination of coverage by a three member panel appointed by the arbitration organization." Petitioner only provides excerpts of the Policy. These excerpts do not include a definition of the terms "insured" or "covered person," Petitioner admits that he did not enter into the Policy directly but that it covers him due to his position with the Church, the entity that was issued the Policy. Since it is unclear in this petition how the Policy defines "insured" or "covered person", it is unclear whether Petitioner falls within either of these arbitration provisions, Petitioner also fails to address the

conduct that gave rise to the lawsuit against him (MCCI.900188) and why the Policy covers it. Therefore, Petitioner has failed to establish that the Policy applies to him.

Respondent is ordered to submit a proposed judgement order within 30 days.

December 5, 2023

s/  
Raquel Marquez

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**26a**

**APPENDIX-E. PETITIONER'S EXCERPTS  
OF CONTROVERTED ISSUES SUBMITTED  
FOR REVIEW, FILED NOVEMBER 3, 2023.**

FILED  
Superior Court of California  
County of Riverside  
Nov 03 2023  
J. Prendergast

Sergei Vinkov  
40795 Nicole Court, Hemet, CA, 92544  
Mobile 951.380.5339  
E-mail [vinjkov@gmail.com](mailto:vinjkov@gmail.com)  
Petitioner, In Pro Per

**SUPERIOR COURT OF THE STATE OF  
CALIFORNIA  
COUNTY OF RIVERSIDE - SOUTHWEST  
JUSTICE CETNER  
[Fourth Judicial District]**

SERGEI V. VINKOV, an individual and as a Congregational Council Member of the Trinity Lutheran Church of Hemet, California, ELCA (2018- 2019)	CASE CVSW2307608 VINKOV VS BROTHERHOOD UNLIMITED JURISDICTION
Petitioner, and <u>Brotherhood Mutual Insurance Company,</u>	RELATED CASEMCC1900188 SMITH VS VINKOV UNLIMITED WRISDICTION Department: S302.
	<b>SERGEI VINKOV'S REQUEST FOR</b>

an  
Indiana Corporation,  
Insurer for the Trinity  
Lutheran Church of  
Hemet, California,  
ELCA (2016-2019)

Respondent.

**STATEMENT OF  
DECISION ON  
TENTATIVE RULING  
ISSUED ON 02-NOV-  
2023; EXHIBIT 1**

Dept: S303  
Judge: Hon. Raquel A.  
Márquez

[CRC Rule 3.1590(n),  
Rule 3.1590(d), 8.712,  
8.1 105(c); CCP §§ 632;  
1291]

Date: 11/03/2023  
Time: 08:30 am

To Judge Hon. Raquel A. Marquez, all interested persons, Respondent and its attorney(s) of record:

NOTICE IS HEREBY GIVEN that within 18 hours after issuance of the tentative ruling (a true and correct copy is attached to this request as **Exhibit 1**, <https://www.riverside.courts.ca.gov/online-services/tentative-rulings>) on 02-NOV-2023, and before the submission of the matter for the court's decision, according to CRC Rule 3.1590(n); Rule 3.1590(d); CCP §§632; 1291, Petitioner requests that the Court issue a Statement of Decision setting forth the factual and legal basis for its Tentative

Page 2

Decision (**Exhibit 1**), scheduled to be announced in open court on November 3, 2023, at 8:30 a.m. in Dep.S303, on the following principal controverted

issues based on the court's records presented by parties:

1. The parties agree that the federal court has adjudicated the matter.
2. Petitioner has not established he is entitled to arbitration under the insurance policy.

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13. Was state or federal law used by the court to determine the outcome of the court's denial to enforce arbitration by a non-signatory to an agreement containing an arbitration clause?

16. Was the federal judgment in favor of Respondent in the related federal proceedings procured fraudulently (Exhibit 3 to Petition)?

17. Is the federal judgment in favor of Respondent void and voidable as a matter of law (Exhibit 3 to Petition)?

20. Does the arbitration agreement contain ambiguities and vagueness (Exhibit I of Petition)?

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43. Whether Respondent's constitutional and statutory rights were infringed by the acts of Respondent and its legal representatives in the course of this and related proceedings?

44. Whether the case should be properly directed to arbitration because arbitration is a way to settle disputes rather than "decide" cases and was a contractual choice of Respondent to settle

controversies under the insurance policy (Exhibit 1 of Petition)?

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48. Whether the federal court's interventions (Exhibits 2-3 to Petition) and non-interventions (Exhibit 4 to Petition), escalated the dispute between the parties and extended Petitioner's recovery grounds under arbitration?

55. Whether this court abused its discretion for failure to send parties to arbitrate "RELIGIOUS FREEDOM PROTECTION COVERAGE" (Exhibit I, Page BMIC000141 of Petition), which cannot and was never presented for consideration in any judicial forum due to restrictions of CCP 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.) and the both federal Establishment Clause and its analog in California (U.S. Const, I amend.)?

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57. Does the trial court abuse discretion in departing from the governing precedents of the courts of higher jurisdiction?

60. Whether Petitioner, by predominance evidence, demonstrated Respondent's refusal and resistance to arbitrate?

61. Whether Petitioner by predominance evidence demonstrated the viability of his claims against Respondent on the breach of contractual and or implied duty-to-arbitrate under arbitration jurisdiction (wrongdoing, causation, and harm

(Exhibits 1-4; Petitioner Deel. filled on 19-SEP-2023, ¶¶6-13,15))?

## **APPENDIX-F. CONSTITUTIONAL AND STATUTORY PROVISIONS**

### **Constitutional Provisions**

#### **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, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

### **Statutes**

#### **9 USC § 2**

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4.