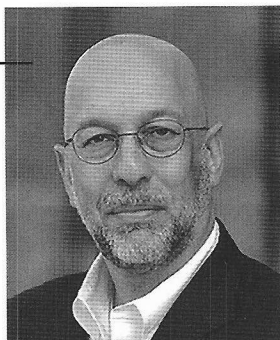


CALIFORNIA'S APPROACH TO NONSIGNATORY JURISDICTION IN ARBITRATION: IS *BENAROYA* PREEMPTED BY THE FEDERAL ARBITRATION ACT?

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I. INTRODUCTION: ARBITRATION CONSENT AND AN EMERGING TENSION IN NONSIGNATORY DETERMINATIONS

California is emerging as a leading forum for domestic and international arbitration. Its positioning as the fourth largest economy in the world generates a steady stream of complex U.S. and international commercial disputes. California courts are deeply committed to the rule of law and principles of justice and due process, and they have developed a strong record for recognition and enforcement of international arbitration awards. Arbitration practitioners in the state routinely handle issues concerning sophisticated business structures, corporate groups, and cross-border transactions in technology, life sciences, entertainment, international trade, and other leading industry sectors.

Against this backdrop, California courts and arbitration tribunals are frequently presented with disputes over whether

nonsignatories to contracts are bound by arbitration provisions. The fundamental rule in the U.S., including California, is uncontroversial: arbitration is a creature of contract, and nonsignatories are not bound unless a recognized contract-extension theory—such as agency, alter ego, assumption, third party beneficiary status, or estoppel—applies. (*Arthur Andersen LLP v. Carlisle* (2009) 556 U.S. 624; *GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC* (2020) 590 U.S. 432.)

A more controversial question concerns who should decide whether such a theory binds a nonsignatory — the court or the arbitral tribunal. The U.S. Supreme Court established in its seminal 1995 decision in *First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938 that arbitral jurisdiction in the U.S. is a gateway issue reserved to the courts unless there is “clear and unmistakable” evidence the parties delegated the issue to the arbitrator. As a practical matter, modern arbitration agreements routinely incorporate institutional rules that delegate jurisdictional questions to the arbitral tribunal. Accordingly, under the

federal rule, arbitrators can routinely decide jurisdiction over the parties, including nonsignatories, without requiring recourse to the courts.

The California Court of Appeal's 2018 decision in *Benaroya v. Willis* (2018) 23 Cal.App.5th 462 presents a challenge to that norm. In *First Options*, the Supreme Court articulated a federal framework under the Federal Arbitration Act (FAA) that safeguards consent through judicial review of arbitrator decisions regarding nonsignatory jurisdiction. *Benaroya*, in contrast, prohibits arbitrators (in cases subject to state court jurisdiction) from considering whether a nonsignatory is bound absent authorization by the nonsignatory to address the issue during the arbitration or a prior judicial ruling.

Benaroya is under increased scrutiny as California's arbitration practice expands, raising the question whether *Benaroya* is vulnerable to preemption under the FAA as interpreted in *First Options*.

This article considers the preemption issue and addresses a narrower, practical question: even if *Benaroya* survives preemption review, how should practitioners in California approach its categorical prohibition. Where does *Benaroya* apply, and how should it be managed in light of California's continued emergence as a leading arbitration seat?

II. THE FEDERAL FRAMEWORK: *FIRST OPTIONS* AND THE ALLOCATION OF AUTHORITY

First Options established the modern federal framework for determining who decides questions of arbitral jurisdiction. The dispute in *First Options* arose from a stock-clearing agreement between a brokerage firm and a corporate entity, where the individual owners — who had not personally signed the arbitration agreement — participated in the arbitration under protest. The arbitral tribunal concluded that it had jurisdiction over the individuals, and the U.S. Supreme Court was asked to determine the proper standard for judicial review of that ruling.

In considering the tribunal's jurisdictional decision, the Supreme Court emphasized that arbitration is fundamentally a matter of consent, and that parties may not be forced to arbitrate issues they did not agree to submit to arbitration. At the same time, the court rejected the notion that arbitrators are categorically forbidden

from addressing questions of arbitral jurisdiction in the first instance.

Instead, *First Options* articulated a two-track system of judicial review. Where parties clearly and unmistakably delegate questions of arbitrability to the arbitrators, courts must defer to the arbitrator's decision. Where such delegation is absent, courts retain authority to decide arbitrability independently, applying *de novo* review. (*First Options*, at 943-947.)

Subsequent Supreme Court decisions have consistently reaffirmed this allocation of authority across both domestic and international arbitration contexts, emphasizing that the FAA safeguards consent through threshold determinations and standards of judicial review rather than through categorical prohibitions on arbitral consideration of gateway issues. (See *Coinbase, Inc. v. Suski* (2024) 602 U.S. 143; *Henry Schein, Inc. v. Archer & White Sales, Inc.* (2019) 586 U.S. 63.)

III. BENAROYA AND CALIFORNIA'S EMPHASIS ON JUDICIAL PRIMACY

In *Benaroya*, the California Court of Appeal, Second District, addressed whether an arbitrator may decide if a nonsignatory is bound by an arbitration agreement. The dispute arose from claims asserted by the actor Bruce Willis and his entertainment services company against an individual who had not signed the actor services contract containing the arbitration clause, but who was alleged to be bound under alter ego and related theories. The arbitrator, a retired judge, concluded he had jurisdiction over the nonsignatory, prompting a judicial challenge to the arbitrator's authority to make that determination.

The Second District held that absent delegation by the nonsignatory in the course of the arbitration or a prior judicial ruling, arbitrators lack authority to decide whether a nonsignatory is bound. The court distinguished between delegation by contracting parties through adoption of arbitral rules and the separate question of consent by nonsignatories. It held that reference to arbitral rules in the arbitration agreement was insufficient to establish consent by a nonsignatory to the underlying contract. As a result, the court did not consider whether jurisdiction was proper and instructed that the award be vacated as to the individual. (*Benaroya*, at 467-468.)

Thus, in contrast to *First Options*, rather than allowing arbitrators to consider nonsignatory arbitrability subject to judicial review, the California appellate court in *Benaroya* treated arbitrator consideration itself as an excess of powers.

This approach altered the sequencing contemplated by *First Options* and introduced mandatory front-end court involvement in most state court cases. *Benaroya* imposes a standard that diverges from the international “competence-competence” principle authorizing arbitrators to determine their own jurisdiction, subject to subsequent court review.

The California Supreme Court has not considered the issue in *Benaroya*. Other California appellate courts cite *Benaroya* favorably for the proposition that courts decide whether nonsignatories are bound, but none have relied on its categorical prohibition or vacated an award on that basis. (See, e.g., *Campuzano v. Contreras* (G059700 [unpub.] Jan. 10, 2013) 2023 WL 141019.) Although federal courts have cited *Benaroya* as a statement of California law governing nonsignatory enforcement, federal courts have not reviewed the *Benaroya* prohibition and have continued to apply the *First Options* review standards.

The *Benaroya* court’s insistence that courts resolve nonsignatory issues (unless authority is expressly delegated by the nonsignatory) places significant strain on the arbitration process. Arbitration is generally expected to be a time- and cost-efficient process and it is burdened by the need for separate court proceedings to determine whether nonsignatories are bound. That burden is especially pronounced where nonsignatories are the only named respondents, thereby threatening to stall arbitrations at the outset. At the same time, *Benaroya* reflects the legitimate concern that nonsignatories should not be compelled to arbitrate absent consent.

IV. FEDERAL JURISDICTION AND INTERNATIONAL ARBITRATION: CONTEXTUAL DIFFERENCES

Benaroya establishes a requirement that is not required by *First Options* and is not applied in the federal courts. If *Benaroya*’s prohibition is to be applied by other California state courts, it creates a dichotomy between federal and state court practices in California. Parties and arbitration tribunals will be required to assess whether a case is exclusively subject to state court jurisdiction before considering the issue.

In domestic arbitrations which are governed by chapter 1 of the FAA, federal court subject matter jurisdiction is not automatic. (*Badgerow v. Walters* (2022) 596 U.S. 1.) Thus, absent diversity of citizenship or a federal question, state courts are the exclusive forum for confirmation or vacatur of an award. In that context, *Benaroya*’s categorical prohibition has its greatest impact, requiring front-end court proceedings before an arbitration involving a nonsignatory may meaningfully proceed. Domestic arbitrations can escape that conclusion only where federal jurisdiction exists or the nonsignatories consent to arbitrator determination.

The Supreme Court’s December 5, 2025 grant of certiorari in *Jules v. Andre Balazs Properties*, No. 25-83, underscores continuing uncertainty in the sequencing of federal court involvement in arbitration, as the court will consider whether a federal court retains authority to review an arbitral award after compelling arbitration when no independent basis for federal court jurisdiction exists at the post-award stage.

International arbitrations governed by the New York Convention present a materially different context. Chapter 2 of the FAA provides that actions or proceedings falling under the Convention arise under the laws of the United States, and federal district courts have original jurisdiction over such cases regardless of the amount in controversy or the citizenship of the parties. (See 9 U.S.C. § 203.) Accordingly, international arbitration matters are assured a federal judicial forum even where diversity or other federal question grounds would otherwise be lacking. This jurisdictional certainty makes arbitrator-first consideration of jurisdiction particularly defensible in international cases.

A further dichotomy potentially exists with respect to international arbitration cases that are not removed to federal court and are submitted to a state court under California’s international arbitration statute which implements the UNCITRAL Model Law. (Code Civ. Proc., § 1297.11 et seq.) It is arguable, albeit untested, that *Benaroya*, which was decided in the context of California’s domestic arbitration statute, does not apply with equal force to arbitrations governed by the state’s international arbitration regime.

Accordingly, if *Benaroya* is applied broadly, a dichotomy emerges between state court domestic procedures, on the one hand, and federal court and international arbitration procedures, on the other.

V. FAA PREEMPTION PRINCIPLES AND THEIR APPLICATION TO *BENAROYA*

The federal preemption doctrine invalidates state laws that conflict with federal law. The Supreme Court has identified several forms of preemption, including express preemption, field preemption, and conflict preemption, all of which derive from the Supremacy Clause of the United States Constitution. (*Arizona v. United States* (2012) 567 U.S. 387.) Conflict preemption includes both impossibility preemption — where compliance with state and federal law is impossible — and obstacle preemption, where state law stands as an obstacle to the accomplishment and execution of Congress’s objectives.

In the arbitration context, the Supreme Court has repeatedly emphasized that the FAA does not occupy the entire field of arbitration regulation. (*Preston v. Ferrer* (2008) 552 U.S. 346.) States remain free to apply generally applicable contract law principles, including rules governing formation, consent, and enforcement. For that reason, FAA preemption disputes rarely involve express or field preemption. Instead, challenges to state arbitration rules almost invariably proceed under an obstacle-preemption analysis, asking whether the state rule interferes with the FAA’s core purposes of enforcing arbitration agreements according to their terms and avoiding arbitration-specific procedural burdens. (See, e.g., *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333 [preemption of rule against class-action waivers in arbitration].)

This obstacle-preemption framework provides the proper lens through which *Benaroya* must be assessed. Accordingly, the issue is not whether California courts may regulate arbitration but whether the *Benaroya* procedures frustrate the FAA’s core objectives. Applying that framework, it can be argued that *Benaroya* does not invalidate arbitration agreements or deny their enforcement. Instead, it restructures the procedural sequence by prohibiting arbitrators from addressing non-signatory arbitrability absent delegation or a prior judicial ruling. In that context, *Benaroya* is consistent with *First Options* to the extent it holds that non-signatory jurisdiction is ultimately a matter for court determination. *First Options* did not address whether the FAA requires arbitrator consideration in the first instance; it merely addressed the applicable standards of judicial review. Still, the challenge for *Benaroya* is that it imposes a categorical prohibition that sits in tension with the FAA’s review-based structure, which anticipates that arbitrators may consider arbitrability issues subject to independent judicial review even where delegation is lacking.

The practical consequences of this sequencing rule are significant. *Benaroya*’s approach can halt arbitrations entirely while threshold court proceedings unfold, particularly those in which non-signatories are the only named respondents. This consequence cannot be readily reconciled with the FAA’s objective of promoting efficient dispute resolution through arbitration. Because federal jurisdiction is required for federal review of domestic cases, the impact is broadly felt in interstate commerce.

However, the preemption question is not straightforward given that it involves a matter of procedure rather than substantive law. In 2025, the California Supreme Court applied federal preemption principles in *Hohenshelt v. Superior Court* (2025) 18 Cal.5th 310, upholding a California statute that imposes consequences for the untimely payment of arbitration fees. The California Supreme Court concluded the statute was not preempted by the FAA because, properly construed, it did not single out arbitration for disfavored treatment or impose obstacles inconsistent with the FAA’s purposes. *Benaroya* may, arguably, be defended on similar grounds as a consent-protective sequencing rule rather than a manifestation of hostility toward arbitration.

The impediments to expediency imposed by *Benaroya* on cases subject to the FAA leave preemption an open question that may receive attention from the federal courts if the opportunity arises.

VI. A CALL FOR THE CALIFORNIA COURTS TO MAKE A MODEST REFINEMENT: PRESERVING CONSENT WHILE REDUCING FRICTION

Even if *Benaroya* is not subject to federal preemption, California courts would do well to adopt the two-tiered approach articulated in *First Options*. Doing so would reduce friction between the FAA and California’s approach without abandoning consent protections.

Treating judicial primacy as a sequencing rule, rather than a categorical prohibition, would preserve full judicial review when consent is lacking while allowing arbitrations to proceed more efficiently. Such an approach would not undermine statutory protections in consumer or employment arbitration. Instead, it would ensure prompt resolution in all arbitrations while still allowing court review whenever requested.

Following the *First Options* framework, permitting arbitrators to assess non-signatory contentions in the first

instance—subject to *de novo* judicial review if consent is disputed – would neither insulate jurisdictional rulings from review nor automatically invalidate proceedings. Arbitration parties would thus receive the promised benefits of time- and cost-efficient dispute resolution while retaining robust judicial safeguards.

Importantly, adopting this sequencing model does not preclude parties from seeking court intervention at the outset of an arbitration. It simply avoids mandatory front-end litigation in every case, keeping arbitrations moving while fully protecting nonsignatories and other parties who seek judicial determination.

This refinement by the California courts would harmonize California practice with the approach taken by the federal courts, including the federal courts sitting in California. It would reduce uncertainty, limit forum shopping, and reduce unnecessary burdens on court dockets, while promoting party-directed resolution of disputes. This modest judicial realignment with federal law would be both more practical and more efficiently achieved than a legislative remedy.

VII. PRACTICAL GUIDANCE FOR ARBITRATION PRACTITIONERS

Pending such action by the California courts, arbitration practitioners should tread cautiously where state court proceedings may be involved. In domestic cases where federal court review is uncertain, and where the nonsignatories do not consent to disposition of the issue by the arbitral tribunal, reliance on arbitration rule provisions stating that arbitrators may determine their own jurisdiction is not a safeguard. The safest course would be to stay the proceeding as to the nonsignatories until a court has determined whether the nonsignatories are bound. Whether the entire arbitration should be stayed depends on the context of the case.

One consideration is that *Benaroya*, as an intermediate appellate decision, is binding only within the Second District (which generally encompasses the Los Angeles area). Regardless, *Benaroya* is persuasive authority elsewhere and other California state appellate districts have cited it favorably, even though they have not specifically addressed the proposition that determinations by arbitrators are a ground for vacatur.

Given the uncertainty as to whether *Benaroya*'s categorical prohibition will be followed by other California courts, arbitral tribunals in domestic cases that may be subject to state court review may consider issuing

conditional jurisdictional findings on nonsignatories while leaving the parties free to concurrently seek judicial clarification. But tribunals are unlikely to assume that risk on their own initiative.

Where federal court jurisdiction is assured, including in international arbitrations, arbitrators can more confidently address questions of jurisdiction over nonsignatories, even without their consent, subject to the *First Options* framework permitting *de novo* judicial review.

VIII. CONCLUSION

California arbitration is on the rise. In the commercial context, California courts are recognized for their firm support of commercial arbitration consistent with the FAA and their strong record in recognizing and enforcing international arbitration agreements and awards under the New York Convention.

In that context, *Benaroya* reflects a principled concern for consent to arbitration. But *Benaroya*'s categorical prohibition against arbitrator determination of jurisdiction over nonsignatories is not compelled by federal law and carries practical costs that impose impediments to arbitration in the state courts.

Federal courts rely on the two-tiered approach articulated in *First Options* and federal court cases in California, including cases involving international arbitration, are not constrained by *Benaroya*.

Although *Benaroya* could ultimately face a preemption challenge, the outcome of which is uncertain, a modest realignment by the California courts harmonizing California practice with the federal approach would benefit parties, arbitration practitioners, and the courts. The California judiciary can readily make this refinement without sacrificing the fundamental judicial protections that underlie both *First Options* and *Benaroya*. Doing so will further advance California's position as a premier arbitration forum.

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