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# Arbitration: Determining the Collateral Estoppel Effect of a Private Arbitration Award On Non-Parties In Subsequent Litigation

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## I. INTRODUCTION

What's the effect of an arbitration award on a subsequent superior court action in California? Does it matter whether the arbitration involves the same issues and the same parties? What if one of the parties in the superior court action did not participate in the arbitration? In other words, do the doctrines of *res judicata* and collateral estoppel apply to court actions following private arbitration awards? If so, under what circumstances? The short answer is that the applicability of *res judicata* and collateral estoppel based on prior private arbitration awards depends on the parties involved and whether they agreed that their arbitration award could have such an effect. Absent such an agreement, California is one of the few jurisdictions that does not recognize collateral estoppel based on private arbitration when sought by a third party.

## II. HOW COLLATERAL ESTOPPEL ISSUES ARISE WITH NON-PARTIES

Private arbitration is a very common form of dispute resolution. Between April 2005 and March 2010, the American Arbitration Association, reported resolving 62,591 arbitration cases.[1] Indeed, many contracts, both standardized and non-standardized, contain arbitration provisions requiring the parties to resolve potential disputes by binding arbitration. These contracts containing arbitration provisions commonly involve real estate issues ranging from commercial leases, commercial and residential purchase and sale agreements, construction contracts, employment contracts, and nearly every other type of contract imaginable. Many standardized forms used in California for real estate transactions mandate arbitration of disputes.

For example, the California Association of Realtors Form Residential Purchase and Sale Agreement (the agreement commonly used in residential purchase and sale transactions in California) contains an arbitration provision wherein the buyers and sellers agree to resolve all disputes arising out of the purchase and sale agreement in binding arbitration.[2] When such disputes arise, the buyers and sellers are required to participate in binding arbitration. However, the parties' real estate brokers and agents are generally not parties to the purchase and sale agreement. Accordingly, they are not parties to the binding arbitration provision and are not obligated to participate in the arbitration. In this situation, a buyer plaintiff seeking to commence a non-disclosure action against the seller and the sellers' real estate agent and/or broker must maintain two separate actions: (1) an arbitration against the seller; and (2) a separate court action against the real estate agent and/or broker. If the arbitration comes to a final award before the court action, which may occur if the court action is stayed for arbitration, the court must determine the collateral estoppel effect, if any, of the private arbitration award. For example, if the private arbitrator determined that the buyer did not prove his/her reasonable reliance on the seller's disclosures (or lack thereof), the issue becomes whether plaintiff buyer is prevented from making a similar non-disclosure claim against the broker in the court action given the private arbitrator's factual findings. In other words, the court must decide whether the buyer is collaterally estopped from pursuing his/her nondisclosure claim against the broker in the superior court based on the adverse private arbitration award. This situation can be further complicated when the broker, although not agreeing to be bound by the arbitration award, participates in the arbitration.

Any contractual arbitration provision that does not cover all parties involved in the dispute can give rise to this issue. If the arbitrating parties conduct a private arbitration ahead of the court action and reach a final resolution, then the parties to the court action must determine the weight, if any, of the private arbitrator's prior findings against the parties to the arbitration.

## III. LEGAL BACKGROUND

### A. The Law of *Res Judicata* and Collateral Estoppel

*Res judicata* in its narrowest form "precludes parties or their privies, from relitigating a cause of action [finally resolved in a prior proceeding]."[3] *Res judicata* also includes a broader principle, collateral estoppel, whereby an issue "'necessarily decided in [prior] litigation [may be] conclusively determined as [against] the parties [thereto] or their privies….in a subsequent lawsuit on a different cause of action.'"[4] Thus, *res judicata* does not merely bar relitigation of identical claims or causes of actions; "it may also preclude a party to prior litigation from redisputing issues therein decided against him, even when those issues bear on different claims raised in a later case."[5]

Collateral estoppel need not always be mutual.[6] It is not required that the earlier and later proceedings involve the identical parties or their privies. Only the party against whom the doctrine is invoked must be bound by the prior proceedings.[7] This rule holds true, in broad terms, whenever the collateral estoppel defense arises in successive *court* actions. As we will see below, collateral estoppel is not so readily available when a party seeks to assert it as a defense based on a private *arbitration* award. This distinction is very significant.

As a whole, collateral estoppel is intended to preserve the integrity of the judicial system, promote judicial economy, and protect litigants from harassment by vexatious litigants.[8] Collateral estoppel, in general terms, allows a litigant, who was not a party to the prior litigation, to take advantage of findings made against his current adversary in an earlier proceeding.[9] Thus, the loss of a particular issue against a particular opponent in one forum may impose adverse and unforeseeable litigation consequences far beyond the foreseeable limits of the

original case, applicable in another forum.[10] The use of collateral estoppel by a non-party to the original action against a prior participant is called "nonmutual collateral estoppel." In cases involving nonmutual collateral estoppel, a party who has an adverse factual finding rendered against it in an original litigation may forever be bound by the adverse ruling in subsequent actions between it and future litigants. Collateral estoppel is a powerful tool.

Courts determine whether collateral estoppel is fair and consistent with public policy on a case-by-case basis because of the dispositive effect of nonmutual collateral estoppel and the dangers it poses to a litigant. This determination is largely dependent "on the character of the forum that first decided the issue later sought to be foreclosed."[11] Courts examine the judicial nature of the prior forum, its legal formality, the scope of the jurisdiction, its procedural safeguards, and, of particular importance, the opportunity for judicial review of adverse rulings.[12] Nonmutual collateral estoppel cases require close examination to determine whether the use of collateral estoppel against a prior party litigant is fair and appropriate.

### B. California Law on Binding Arbitration

California has a comprehensive statutory scheme regulating private arbitration.[13] Essentially, "a written agreement to submit [either a present or future controversy] to arbitration… is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract."[14] "The policy of the law in recognizing arbitration agreements and in providing by statute for their enforcement is to encourage persons who wish to avoid delays incident to a civil action to obtain an adjustment of their differences by a tribunal of their own choosing."[15] The statutory scheme sets forth the basic characteristics of arbitration proceedings, including enforcement of agreements to arbitrate, establishing the rules for the conduct of arbitration proceedings, and the identifying circumstances in which arbitrators' awards may be judicially vacated, corrected, confirmed, and enforced.[16] Note, the *limited judicial review* applicable to arbitration proceedings "is a well understood feature of private arbitration, inherent in the nature of the arbitral forum as an informal, expeditious, and efficient means of dispute resolution. By choosing private arbitration, the parties 'evince [their] intent to bypass the judicial system and thus avoid potential delays at the trial and appellate levels.'"[17] There is limited appellate review of an arbitrator's award to enable and protect the expedited process that arbitration is supposed to provide. Thus, arbitration by statute and agreement is designed to be efficient. Part of that efficiency involves eliminating appellate review on most grounds. This characteristic has a significant impact on the scope of collateral estoppel based on private arbitration awards.

## IV. COLLATERAL ESTOPPEL BASED ON PRIVATE ARBITRATION AWARDS

### A. Mutual Collateral Estoppel

An arbitration award, confirmed or unconfirmed, has the same *res judicata* effect as a court judgment.[18] Indeed, in *Thibodeau v. Crum,* the court of appeals conclusively determined this issue in the context of a construction dispute. In that case, plaintiffs Peter and Judy Thibodeau entered into a contract with Paul Eller & Associates for the construction of a single-family home. The Thibodeaus initiated an arbitration proceeding pursuant the terms of the construction contract, claiming damages against Eller based on claims of unexcused delay and poor workmanship.[19] After a three-day hearing, the arbitrator awarded Eller the original contract price, plus amounts for changes made by the Thibodeaus and other allowance items.[20] The arbitrator's award included an offset of $2,261 for "Concrete Driveway repair" based on the Thibodeaus' claims that concrete chunks had broken off the driveway in certain areas.[21]

The Thibodeaus subsequently filed a petition in the superior court to correct certain portions of the arbitration award affecting the prevailing party determination for purposes of the attorney fee award.[22] Prior to the hearing on their petition, Eller filed a Chapter 11 bankruptcy petition in federal court, which triggered an automatic stay under bankruptcy law.[23] As a result, the arbitration award was never corrected or confirmed.

Following the Eller bankruptcy filing, the Thibodeaus initiated a superior court action against Michael Crum, the subcontractor who had completed the cement work on the Thibodeaus' driveway.[24] Crum argued, as an affirmative defense, that the Thibodeaus were barred from litigating the driveway issue because that matter had already been resolved in the Thibodeau/Eller arbitration.[25] The trial court rejected Crum's *res judicata* affirmative defense and awarded the Thibodeaus $23,933 in damages after a one day trial. Crum appealed.

The Court of Appeal overturned the trial court decision holding, "'If the matter was within the scope of the action, related to the subject-matter and relevant to the issues, so that it *could* have been raised, the judgment is conclusive on it despite the fact that it was not in fact expressly pleaded or otherwise urged. A party cannot by negligence or design withhold issues and litigate them in consecutive actions.'"[26] In other words, the arbitrating parties were required to place before the arbitrator all matters within the scope of the arbitration, related to the subject matter and relevant to the issues generally.[27] The court concluded that "if the radiating cracks in the driveway were not encompassed within the Thibodeau/Eller arbitration, they most certainly should have been,"[28] and there was no logical reason why the arbitration should encompass the chunks in the driveway but not the cracks. In other words, *res judicata* applies to matters litigated in prior actions by the same parties, or privies thereof, as well as those matters that should have been litigated in the prior action because of the close nexus of facts. Necessarily encompassed within the court's decision was that a contractor and its subcontractor were privities for purposes of *res judicata*.

As part of its ruling, the *Thibodeau* court expressly held that "[t]he doctrine of *res judicata* applies not only to judicial proceedings, but also to arbitration proceedings."[29] And, the court determined that the mere fact that the arbitration award had not been confirmed (due to the Eller bankruptcy petition) was of no consequence. "We conclude that the essential adjudication in an arbitration proceeding is the award. The function of the court is limited to confirming the award as made, or to correct and confirm it as correct, or to vacate it within the limitations and as provided by the statutes."[30] "Once a valid award is made by the arbitrator, it is conclusive on matters of fact and law and all matters in the award are thereafter *res judicata*."[31]

Thus, under *Thibodeau*, not only is a private arbitration award enforceable by collateral estoppel, but all matters that reasonably should have been heard in the arbitration proceeding are also subject to collateral estoppel. And, a non-confirmed private arbitration award does not affect the applicability of *res judicata* in the mutual context. This 1992 case has since been distinguished by the California Supreme Court for nonmutual collateral estoppel purposes.

### B. Non-Mutual Collateral Estoppel

#### *1. California Does Not Recognize Nonmutual Collateral Estoppel*

The California Supreme Court has held that a private arbitration award, even if judicially confirmed, will not have nonmutual collateral estoppel effect under California law unless there was an agreement to that effect in the particular case.[32] California prohibits an unsuspecting arbitration participant from being bound by a ruling in a private arbitration in unforeseeable future litigation. This rule differs from most other jurisdictions because of California's public policy concerns regarding arbitration. The seminal case in California on this issue is *Vandenberg v. Superior Court of Sacramento County*.[33]

*Vandenberg* involved arbitration and subsequent litigation arising out of damage to a parcel of land. Vandenberg leased a parcel of land for an automobile dealership from Boyd under a series of leases for a period of thirty years.[34] After thirty years of using the land as an automobile sales and service facility, Vandenberg discontinued his business and delivered possession of the land back to Boyd. Boyd then removed underground waste oil storage tanks on the subject property to prepare the property for sale.[35] Boyd's subsequent underground testing revealed contamination of the soil and groundwater under the property. Boyd then filed an action against Vandenberg, alleging a myriad of causes of action based in contract and tort arising out of the contaminated soil and groundwater. Boyd's allegations focused on Vandenberg's installation and operation of waste oil storage tanks causing this contamination.[36]

Vandenberg tendered the claims to his commercial general liability insurance carriers, with whom he had contracted over the thirty years he leased the property. Generally, those policies provided coverage to Vandenberg for sums he was "legally obligated to pay as damages" because of property damage. However, some of the policies excluded damage caused by a pollutant or contaminant except for a "sudden and accidental" discharge.[37] Only one of Vandenberg's insurers, United States Fidelity and Guaranty Company (USF&G) agreed to provide a defense. Vandenberg, Boyd and USF&G ultimately reached a judicially supervised settlement agreement. As part of the agreement, Boyd released all claims against Vandenberg except those based on the theory that the contamination constituted a breach of their lease agreements. Boyd and Vandenberg agreed to resolve that issue through binding arbitration.[38]

Vandenberg and Boyd arbitrated their breach of lease dispute in a formal manner, with transcribed proceedings, extensive evidence, briefing, representation by counsel, and argument.[39] As part of the arbitration award, the arbitrator determined that the contamination stemmed primarily from the underground waste oil tanks and was caused, in part, by Vandenberg's improper installation, maintenance and use of the tanks.[40] The arbitrator further indicated that discharge of contaminants was not "sudden and accidental." The arbitrator awarded over $4 million to Boyd, which was subsequently confirmed by a superior court judgment.[41]

Vandenberg's insurers rejected his subsequent claim for indemnification. He then filed an action against them arising out of their failure to defend, settle or indemnify him. The insurers, in turn, filed a motion for summary judgment on the grounds that there was no coverage under the policies because the arbitrator's determination that the contamination was not "sudden and accidental" triggered the policy exclusion in their insurance contracts based on the collateral estoppel (nonmutual) effect of the Boyd arbitration.[42]

The trial court granted summary judgment based on collateral estoppel. The Court of Appeal then issued peremptory writs of mandate reversing the summary judgment. The appellate court held, "absent a contrary agreement by the arbitral parties, a party to private arbitration is not barred from re-litigating issues decided by the arbitrator when those issues arise in a different case involving a different adversary and different cause of action." [43] The court reasoned, "It would not be fair to give a private arbitration decision nonmutual collateral estoppel effect without the arbitral parties' consent… because private arbitration lacks significant safeguards of court litigation, particularly the right to full judicial review."[44]

The California Supreme Court affirmed, rejecting nonmutual collateral estoppel based on a private arbitration award. The decision stemmed on private arbitration's role in the legal system. First, the Court explained that California's statutory scheme does not provide for a private arbitration award to be binding in favor of nonparties in litigation involving different causes of action where the arbitral parties have not reached such an agreement. Because of the absence of any such statutory language regarding nonmutual collateral estoppel based on a private arbitration award, it is not an inherent or expected feature of private arbitration that is implicitly accepted by the arbitrating parties. As a result, the Court determined that the insurance companies could not give the arbitrator's decision nonmutual collateral estoppel effect against Vandenberg absent an agreement between Vandenberg and Boyd to do so.[45]

The California Supreme Court also based its decision on the informal and imprecise nature of arbitration. Indeed, "arbitrators, unless specifically required to act in conformity with rules of law, may base their decision upon broad principles of justice and equity, and in so doing so may expressly or impliedly reject a claim a party might successfully have asserted in a judicial action."[46] This ability to base their decision on broad principles of justice and equity, along with the lack of judicial review, are often the very reasons that parties agree to resolve their disputes through arbitration. However, the Court noted that these same features can have serious unexpected consequences and disadvantages if issues decided by the arbitrator can later be leveraged in favor of strangers to the arbitration.[47] The Court explained, "common sense weighs against the assumption that parties contemplate such remote and collateral ramifications when they agree to arbitrate controversies between themselves…The very fact that arbitration is by nature an informal process, not strictly bound by evidence, law or judicial oversight, suggests reasonable

parties would hesitate to agree that the arbitrator's findings in their own dispute should thereafter bind them in cases involving different adversaries and claims."[48]

*2. Other Jurisdictions View Nonmutual Collateral Estoppel Based on Private Arbitration Awards Differently*

Other jurisdictions addressing nonmutual collateral estoppel disagree with California's position on this issue. The predominant view in other jurisdictions is that "unless the arbitral parties agreed otherwise, a judicially confirmed private arbitration award will have collateral estoppel effect, even in favor of nonparties to the arbitration, if the arbitrator actually and necessarily decided the issue sought to be foreclosed and the party against whom estoppel is invoked had full incentive and opportunity to litigate the matter."[49] Pennsylvania, Minnesota, Oklahoma, New Jersey, New York, and Idaho interpret silence regarding nonmutual collateral estoppel to imply consent. These jurisdictions justify their decision to allow nonmutual collateral estoppel based on a private arbitrator's award in several ways. First, there is a general policy against re-litigation of issues already decided. Second, collateral estoppel causes no injustice when the party to be bound had a full and fair opportunity to litigate the issue to be foreclosed. And third, "final" and "binding" arbitration necessarily implies the possibility of collateral estoppel, particularly when the law gives judicially confirmed arbitration awards the same force and effect as civil judgments.[50]

The California Supreme Court rejected these arguments. The court reasoned that California's private arbitration statutes, including Code of Civil Procedure section 1287.4, does not warn parties that the arbitrator's award may be used against them by third persons to resolve different causes of action. In arbitration, the contractual nature of private arbitration dictates that the scope and intent of an arbitration award must derive from the parties' consent. Finally, because of the informal nature of arbitration proceedings, silence cannot be interpreted as consent.[51]

The California Supreme Court also refused to accept the argument that nonmutual collateral estoppel must be recognized to preserve the integrity of the judicial system, promote judicial economy, and protect litigants from harassment by vexatious litigation. Instead, the court determined that because a private arbitrator's award is outside the judicial system, denying the award collateral estoppel effect has no adverse impact on judicial integrity. Likewise, because private arbitration does not involve the use of a judge or courtroom, it necessarily does not involve re-litigation or undermine judicial integrity by requiring the duplication of the same issue.[52]

Some jurisdictions have adopted a case-by-case approach, which California also rejects. Under a case-by-case approach, parties who agree to arbitrate, but neglect or fail to negotiate a specific disclaimer of collateral estoppel effect, will not know in advance whether a court will later find the arbitration binding in favor of third parties on different claims.[53] "If the issue ever arises in future litigation, its resolution will depend on a judicial opinion whether the prior arbitration afforded the losing party a full and fair opportunity to litigate the matter to be foreclosed." The result creates uncertainty and requires the parties to "hedge" against the possibility that the decision will later be deemed binding in different litigation with other parties. Ultimately, by forcing the parties to hedge against a binding decision, many of the efficiencies of arbitration will be eliminated because it will force parties to be concerned about the collateral estoppel effect of the arbitration award on future litigation. Parties would be forced to arbitrate issues to finality, which eliminates arbitration as a distinct alternative to litigation.[54]

It is doubtful that parties will chose arbitration solely based on an understanding that any award will be immune from nonmutual collateral estoppel. However, there is good reason to believe that a lack of protection from nonmutual collateral estoppel will necessarily complicate and formalize an area of dispute resolution that has been traditionally more freeform.

*3. Can a Duplication of Efforts Be Avoided?*

Nearly eleven years have passed since the *Vandenberg* decision and there is no indication that California will join the majority of jurisdictions that recognize the nonmutual collateral estoppel effect of private arbitration. With this rule in place, parties can freely arbitrate disputes without significant worry that a private arbitration award will foreclose an unforeseen factual issue in future litigation.

Nevertheless, parties may still desire to avoid a duplication of effort and having to prove up a factual case in more than one venue—arbitration and the superior court. In such situations, the logical converse of the rule expressed in *Vandenberg* suggests that the parties are able to agree in advance, and perhaps in their arbitration agreements, that any private arbitration award will be dispositive on all issues determined therein for all purposes, including subsequent litigation involving third parties. In this way, parties can finally resolve factual issues for all purposes by simply agreeing that the arbitration award will have a collateral estoppel effect for all purposes—including nonmutual collateral estoppel. The issue then becomes whether the parties really have incentive to make such an agreement, because doing so could have the unintended consequence of motivating additional third party litigation. That said, the doctrines of *res judicata* and collateral estoppel are well recognized principles in ordinary litigation—allowing an arbitration exception may ease the overburdened judicial system by motivating parties to agree to arbitration.

Alternatively, California's arbitration act does provide a possible way to avoid a duplication of efforts where less than all of the parties in a dispute have agreed to binding arbitration. California's Code of Civil Procedure provides "specific and ample means of assuring that private arbitrations will not impact unfairly on judicial decision making, or on third party rights, when a party to an arbitration agreement is also a litigant in a closely related court proceeding involving 'a common issue of law or fact.'" [55] In such a situation, the court may: deny arbitration, impose forced joinder of some or all parties or issues in a single proceeding, or use stay power to determine whether arbitration or court litigation should proceed first.[56] While the parameters of this rule are not the subject of this article, Code of Civil Procedure section 1281.2 should be fully explored before litigating and arbitrating causes of action arising out of a common set of facts.

*4. Whittling Down California's Rule Through Active Participation in Arbitration*

While the *Vandenberg* ruling remains the rule in California, subsequent decisions, like that in *Grinham v. Fiedler*, provide further clarity as to the scope of collateral estoppel.[57] *Grinham* involved a construction dispute regarding certain construction work that Hydrex Termite Pest Control Co. San Jose and its contractor Grinham agreed to perform for Triple A Machine Shop ("Triple A").[58] Triple A was dissatisfied with the work the contractors performed so it brought a claim for breach of contract against Grinham and Hydrex San Jose. The construction agreement provided for mandatory arbitration.[59] Triple A joined the Fielders and Hydrex Pest Control of Santa Clara, as Grinham's employers in their claim, after it learned that Hydrex Pest Co. of San Jose did not exist.[60] In June of 1999, Triple A, Grinham and the Fielders appeared before an arbitrator. The Fielders objected to the arbitration by arguing that that they were not parties to the contract with Triple A, and therefore were not obligated to arbitrate the dispute.[61] Despite their objection, the Fielders participated in the arbitration and presented testimony regarding their non-liability.

The arbitrator decided that Grinham was liable to Triple A for $14,822. He also decided that the Fielders, both individually and doing business as Hydrex Pest Control of Santa Clara County, were not liable to Triple A because Grinham exceeded the scope of his authority as their actual or ostensible agent.[62] The arbitration award was later confirmed and the court entered judgment therein.

After Grinham failed to satisfy the judgment, Triple A filed an action in Ventura County to set aside allegedly fraudulent transfers Grinham made to avoid the judgment. Grinham cross-complained against the Fielders, alleging causes of action for declaratory relief and contribution.[63] The Fielders, in turn, sought summary judgment based on the defenses of *res judicata* and collateral estoppel arising out of the arbitrator's award. The superior court granted summary judgment on collateral estoppel grounds based on the arbitrator's finding that the Fielders "had no liability."[64] Grinham appealed the granting of summary judgment.

On appeal, Grinham argued that under *Vandenberg,* the Fielders could not rely upon the arbitration findings regarding their lack of liability as collateral estoppel because they were third parties to the arbitration who "specially appeared."[65] Grinham further claimed that because the Fielders contested jurisdiction and the arbitrator found that they were "not bound to arbitrate the dispute" with Triple A, collateral estoppel should not apply.

The court of appeal distinguished these facts from *Vandenberg.* The court reasoned that the Fielders participated in the arbitration completely, presenting testimony and raising legal arguments concerning Grinham's actual and ostensible authority to bind Hydrex Pest Control of Santa Clara County to a construction contract with Triple A.[66] Thus, the court of appeal viewed Fielder's participation in the arbitration and the arbitrator's decision absolving them of liability as sufficiently different from *Vandenberg,* where the party seeking to benefit from the arbitration award had not participated in the arbitration.

Thus, the *Grinham* decision muddles the otherwise straightforward principle set forth in *Vandenberg*. While ordinarily a private arbitration award cannot be used as collateral estoppel against a third party, if that third party participates in the arbitration, the possibility of collateral estoppel may be revived. Resolution of this issue will necessarily involve an analysis of the level of participation and the parties' privies.

## V. CONCLUSION

California, unlike most jurisdictions, does not permit non-mutual collateral estoppel based on an arbitration award absent (1) the parties' express agreement or (2) a substantial level of participation in the arbitration by the third party seeking to benefit from the arbitration award.

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## ENDNOTES

1 American Arbitration Association, Code of Civil Procedure (CCP) section 1281.96 Data Collection Requirements report.
2 California Association of Realtors Residential Purchase and Sale Agreement, Paragraph 17.
3 *Teitelbaum Furs, Inc. v. Dominion*, 58 Cal. 2d 601, 604 (1962).
4 *Vandenberg v. Super. Ct. of Sacramento County*, 21 Cal. 4th 815, 828 (1999) (citing *Teitelbaum Furs, Inc. v. Dominion*, 58 Cal. 2d 601, 604 (1962)).
5 *Vandenberg*, 21 Cal. 4th at 828.
6 *Lucindo v. Super. Ct.* 51 Cal. 3d 335, 341 (1990).
7 *Id.*
8 *Id.* at 343.
9 *Vandenberg*, 21 Cal. 4th at 829.
10 *Kelly v. Trans. Globe Travel Bureau, Inc.,* 60 Cal. App. 3d 195, 202 (1976).
11 *Vandenberg*, 21 Cal. 4th at 829.
12 *United States v. Utah Constr. Co.,* 384 U.S. 394, 421-422 (1966).
13 CCP § 1280, *et seq*.
14 *Id.* § 1281.
15 *Moncharsh v. Heily & Blase,* 3 Cal. 4th 1, 9 (1992).
16 CCP §§ 1281.2-1281.95, 1285-1288.8, and 1290-1294.2.
17 *Vandenberg*, 21 Cal. 4th at 828 (citing *Moncharsh v. Heily & Blase,* 3 Cal. 4th at 10).
18 *Thibodeau v. Crum*, 4 Cal. App. 4th 749 (1992).
19 *Id.* at 752-53.
20 *Id.* at 753.

21 *Id.*
22 *Id.* at 753; CCP § 1286.6.
23 *Id.;* 11 U.S.C. § 362.
24 *Id.* at 753-54.
25 *Id.*
26 *Id.* at 755 (citing *Stutphin v. Speik,* 15 Cal. 2d 195, 202 (1940)).
27 *Coral v. State Farm Mut. Auto. Ins. Co.*, 92 Cal. App. 3d 1004 (1979).
28 *Thibodeau*, 4 Cal. App. 4th at 756.
29 *Id. (*citing *Lehto v. Underground Constr. Co.,* 69 Cal. App. 3d 933, 939 (1977)).
30 *Id.* at 758 (citing CCP § 1286.2).
31 *Id.* (citing *Lehto v. Underground Constr. Co*., 69 Cal. App. 3d at 939).
32 *Thibodeau v. Crum*, 4 Cal. App. 4th 749 (1992).
33 *Vandenberg*, 21 Cal.4th at 824.
34 *Id.* at 825.
35 *Id.*
36 *Id.*
37 *Id.*
38 *Id.* at 826.
39 *Id.*
40 *Id.*
41 *Id.*
42 *Id.* at 826-27.
43 *Id.* at 827.
44 *Id.*
45 *Id.* at 837.
46 *Id.* at 821, 832.
47 *Id.* at 832.
48 *Id.*
49 *Id.* at 834.
50 *Am. Ins. Co. Messenger*, 371 N.E.2d 798, 803 (1977).
51 *Vandenberg,* 21 Cal. 4th at 835.
52 *Id.* at 833.
53 *Id.* at 836.
54 *Id.* (Citing Motomura, *Arbitration and Collateral Estoppel: Using Preclusion to Shape Procedural Choices*, 63 Tul. L. Rev. 29, 71 (1988)).
55 *Vandenberg*, 21 Cal. 4th at 836, n. 10; CCP § 1281.2.
56 *Vandenberg*, 21 Cal. 4th at 836, n. 10 (citing *Volt Info. Sciences v. Leland Stanford Jr. Univ.*, 289 U.S. 468 (1989).)
57 *Grinham v. Fielder,* 99 Cal. App. 4th 1049, 1051 (2002).
58 *Id.*
59 *Id.* at 1052.
60 *Id*.
61 *Id.*
62 *Id.*
63 *Id.* at 1051.
64 *Id.* at 1053
65 *Id.*
66 *Id.* at 1054.