VALLEY LAWYER

APRIL 2023 • $5

A Publication of the San Fernando Valley Bar Association

Water Rights in the San Fernando Valley and Beyond

Earn MCLE Credit

See You Later, Arbitrator! A Guideline to Vacating Arbitration

Dark Web Monitoring for Law Firms

www.sfvba.org

CONTENTS

APRIL 2023

VALLEY LAWYER
A Publication of the San Fernando Valley Bar Association

FEATURES

DEPARTMENTS

VALLEY LAWYER

SAN FERNANDO VALLEY BAR ASSOCIATION

20750 Ventura Boulevard, Suite 104
Woodland Hills, CA 91364
Phone (818) 227-0490
Fax (818) 227-0499
www.sfvba.org

Valley Lawyer is published monthly. Articles, announcements, and advertisements are due by the first day of the month prior to the publication date. The articles in Valley Lawyer are written for general interest and are not meant to be relied upon as a substitute for independent research and independent verification of accuracy.

Moving Forward

MARK S. SHIPOW
Interim Editor,
Valley Lawyer

mshipow@socal.rr.com

FOR THE PAST SEVERAL years, Michael White has been the Editor of *Valley Lawyer*. He fulfilled that role admirably, maintaining the award-winning caliber our Association's official publication. He has now moved on to a different, non-legal publication. We thank him for his hard work and diligence, and wish him the best of luck in his new position.

For the last couple of years of Michael's tenure, I had the pleasure of working with him as a member of our Editorial Committee. (By way of background, I also am a past member of the SFVBA Board of Trustees, and a past President and current member of the Board of Directors of The Valley Community Legal Foundation.) The Editorial Committee was chaired by the late David Gurnick. Under his guidance, the Committee assisted Michael in determining an editorial calendar, brainstorming for subjects to address in the magazine, and generally helping the publication process in any way possible.

The departure of Michael and tragic passing of David have left a major void in our efforts to maintain the high standards we've come to expect from *Valley Lawyer*. I have agreed to step in to act as Editor on a temporary basis and assist in the continuing publication of our magazine. I am thankful that Marina Senderov remains as our Graphic Designer, doing all the hard work of actually putting the publication together every month. I also appreciate the support and assistance of Matthew Breddan and the SFVBA Board, Rhea Mac, our Interim Executive Consultant, and Linda Temkin, the Association's Director of Education and Events.

As we move through this period of transition, I ask for your patience. I am keenly interested in the success of *Valley Lawyer*, and in maintaining our high standards. I will do my best, but I am not by profession an editor, and do not profess to be able to fill that position. I do need your help in this endeavor; we must have content in order to publish. I encourage you to write an article on a legal subject of interest to you. You will be helping me, the Association, our readers, and yourself. In the absence of enough new articles, we may reprint articles from past editions, or from outside sources. Please bear with us when this happens.

> "We are actively seeking a new Editor, and hope to fill that position as soon as possible."

Our Association and our publication deserve the best. We are actively seeking a new Editor, and hope to fill that position as soon as possible. If you know of someone with substantial experience as an editor and who might be interested in our publication, please let me or Matthew Breddan know as soon as possible.

In the meantime, we are dedicated to keeping *Valley Lawyer* going. I hope you enjoy this issue.

Spring Forward With SFVBA

MATTHEW A. BREDDAN
SFVBA President

MBreddan@ReapeRickett.com

HI EVERYONE. As we are already moving into the second quarter of 2023, I am happy to report that blossom by blossom, spring is commencing at the SFVBA.

There have been a tremendous number of changes at the Bar offices, as some of you may know. This year has seen the transition out of our former Executive Director, Rosie Soto Cohen, and the incoming of our Interim Executive Consultant, Rhea Mac. As with all change, the Bar is bound to experience growing pains, but I have no doubt that we are fully on our way to recovering from the financial, emotional, and social constraints placed on this organization by the pandemic.

As the days get longer, I'm hoping that you will consider volunteering with our nearly 100-year-old organization so that we can make 2023 the best year yet. Our sections are all running efficiently and continue to be one of our greatest assets to our members. Please consider joining a section relevant to your practice area and attending the scheduled events, meetings, and MCLE sessions. You can easily join a section by visiting https://sfvba.org/about-us/sections/ and contacting the applicable section chair.

> "Our sections are all running efficiently and continue to be one of our greatest assets to our members."

I also would like to take this time to remind our members of the SFVBA's Attorney Referral Service (the ARS), which is humming along at a pre-pandemic pace in connecting potential clients with our attorney panel members. The ARS is always looking to add attorney panel members from an array of practice areas. Please also remember that the ARS is always appreciative when our members refer potential clients to the ARS for cases that they cannot handle (for any number of reasons), as well as for cases that are not within their practice area. The ARS provides an invaluable service to the attorney members as well as to the public at large, so please do keep it in mind for your referrals.

The SFVBA thanks you for your membership and asks, at this point and if you are able, for more member involvement. We are trying to rejuvenate the bar after three years of severe limitations on our activities due to Covid-19. We welcome your ideas, comments, suggestions and even criticism as we usher into this new era. We are here to serve the general public and you, our members. Please do not hesitate to talk to any member of our Board or Staff about how you can deepen your engagement with this fantastic organization.

San Fernando Valley Bar Association
founded in 1926

Sponsor

THE SFVBA'S 3RD ANNUAL MOCK TRIAL COMPETITION

April 7 & 8, 2023

In Person at the Van Nuys Courthouse

$750 AWARD PRESENTERS

ONLY 2 AVAILABLE!

Presenters appear at Award Ceremony to Intro Themselves and Give Individual Award: Best Advocate, Best Opening, Closing, Cross or Direct Exam Top billing on all Promotional Material

The Reape-Rickett Law Firm | Grant | Shenon Smart Legal Matters | LH Lewitt | Hackman Shapiro | Marshall | Harlan A Law Corporation

$500 FIRST CHAIR SPONSORS

UNLIMITED!

Recognition at Award Ceremony Prominent Billing on all Promotional Material

FLANS & WEINER, INC. REAL ESTATE AUCTIONEERS | ALLEGUEZ | NEWMAN | GOODSTEIN LLP ATTORNEYS

$250 SECOND CHAIR SPONSORS

UNLIMITED!

Name included on all Promotional Material

KM Kraft Miles A Law Corporation | Daniel Teola, Esq.

$100 RECEPTION DESSERT/DRINK SPONSORS

UNLIMITED!

Law Offices of GORDON & BRAIKER–GORDON | SmithCoastValuations Real Estate Appraisals & Value Consultations | LAW OFFICES OF NANCY REINHARDT

VOLUNTEER

Practicing Attorneys and Bench Officers Needed!

EVENT INFORMATION

Sponsor the SFVBA's Third Annual Mock Trial Competition where teams from California law schools will go head-to-head to be the San Fernando Valley Bar Association's Mock Trial Champions.

Law student scholarships graciously provided by the Valley Community Legal Foundation.

Reception and Final Round graciously hosted by the University of West Los Angeles, Woodland Hills Campus.

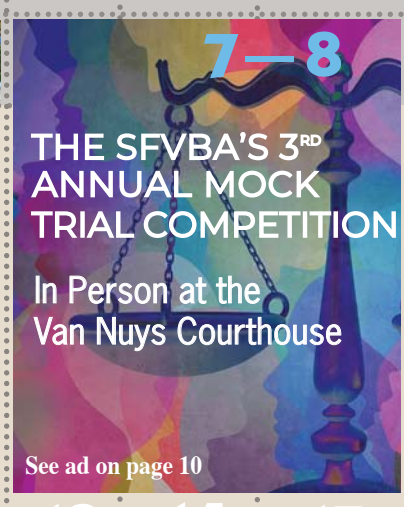
PLEASE CONTACT

Kyle Ellis (858) 373-8122 | elliskylem@gmail.com
Linda Temkin (818) 227-0495 | events@sfvba.org

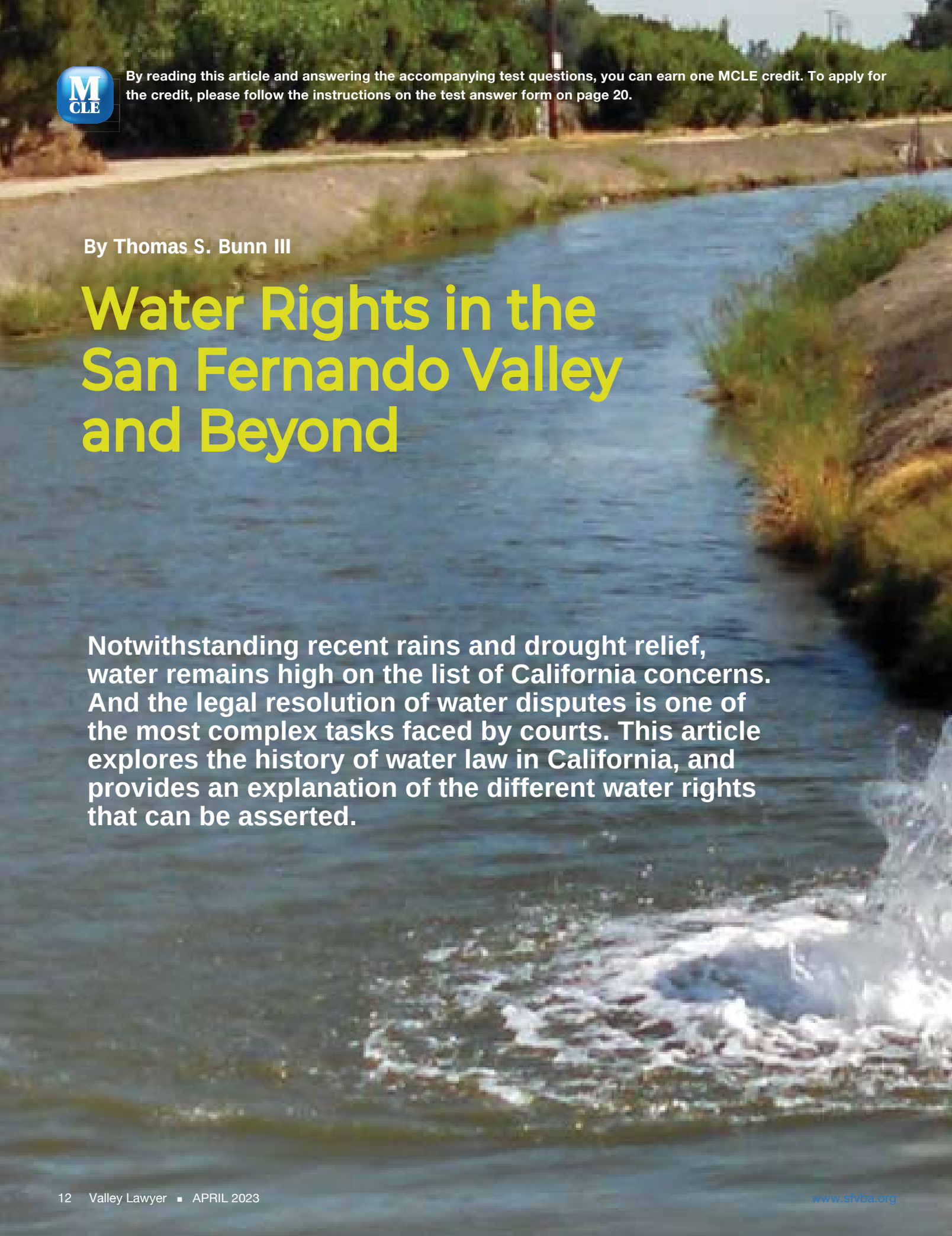
UWLA University of West Los Angeles | VCLF

CALENDAR

APRIL 2023

SUN	MON	TUE	WED	THU	FRI	SAT
VBN Valley Bar Network — Returning Live and in Person Soon!						1
2	3	4	 5			
 9	10	WEBINAR Probate and Estate Planning Section 11 ***Is There a Doctor in the House? When Lawyers Need Doctors to Support and Defend Their Client's Estate Plans*** **12:00 NOON** Panel Presentation with attorneys Sarah Broomer, Nancy Reinhardt and Dr. David Trader. This promises to be an entertaining and insightful presentation! (1 MCLE Hour) Board of Trustees Meeting **6:00 PM** **SFVBA OFFICES**	12	 See ad on page 10	13	14	15
16	17	WEBINAR Taxation Law Section 18 ***Legal Services Agreements*** **12:00 NOON** Certified Legal Malpractice Attorney Amanda Moghaddam will provide tips regarding how to draft strong legal services agreements to protect against attorney malpractice claims. This webinar should be helpful to experienced and new lawyers as well in strengthening the provisions in their legal services agreement. (1 MCLE Hour in Legal Ethics)	WEBINAR Employment Law Section 19 ***How to Defend a Deposition–the Less Fun Part of Litigation*** **12:00 NOON** Marina Katz Fraigun will delve into how to take and defend a deposition and how best to prepare and present yourself and your client. (1 MCLE Hour)	20	21	22 
SFVBA PROBATE AND ESTATE PLANNING SECTION  See ad on page 21			WEBINAR Business Law and Real Property Section 26 ***Government Inquiry Into Real Estate Transactions Expanding To Most Entities in 2024*** **12:00 NOON** Attorneys Jennifer Felten and Janice Miller will discuss the history of FinCEN Geographic Targeting Orders; Enactment of the Corporate Transparency Act; Current Proposed Rules for Business Registration; and What to Expect Moving Forward! (1 MCLE Hour)	27	28	29
23	24	25				
30						

The San Fernando Valley Bar Association is a State Bar of California MCLE approved provider. Visit www.sfvba.org for seminar pricing and to register online, or contact Linda Temkin at (818) 227-0495 or events@sfvba.org. Pricing discounted for active SFVBA members and early registration.



By reading this article and answering the accompanying test questions, you can earn one MCLE credit. To apply for the credit, please follow the instructions on the test answer form on page 20.

By Thomas S. Bunn III

Water Rights in the San Fernando Valley and Beyond

Notwithstanding recent rains and drought relief, water remains high on the list of California concerns. And the legal resolution of water disputes is one of the most complex tasks faced by courts. This article explores the history of water law in California, and provides an explanation of the different water rights that can be asserted.

THE CALIFORNIA SUPREME COURT HAS STATED: "The scope and technical complexity of issues concerning water resource management are unequalled by virtually any other type of activity presented to the courts."[1] California water rights law is based almost entirely on case law, which has evolved as the state has grown. It originated in competing principles of English common law, on the one hand, and mining rights developed during the Gold Rush, on the other. Likewise, it deals with competing types of users—agricultural, municipal, industrial, and environmental. Water rights cases can potentially involve thousands of parties, and can affect a community's entire water supply.

This article describes the major types of water rights in California. It gives an overview of the evolution of California groundwater basin adjudications, with special attention to the adjudication of the San Fernando basin.

California law distinguishes between surface water and groundwater. Surface water refers not only to surface streams but also to water flowing underground in known and definite channels.[2] All other underground water is known as groundwater.

California maintains a dual system of water rights.[3] For surface water, there are riparian rights and appropriative rights. Riparian rights are creatures of English common law, which was adopted by California when it became a state. Riparian rights belong to landowners adjoining a surface stream, and are limited to use on the adjoining land. If the land is transferred, the right goes with it. *Riparian* rights are shared among landowners on the stream. Riparian rights are not measured by a specific quantity of water except when apportioned by a court decree.

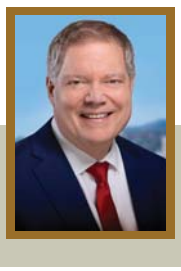
Appropriative rights were devised by miners during the Gold Rush. Initially, appropriative rights could be acquired simply by diverting water (usually on public lands), but in 1914 the legislature instituted a permit system.[4] To get a permit, the appropriator must show that there is water available for appropriation, and that no other users will be damaged by the appropriation. The water does not have to be used on a particular property, but can be transported to the place of use. The amount of an appropriative right is fixed, equal to the amount of water historically appropriated. Appropriative rights are subject to a "first in time, first in right" priority rule. If there is not enough water for all appropriators, senior appropriators, who acquired their rights first in time, are entitled to satisfy their reasonable needs, up to their full appropriation, before more junior appropriators are entitled to any water.

Thirty-six years after California became a state, the California Supreme Court was asked to choose between Miller and Lux, who had riparian rights to the lower Kern River, and Haggin, who had appropriated the entire flow of the river upstream. In essence, the court had to decide which of the two systems would be used by the new state. Each system was supported by statute: the riparian system by the incorporation of English common law, and the appropriative system by its own set of statutes. The court held that both systems would be used, but that riparian rights had priority. In other words, riparian users are entitled to satisfy their reasonable needs before any appropriator may take water.[5]

A similar dual system is used for groundwater rights. The *overlying* right is the right of a landowner whose land overlies a groundwater basin to use groundwater on that land. It is analogous to the riparian right. Just as with the riparian right, the overlying right is not transferable except with the overlying land, and is not fixed in amount except when allocated by a court. But unlike riparian rights, for overlying rights the California Supreme Court did not follow English common law, which provided that a property owner had a right to all water that could be pumped from the land, whether or not that interfered with the right of other overlying users. The court said that might be appropriate for England, where water was plentiful, but was not appropriate for the drier climate of California. Instead, the court held that the overlying right was a *correlative* (shared) right to a common supply.[6]

Similarly, the *appropriative* right to groundwater is analogous to the appropriative right to surface water. It does not depend on property ownership; the water can be transported to the place of use, even if that is outside the groundwater basin; the amount of the right is equal to the amount historically appropriated; and there is a "first in time, first in right" priority rule. All water pumped by public and private water suppliers for municipal use is considered appropriative, because the water is not used on land owned by the water supplier.

Another type of water right, which applies both to surface water and groundwater, is the prescriptive right. The elements that create a prescriptive water right include use that is actual, open and notorious, hostile and adverse to the original owner, continuous and uninterrupted, under a claim of right, for the statutory period of five years.[7]



Thomas S. Bunn III is a partner at Lagerlof, LLP in Pasadena. He practices public agency and water law. He can be reached at TomBunn@Lagerlof.com.

LawPay®

AN AFFINIPAY SOLUTION

+

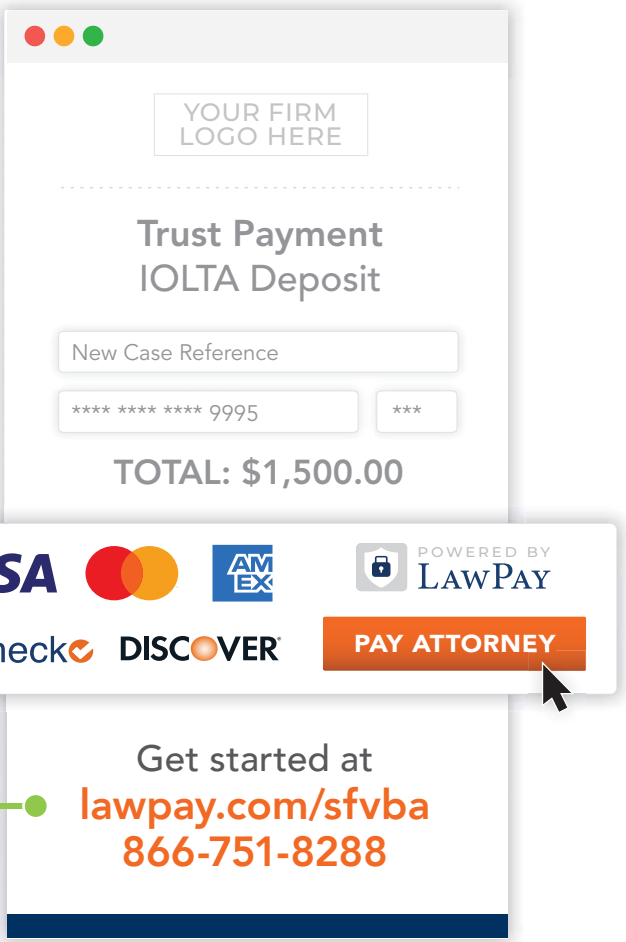
San Fernando Valley Bar Association

Member Benefit Provider

> **I love LawPay!** I'm not sure why I waited so long to get it set up.
>
> *– Law Firm in Ohio*

Trusted by more than 150,000 professionals, LawPay is a simple, secure solution that allows you to easily accept credit and eCheck payments online, in person, or through your favorite practice management tools.

- **22% increase in cash flow with online payments**
- **Vetted and approved by all 50 state bars, 70+ local and specialty bars, the ABA, and the ALA**
- **62% of bills sent online are paid in 24 hours**



Get started at
lawpay.com/sfvba
866-751-8288

Data based on an average of firm accounts receivables increases using online billing solutions.

LawPay is a registered agent of Wells Fargo Bank N.A., Concord, CA and Synovus Bank, Columbus, GA.

In 1928, voters approved a constitutional amendment limiting water use to amounts that were reasonably and beneficially used and prohibiting waste of water.[8] This principle of *reasonable use* is now a prime directive of California water law.

After World War II, the population of the Los Angeles basin increased dramatically. Planners realized that the water supply, which consisted of some surface water but mostly ground water, would not be sufficient to supply the growing population. Groundwater levels were already declining and eventually wells would run dry. As a result, the Metropolitan Water District of Southern California (MWD) was formed to build an aqueduct from the Colorado River. MWD would sell water from the aqueduct to member agencies, some of which were cities and others newly formed wholesale water suppliers. The problem was that purchasing water from the aqueduct was considerably more expensive than continuing to pump groundwater. Unless a method was found to fairly allocate the cost of the imported water, the member agencies would wind up subsidizing those who were overpumping the groundwater basins. The solution was *groundwater basin adjudications*.

Every groundwater basin adjudication is different, but they usually have three features: (1) the judgment is negotiated and stipulated to by a large majority of water users; (2) the court determines a water right for all groundwater users (excluding minimal users); and (3) the court adopts a *physical solution*, which is a management plan that complies with the constitutional principle of reasonable and beneficial use. The physical solution often allows a groundwater user to pump in excess of its decreed water rights, as long as it pays the cost to replace its overproduction with imported water—thus solving the freeloader problem.

The first groundwater basin adjudication was the Raymond basin in 1949.[9] The city of Pasadena pumped groundwater from the Raymond basin, as did several other cities and a number of overlying owners. The trial court found that the basin had been *overdrafted* for many years, which means that the amount pumped exceeded the *safe yield* of the basin. The safe yield is the amount that can be continuously pumped out of the basin without causing an undesirable result, which in this case was declining groundwater levels. Groundwater levels typically go up during wet periods and down during dry periods, but in the Raymond basin the levels were progressively declining during both wet and dry periods.

All but one party stipulated to a proportionate reduction in their historic use, based on a theory of *mutual prescription*, i.e., that each water user had acquired prescriptive rights against the others. The trial court imposed the stipulated judgment on all parties. The dissenting party appealed, contending that, because every party was able to take all the water it needed, and no party had prevented a taking of water by any other party, the element of adversity was missing. The court ruled that adversity was present because all the parties

together were pumping more than the safe yield, and this injured the parties by reducing the total available supply. Accordingly, the court did not allocate water rights on the basis of priority, but affirmed the judgment for a proportionate reduction. The court noted that an allocation based in "first in time, first in right" would result in an unequal sharing of the burden of curtailing the overdraft, which was not justified where all the parties had produced water from the basin for many years and had not taken action to protect the supply. Moreover, a proportional reduction promoted the best interests of the public, because it would be less disruptive than total elimination of some of the uses.

While this result was not universally accepted—a dissenting justice called it "bureaucratic communism," and in 1949 those were strong words—the doctrine of mutual prescription set forth in *Pasadena* became the model for future adjudications in southern California. It was easy to apply and it was fair. A quarter-century later, however, the California Supreme Court limited the applicability of mutual prescription in the adjudication of the San Fernando basin.[10] *San Fernando* was a big, long-running case: the complaint was filed in 1955; the trial took 181 court days; the Supreme Court opinion was issued in 1975, and the final judgment on remand was entered in 1979. The Supreme Court opinion took up 111 pages in the Official Reports, and was the controlling authority for California groundwater law for another quarter-century.

Interestingly, the main point of *San Fernando* did not concern prescriptive rights, but *pueblo rights*, which are unique to the city of Los Angeles. Los Angeles sued numerous defendants, including the cities of Glendale, Burbank and San Fernando, as well as private defendants like Forest Lawn and Lockheed, to obtain a declaration of its rights to water in the San Fernando, Sylmar, Verdugo and Eagle Rock groundwater basins. It based its claim to *native* (non-imported) groundwater on pueblo rights, a creature of Spanish and Mexican Law. The trial court rejected this claim and followed what was by then the time-honored principle of mutual prescription.

First, the Supreme Court reiterated prior decisions that the city of Los Angeles, as a successor to the pueblo of Los Angeles, had a right, superior to that of a riparian or an appropriator, to satisfy its needs from the Los Angeles River. The court went on to hold that the pueblo right was not limited to the river itself but included all the native groundwater within the San Fernando basin, because the groundwater feeds the river at the southeast corner of the basin, which is located just above the junction of the river and the Arroyo Seco, near the intersection of North Figueroa Street and San Fernando Road and the intersection of the Pasadena and Golden State Freeways.

The court then turned its attention to imported water. Over 40 percent of the safe yield of the San Fernando basin was derived from water imported from outside the Los Angeles River watershed, mainly as return flow after use in the basin (for example, water sinking into the ground after irrigation). This water either had been imported by Los Angeles from the Owens Valley and Mono basin, or was Colorado River water purchased by Los Angeles, Glendale or Burbank. The court held that each of these cities had a right to recapture the return flow from the water it imported.

Having effectively determined the groundwater rights in the San Fernando basin—the right to native water belongs to Los Angeles under its pueblo right, and the right to imported water return flow belongs to the city that imported the water—the court undertook to resolve issues concerning prescriptive rights that were not resolved in *Pasadena*. First, the court stated that a "mechanical" allocation based on historical production did not necessarily give the most equitable result. Second, the mutual prescription doctrine was not needed for the purpose achieved in *Pasadena*: avoiding elimination of certain appropriative rights. Third, the mutual prescription doctrine, which is based on historic water production, might encourage a "race to the pumphouse" after overdraft commences. Fourth, prescriptive rights could not be acquired as against public entities under Civil Code 1007, thus making mutual prescription effectively impossible. The court set out a number of additional principles to guide the trial court on remand.

The final judgment determined the water rights in the basins; retained jurisdiction to decide post-judgment issues; provided for the appointment of a watermaster to administer the judgment; and provided a physical solution, which among other things allows certain parties to pump water and pay compensation to the city holding water rights to that water.[11]

The judgment is still being administered in the same way after 44 years. The watermaster is advised by an administrative committee, consisting of representatives from the five public agency parties: Los Angeles, Glendale, Burbank, San Fernando, and the Crescenta Valley Water District. The watermaster collects and publishes information about the basin, and also is involved in such matters as groundwater contamination and construction standards that allow rain water to seep into the ground.

The only California Supreme Court case to address groundwater since *San Fernando* is the Mojave basin adjudication.[12] In that case, the vast majority of groundwater users agreed to an allocation of rights based on historical production, just as if it were a mutual prescription case. But the parties did not allege mutual prescription, or in fact any prescriptive rights at all. Instead, they claimed that the doctrine of *reasonable and beneficial use* under the California Constitution required an *equitable apportionment* of all rights when a basin is in overdraft. They relied on a footnote from *San Fernando*, which talked about factors to be taken into account in an equitable apportionment.

In an appeal by a group of farmers who had not stipulated to the physical solution, the Supreme Court disagreed. It held that a physical solution could not ignore water rights priorities. The court affirmed the decision of the court of appeal, reversing the judgment as to the dissenting farmers, but upholding it as to the stipulating parties.

The irony of *Mojave* is that the area was transitioning from large-scale agriculture to more urban uses. The stipulating parties had provided for this by making the water rights under the judgment transferable, so farmers could sell their rights to cities. But because the non-stipulating farmers' hard-won overlying rights had to be used on the overlying land, the cities had no use for their rights. So they all ended up stipulating to the judgment anyway.

An important question left unanswered by these Supreme Court cases is how to treat so-called *dormant overliers*—persons who hold overlying rights by virtue of property ownership, but who have never exercised those rights. This question was answered by the court of appeal in *Antelope Valley Groundwater Cases*.[13] These consolidated cases included a class action on behalf of approximately 18,000 property owners that owned overlying land in the basin but who had never pumped groundwater. As such, they had overlying rights—but the basin had been dramatically overdrafted for 50 years.

Most of the parties stipulated to a judgment and physical solution. The dormant overliers were declared to have overlying rights, but they were not allocated any portion of the safe yield. Instead, they were given the opportunity to apply to the watermaster for new groundwater production on condition, among other things, that they pay an assessment sufficient to buy an equal amount of imported water to replace what they pumped.

The court of appeal affirmed. It began by quoting the statement of the Supreme Court at the beginning of this article. It went on, "The legal and technical complexities inherent in any water rights adjudication grows exponentially when a court is called upon to craft a comprehensive resolution that must accommodate the legally cognizable water rights claims of thousands of users who are all competing for access to an overburdened source of supply that is insufficient to meet all of the demands placed upon it. This is such a case."[14] The court cited *Mojave* for the proposition that a court *could* use equitable apportionment principles, as long as it did not completely disregard existing water rights. It characterized what the trial court did as recognizing the rights held by the dormant overliers but subordinating them to the rights of overlying landowners who were then using all the available supply.

The battleground is now shifting to the San Joaquin Valley. Its groundwater basins have been overdrafted for many years, causing not only declining groundwater levels but other undesirable effects such as land subsidence. But none of the basins have been adjudicated. In 2014, the legislature enacted

the Sustainable Groundwater Management Act (SGMA), requiring that almost all groundwater basins in the state be made sustainable within 40 years. It is likely that SGMA will set off numerous basin adjudications and other lawsuits.

About every 25 years, the California Supreme Court issues a major water law opinion, which changes the legal landscape. It has been 23 years since *Mojave*. Is the next opinion working its way up?

[1] *Environmental Defense Fund, Inc. v. East Bay Mun. Utility Dist.* (1980) 26 Cal.3d 183, 194 [internal quotes and citations omitted].
[2] Wat. Code § 1200.
[3] Hutchins, *The California Law of Water Rights* (1956) pp. 40–41.
[4] Wat. Code §§ 1200–1851.
[5] *Lux v. Haggin* (1866) 69 Cal. 255.
[6] *Katz v. Walkinshaw* (1903) 141 Cal. 116.
[7] *Brewer v. Murphy* (2008) 161 Cal.App.4th 928, 938.
[8] Cal. Const., art. X, § 2.
[9] *City of Pasadena v. City of Alhambra* (1949) 33 Cal.2d 908 (*Pasadena*).
[10] *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199 (San Fernando).
[11] Judgment, The City of Los Angeles vs. City of San Fernando, et al., Los Angeles Superior Court Case No. 650079, http://ularawatermaster.com/public_resources/City-of-LA-vs-City-of-San-Fernando-et-al-JUDGMENT.pdf.
[12] *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224 (*Mojave*).
[13] *Antelope Valley Groundwater Cases* (2021) 62 Cal.App.5th 992
[14] *Antelope Valley Groundwater Cases, supra*, 62 Cal.App.5th 992, 999.

Water Rights in the San Fernando Valley and Beyond

Test No. 174

This self-study activity has been approved for Minimum Continuing Legal Education (MCLE) credit by the San Fernando Valley Bar Association (SFVBA) in the amount of 1 hour. SFVBA certifies that this activity conforms to the standards for approved education activities prescribed by the rules and regulations of the State Bar of California governing minimum continuing legal education.

1. Surface water refers only to surface streams.
   ❑ True ❑ False

2. Surface water includes water flowing underground in known and definite channels.
   ❑ True ❑ False

3. All underground water other than water flowing underground in known and definite channels is known as groundwater.
   ❑ True ❑ False

4. Riparian water rights are creatures of English common law, and were adopted by California when it became a state.
   ❑ True ❑ False

5. Riparian rights belong to landowners adjoining or within a few miles of a surface stream.
   ❑ True ❑ False

6. Riparian rights are limited to a specific quantity of water.
   ❑ True ❑ False

7. Appropriative water rights are allocated by a permit system, based on showing that there is water available for appropriation, and that no other users will be damaged by the appropriation.
   ❑ True ❑ False

8. Appropriative rights are subject to a "first in time, first in right" priority rule.
   ❑ True ❑ False

9. In the *Lux* case, the California Supreme Court decided that appropriative users are entitled to satisfy their needs before any riparian users may take water.
   ❑ True ❑ False

10. Overlying groundwater rights are the rights of a landowner whose land overlies a groundwater basin to use groundwater on that land.
    ❑ True ❑ False

11. Overlying rights are transferable at will.
    ❑ True ❑ False

12. The California Supreme Court has held that overlying rights are a correlative (shared) right to a common supply.
    ❑ True ❑ False

13. Appropriative rights to groundwater permit water to be transported to the place of use, even if that is outside the groundwater basin.
    ❑ True ❑ False

14. All water pumped by public and private water suppliers for municipal use is considered an overlying right.
    ❑ True ❑ False

15. Prescriptive water rights are gained where there is use that is actual, open and notorious, hostile and adverse to the original owner, continuous and uninterrupted, under a claim of right, for the statutory period of five years.
    ❑ True ❑ False

16. Groundwater basin adjudications usually have three features: (1) the judgment is negotiated and stipulated to by a large majority of water users; (2) the court determines a water right for all groundwater users; and (3) the court adopts a physical solution.
    ❑ True ❑ False

17. Overdrafting of a water basin means that the amount pumped exceeds the safe yield of the basin, which is the amount that can be continuously pumped out of the basin without causing an undesirable result.
    ❑ True ❑ False

18. In the *San Fernando* case, the court held that the city of Los Angeles has pueblo rights in the San Fernando, Sylmar, Verdugo and Eagle Rock groundwater basins, superior to that of a riparian or an appropriator.
    ❑ True ❑ False

19. In the *San Fernando* case, the court held that a "mechanical" water allocation based on historical production provided the most equitable result.
    ❑ True ❑ False

20. The California Supreme Court has stated that water resource management issues are easy to decide.
    ❑ True ❑ False

Water Rights in the San Fernando Valley

MCLE Answer Sheet No. 174

INSTRUCTIONS:

1. **Accurately complete this form.**
2. **Study the MCLE article in this issue.**
3. **Answer the test questions by marking the appropriate boxes below.**
4. **Mail this form and the $20 testing fee for SFVBA members (or $30 for non-SFVBA members) to:**

   San Fernando Valley Bar Association
   20750 Ventura Blvd., Suite 104
   Woodland Hills, CA 91364

METHOD OF PAYMENT:

❑ **Check or money order payable to "SFVBA"**

❑ **Please charge my credit card for**

$_____.

Credit Card Number

CVV code **Exp. Date**

Authorized Signature

5. **Make a copy of this completed form for your records.**
6. **Correct answers and a CLE certificate will be mailed to you within 2 weeks. If you have any questions, please contact our office at (818) 227-0495.**

Name _____

Law Firm/Organization _____

Address _____

City _____

State/Zip _____

Email _____

Phone _____

State Bar No. _____

ANSWERS:

Mark your answers by checking the appropriate box. Each question only has one answer.

1.	❑ **True**	❑ **False**
2.	❑ **True**	❑ **False**
3.	❑ **True**	❑ **False**
4.	❑ **True**	❑ **False**
5.	❑ **True**	❑ **False**
6.	❑ **True**	❑ **False**
7.	❑ **True**	❑ **False**
8.	❑ **True**	❑ **False**
9.	❑ **True**	❑ **False**
10.	❑ **True**	❑ **False**
11.	❑ **True**	❑ **False**
12.	❑ **True**	❑ **False**
13.	❑ **True**	❑ **False**
14.	❑ **True**	❑ **False**
15.	❑ **True**	❑ **False**
16.	❑ **True**	❑ **False**
17.	❑ **True**	❑ **False**
18.	❑ **True**	❑ **False**
19.	❑ **True**	❑ **False**
20.	❑ **True**	❑ **False**

SFVBA PROBATE AND ESTATE PLANNING SECTION

San Fernando Valley Bar Association
Founded in 1926

Join us for a Casual Al Fresco Dinner

TUESDAY
APRIL 18
5:30 PM
SFVBA COURTYARD
20750 VENTURA BOULEVARD

Exclusive to SFVBA Probate and Estate Planning Members Only!
Free to Our Current Section Members! Reservations Required!

THANK YOU TO OUR SPONSORS

BANC OF CALIFORNIA
Scott Kunitz

BOND SERVICES OF CALIFORNIA
Will Mingram/Kevin Phillips

GS gish SEIDEN LLP
Certified Public Accountants & Advisors
Sargis Isavi

Paul Hargraves & Roberta Marr
800.579.4380 | 310.362.4836
TRUST PROPERTIES USA
PROBATE & TRUST REAL ESTATE

AFFINITY SPONSORS

MANUFACTURERS BANK
A MEMBER OF SMBC GROUP
Ronna Lubash

LAWYERS' MUTUAL
INSURANCE COMPANY

Donations Gladly Accepted for Haven Hills Domestic Violence Shelter, Checks to Haven Hills and Gift cards Welcome!

RSVP **to events@sfvba.org or (818) 227-0495 for further details and sponsorship opportunities**

By Jonathan D. Roven

See You Later, Arbitrator!

A Guideline to Vacating Arbitration

AN EMPLOYEE IS WRONGFULLY TERMINATED, harassed, or just did not receive their earned wages. They hire an attorney, who takes the case on contingency, and files the case with the court, hoping one day to show the jury the wrongdoings of the employer. But then, an arbitration agreement arises, and after a motion to compel arbitration, the parties are ordered to arbitrate.

Arbitration is usually a problem for plaintiffs. Although it may result in a quicker disposition of an employee's case (depending on who the arbitrator is), the arbitrator is paid by the employer, which is an inherent bias. In an employment arbitration in the state of California, the employer is obligated to pay for arbitration. *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83. Since an arbitration can cost the employer tens of thousands of dollars (or more), some plaintiff attorneys believe that the high cost of arbitration will encourage the employer to settle the case early. However, employers are usually ready, willing and able to pay the evidentiary hearing fee rather than face a jury.

Arbitration is usually a solution for defendants (and their counsel). Arbitrators who may be career-lawyers or retired judges are likely less swayed by the emotion of a wrongful termination case by their counterpart jury. Defense attorneys can utilize discovery and endless meet and confer attempts to bill clients, and will rarely (if ever) be sanctioned by an arbitrator for misuse of the discovery process. At the end of an arbitration, the arbitrator can merely say, "I didn't believe the claimant" and award zero damages after days of evidentiary hearing, thousands of dollars organizing experts, and thousands of dollars the plaintiff attorney will invest in a case.

Jonathan D. Roven, the lead attorney at Jonny Law, PC, is an employment litigator. He can be reached at jon@calljonnylaw.com.

Luckily, there is a mechanism for vacating an arbitration during the pendency of the action. California Code of Civil Procedure § 1281.97 was enacted as a part of Senate Bill No. 707 (2019). The Legislature expressed their concerns about situations in which a "company's strategic non-payment of fees and costs severely prejudices the ability of employees or consumers to vindicate their rights." Now, if the employer or other respondent in a consumer arbitration fails to pay the arbitration fee, the employee may move to vacate the arbitration altogether, and put their case potentially back in front of a jury.

When the employer receives a bill for the evidentiary hearing, which again can be tens of thousands of dollars, the clock starts ticking for when they will have to pay that bill to continue arbitration. As the *Armendariz* case emphasizes, the employer must pay the arbitration fee, and they must pay within 30 days after the due date. According to the California Code of Civil Procedure § 1281.98(a)(1), "…if the fees or costs required to continue the arbitration proceeding are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel the employee or consumer to proceed with that arbitration as a result of the material breach."

Simply put, if the employer fails to pay the arbitration fee within 30 days of the due date, the employee may move to vacate the order compelling arbitration.

> "Defense attorneys can utilize discovery and endless meet and confer attempts to bill clients, and will rarely (if ever) be sanctioned by an arbitrator for misuse of the discovery process."

Exception for "Substantial Compliance"?

In the case of *Espinoza v. Sup. Ct.* (2022) 83 Cal.App.5th 761, the question was asked of whether substantial compliance was an exception to materially breaching the arbitration agreement by not timely paying the arbitration fees. The trial court initially granted arbitration and stayed litigation. During the arbitration, the defendant received an invoice and did not pay within 30 days of the due date. The plaintiff sought an order lifting the stay of the litigation. In defendant's opposition, they stated, "[d]ue to a clerical error, the request for cash flow was delayed and this prevented the accounts payable department from issuing a check for payment of the invoice," and that plaintiff made no mention of defendant's failure to pay during settlement discussions. Defendant later paid the invoice, albeit a few days late. The trial court denied plaintiff's motion because the defendant was in substantial compliance of the arbitration provision, and plaintiff suffered no prejudice as shown by not expressing a concern regarding nonpayment during settlement discussions.

The Court of Appeal reversed. They expressly ruled that "Section 1281.97 Contains No Exceptions for Substantial Compliance, Unintentional Nonpayment, or Absence of Prejudice" and that "[t]he language of section 1281.97 is unambiguous." *Id.* at 775-6. The court emphasized that the trial court erred in denying the plaintiff's motion because the statute does not provide that substantial compliance is an exception. The court also addressed that in an employment arbitration, the plaintiff's livelihood may be the subject of adjudication. In arbitrations involving big companies, missing a payment of a few hundred dollars may be a minor and immaterial mistake, however this mistake may delay the hearing on the employee's claims, which could be significant prejudice to someone who cannot pay bills or rent. The Court of Appeal instructed the trial court to reverse the ruling and address sanctions.

About a month later, the matter of *De Leon v. Juanita's Foods* (2022) 85 Cal.App.5th 740 was decided. In *De Leon*, again the defendant failed to pay the arbitration fees within 30 days after the due date. This time the trial court granted the plaintiff's motion to vacate the order compelling arbitration. The Court of Appeal concluded that a late payment constitutes a "material breach" based on the plain language of section 1281.98. The defendant raised many arguments, including Juanita's Foods was advised to pay all fees as soon as possible, that JAMS was willing to proceed with a management conference, and that *De Leon* was to blame because they forced Juanita's Foods to compel arbitration rather than simply agreeing to arbitrate. Juanita's Foods argued that the trial court erred by applying a "hyper-technical reading" of the section. The Court of Appeal disagreed, stating "the statute's language establishes a simple bright-line rule that a drafting party's failure to pay outstanding arbitration fees within 30 days after the due date results in its material breach of the arbitration agreement." *Id*. at 753.

Even as important, the Court of Appeal noted in *De Leon* that there is nothing in section 1281.98 that allows the trial court to consider factors such as delay or prejudice. The *De Leon* court affirmed the trial court's ruling that Juanita's Foods materially breached the agreement by failing to timely pay fees. Together, the *Espinoza* and *De Leon* rulings pave the way for a clear, bright-line rule that failing to pay arbitration fees within 30 days of the invoice due date is a material breach, allowing opposing parties to vacate arbitration.

Steps to Vacating Arbitration

1. Make Sure of the Invoice Due Date

The first important step is to look at the date that the invoice was sent to the opposing counsel. For example, Judicial Arbitration and Mediation Services, Inc. ("JAMS") may send the invoice using the JAMS Access system prior to following up with an email. The American Arbitration Association ("AAA") may send the invoice via mail. It is also important to look at the actual invoice. Some invoices may state "Due upon receipt" whereas others may give more time to pay the invoice. The breach does not occur until 30 days after the invoice due date. Also be sure to see whether the invoice due date is on a legal holiday, including weekends, because that could lead to a mistake regarding the actual due date. If one is unsure about the actual due date, they can call the case manager to see when the first time the invoice was actually sent and calculate 30 days from that date.

2. Confirm Nonpayment and Give Notice

Once the due date has been determined and has passed, send an email or call the case manager to see whether the invoice has been paid. It may take a few tries but be persistent about getting the information. After the invoice has been confirmed to be past due, have a discussion with the client about the potential option of vacating the arbitration. Afterward, send an email to both the employer's counsel, the case manager, and the arbitrator (if in direct communication) that the invoice has not been timely paid, the client unilaterally elects to vacate the arbitration and pursue the matter in superior court. Sample language is as follows: "Dear Arbitrator, Claimant is informed that the invoice dated [date of invoice] has not been paid. Pursuant to CCP § 1281.98, Claimant hereby elects to withdraw the claim from arbitration and pursue the matter in superior court." There is likely to be some confusion on the part of the employer as this is still a developing area of the law. However the case law is clear that there is no exception for substantial compliance or prejudice. Still, respondents will argue substantial compliance, applying common sense, lack of prejudice, and the parties may be in the midst of settlement discussions. As discussed above, these are not exceptions to the bright line rule.

3. File Your Motion to Vacate the Order

After you have correspondence to show that your client elects to pursue the matter in superior court, file the motion. The motion consists of the notice, the motion,

the declaration, and the proposed order. As a part of the exhibits, be sure to include the order compelling arbitration, the invoice, and evidence that the invoice has not yet been paid. It is unlikely that the respondent would entertain a stipulation as waiver of arbitration could be tantamount to a plaintiff inadvertently waiving a jury. It is important to include the statutory language, along with the *Espinoza* and *De Leon* interpretations showing there is no exception for substantial compliance. For a copy of a sample motion, the author may be emailed.

At the hearing on the motion to vacate the order compelling arbitration, usually judges do not want to grant the motion. However, it is important to be clear that there is no exception for failing to pay the arbitration fee, that the drafting party is in material breach, and that the case law is clear that this is a bright line rule. Rarely will this motion be granted without some pushback from the judge, likely because this is a newly developing area of the law. However, the law is on the side of the party requesting to vacate arbitration.

4. File Your Motion for Costs and Sanctions

Once the motion to vacate the order is granted, the moving party may move for an order for reasonable attorney's fees and costs as a result of the material breach. CCP § 1281.99(a) states as follows: "The court shall impose a monetary sanction against a drafting party that materially breaches an arbitration agreement pursuant to subdivision (a) of Section 1281.97 or subdivision (a) of Section 1281.98, by ordering the drafting party to pay the reasonable expenses, including attorney's fees and costs, incurred by the employee or consumer as a result of the material breach." The law on what is "as a result of the material breach" is not yet clear. Therefore, it is important to provide descriptive billing entries and relate them to the material breach if they are related, to allow for the court to assess the reasonableness of the attorney's hours. It is also noteworthy to file a memorandum of costs if there were any costs associated with the material breach.

Takeaways

This is an exciting new area of law that is rapidly developing. To encourage more development in this field, motions should be filed to vacate arbitration when the opportunity presents itself. For many employees, they find themselves stuck in arbitration answering endless discovery and participating in a full-blown evidentiary hearing, only to get minimal results. By using this powerful tool, an employee or consumer can get their case back in front of a jury to attempt to obtain a fair verdict.

By Sharon D. Nelson, Esq., John W. Simek and Michael C. Maschke

Dark Web Monitoring for Law Firms:

Is It Worthwhile?

MOST LAWYERS HAVE NO idea that the Internet is made up of several different areas, some of which are extremely difficult to access. When they use a browser to search for information or purchase products, they generally are accessing what is called the surface web. It is the information that is freely available with little or no restriction and accessible via search engines such as Google.

However, most internet information resides in what we call the deep web. Essentially, anything accessed using a password is considered the deep web. Examples would be email, bank accounts, medical records, etc. Think of the deep web as the portion of an iceberg that is below the surface and is not indexed by the search engines. Some reports put the amount of deep web data at 97% or more of the total internet.

Before we jump into the subject of dark web monitoring, let's discuss the dark web to set the stage.

Dark web access

The dark web typically contains sites that are associated with illegal activities such as child pornography, fraudulent services, drug trade, trafficking, etc. It is a minor portion of the deep web. Like other areas of the deep web, the content is not indexed and accessible via search engines.

Websites have .onion at the end of the site URL. The site address is a collection of scrambled text that isn't even close to identifying the site itself.

As an example, the dark web URL for the CIA is http://ciadotgov4sjwlzihbbgxnqg3xiyrg7so2r2o3lt5wz5ypk4sxyjstad.onion/ At least it starts with ciadotgov.

Special software is used to access sites on the dark web. The Tor (The Onion Router) browser is most often used to access dark web data. Lawyers are always curious about the dark web and what evidence may be available there for their cases.

In fact, they often see the dark web as a "sexy" place to explore and want us to tell them how to safely access it. And yes it can be "sexy" in all kinds of ways, but our recommendation to attorneys is clear: **Don't access it.** Even if you have the technical knowledge to install and configure the Tor browser, securely accessing the dark web is simply beyond the skill level of most attorneys. In other words, to reverse Nike's slogan…Just Don't Do It!

Privacy

People hear the term "dark web" and immediately visions of criminal activity come to mind. Sex, drugs, guns, cyberattacks, etc. However . . . by its very design, the dark web is an excellent place to protect privacy. Journalists use the dark web to send and receive messages anonymously and to protect the identity of news sources. The dark web is also used to access information in countries where internet access is restricted. So it is not all evil, though much of it is—and it is best avoided as a destination.

Dark web marketplace

Unfortunately, the dark web is mainly used for illegal activity, as noted above. It is also a repository

Sharon D. Nelson is a practicing attorney and the president of Sensei Enterprises, Inc. She is a past president of the Virginia State Bar, the Fairfax Bar Association and the Fairfax Law Foundation. She is a co-author of 18 books published by the ABA. snelson@senseient.com.

John W. Simek is vice president of Sensei Enterprises, Inc. He is a Certified Information Systems Security Professional (CISSP), Certified Ethical Hacker (CEH) and a nationally known expert in the area of digital forensics. He and Sharon provide legal technology, cybersecurity and digital forensics services from their Fairfax, Virginia firm. jsimek@senseient.com.

Michael C. Maschke is the CEO/Director of Cybersecurity and Digital Forensics of Sensei Enterprises, Inc. He is an EnCase Certified Examiner, a Certified Computer Examiner (CCE #744) a Certified Ethical Hacker and an AccessData Certified Examiner. He is also a Certified Information Systems Security Professional. mmaschke@senseient.com.

for stolen personal information that is typically put up for sale by cybercriminals. We will concentrate on marketplaces used to sell personal information such as stolen credit cards, bank account logins, medical records (yes, medical records are quite valuable in relation to other records) and other items where financial gain is the motive. It is the fear of personal information being disclosed on the dark web that has spurred such great interest in monitoring services. That is particularly true for lawyers who are ethically mandated to protect client confidential data.

Dark web information

A key question is "How did my personal data get on the dark web?" While each person's situation is unique, here are the ways cyber criminals gain access to your information. A common method is to have your computing device(s) infected with malicious software designed to capture your activity by stealing your passwords and user IDs.

Phishing scams are another method to get you to divulge your private information. You may end up on a malicious web page where you freely enter the requested information which is then transmitted to the cybercriminal. Another popular phishing scam gets you to call a phone number (typically toll free) to get technical assistance with a pop-up warning or to dispute a purported credit card charge for a service or item you did not purchase.

Commonly, your data ends up on the dark web because of a data breach. In other words, your information is held by another party (like a law firm!) and the firm suffers the breach. Since the pandemic, ransomware attacks have significantly increased. Many ransomware attackers exfiltrate the target's data first and then take various steps to entice the target to pay the ransom. Commonly, the exfiltrated data includes client information which may end up on the dark web.

Monitoring services

You may have seen commercial advertisements for services that monitor for identity theft. Services tend to start at around $100/year. The services promise to monitor various aspects of your life and alert you to suspicious activity. Basically, they monitor your credit score, as well as online and financial activity. Dark web monitoring is typically part of the service too.

How do they monitor and what does it mean to you? **Let us first say that we are not big fans of any of the monitoring services.** You will probably end up giving them all sorts of personal information so that they

know what to look for and act on your behalf. They can't scan for release of your social security number if they don't know what it is. They'll need to know your credit card numbers to scan the dark web to see if they are available for sale. You get our drift.

Do you trust the monitoring company to have robust security in place to protect all the personal data you have entrusted to them? It seems to us that a monitoring service is very similar to a law firm in that it provides a "one-stop shop" for cybercriminals.

What about dark web scans? Frankly, we think many security and monitoring companies use dark web scans as the FUD (Fear, Uncertainty & Doubt) factor to scare you into paying them money. We see hundreds of dollars a month being charged to law firms just for dark web scans. The vendors will produce a report showing that your email address, social security number, password, etc. were found on the dark web. So what? The discovered data is usually stale (several years old) and of very little value. You've probably already changed your password for the discovered sites and implemented MFA too.

Get real value for your money!

One real value for a dark web scan is awareness. You should be able to obtain an initial dark web scan free of charge—without paying an ongoing monthly monitoring fee, which we certainly don't recommend. The initial report will help identify if you have law firm employees that tend to reuse the same password across multiple sites. It may even identify sites you were not aware of so that you can immediately change the password. Use the dark web scan to educate employees at your next cybersecurity awareness training session. If you're not teaching your employees about cybersecurity, at least annually, you are missing a very significant part of cyber resilience! A human element is involved in data breaches 82% of the time.

Take control of your data and don't hand it over to a monitoring service. You should be using a password manager and a unique password for each website or application you use. Put a freeze on your credit file at the three major credit bureaus. Freezing your credit file is free. Why would you want to pay someone to monitor your credit score since freezing your credit file will stop a huge amount of identity theft opportunities? A lot of credit cards offer free credit score reports too.

Final Words

If fear seems to be the driving force to get you to sign up for dark web monitoring, and it usually does, use the advice above and stop throwing your money away!

Valley Community Legal Foundation
of the San Fernando Valley Bar Association

CHARITY BEGINS WITH YOU

THE SAN FERNANDO VALLEY LEGAL COMMUNITY

- CHARITABLE ARM OF THE SFVBA
- SUPPORTING LEGAL NEEDS OF VALLEY YOUTH, DOMESTIC VIOLENCE VICTIMS, AND VETERANS
- WORKING WITH JUDGES AND OTHERS IN THE VALLEY LEGAL COMMUNITY
- SPONSORING TEEN COURT CLUBS AND LAW MAGNETS AT 9 VALLEY HIGH SCHOOLS
- PROVIDING EDUCATIONAL GRANTS FOR LEGAL CAREERS
- SUPPORTING LAW-RELATED PROJECTS IN THE VALLEY
- ASSISTING VALLEY RESIDENTS IN NEED

FUNDED BY DONATIONS FROM PEOPLE LIKE YOU

VCLF SUPPORTS THE FOLLOWING ORGANIZATIONS

CASA for Children · Haven Hills · Boys & Girls Clubs of San Fernando Valley · PESA Parents Educators / Teachers & Students in Action · the Y West Valley Family YMCA · Comfort For Court Kids, Inc. · The Ken Project · Boys & Girls Clubs of Greater Los Angeles · Blanket the Homeless

RECENT SCHOLARSHIP RECIPIENTS INCLUDE STUDENTS AT

UWLA University of West Los Angeles · Pierce College · Southwestern Law School · James Monroe High School Law & Government Magnet

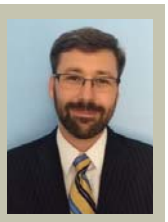
To donate to the VCLF or to learn more, visit
www.thevclf.org
and help us make a difference in our community

Valley Community Legal Foundation

San Fernando Valley Bar Association founded in 1926

VCLF Programs

KYLE M. ELLIS
Secretary of VCLF



elliskylem@gmail.com

MARCH 1ST AND APRIL 1ST RESPECTIVELY mark the end of California's and Los Angeles County's States of Emergency related to the COVID-19 pandemic. With these three-year long emergency declarations coming to an end, the Valley Community Legal Foundation (VCLF) is taking this opportunity to reflect on the changes and challenges of the past three years, and look ahead to the exciting endeavors that the VCLF is planning for 2023.

It is with great pride that the VCLF has met the challenges posed by COVID-19, and continued to offer its charitable services to our community. Throughout the past three years, our members have continued to offer educational programs like *Constitution and Me*, where volunteer lawyers and judicial officers work with high school students on a constitutional law moot court problem.

The VCLF continued to promote academic excellence for students pursuing law related studies by offering numerous scholarships for high school students, awarding thousands of dollars each year to those exceptional scholars. More than that, starting in 2021 the VCLF expanded its support of academic excellence in the legal field by offering scholarships to the winners of the San Fernando Valley Bar Association's Mock Trial Competition. This year marks both the third year of the competition and the third year of the VCLF's support for the law student competitors.

In this time of great need, the VCLF never wavered with its long-standing support of the Blanket the Homeless program, now more important than ever with tens of thousands of neighbors facing homelessness every day. As a point of general privilege, these last few cold and wet months have been very trying for those without housing—please donate now to this program.

Turning the page on the pandemic, and looking ahead to the remainder of 2023, the VCLF is eager to implement a number of exciting programs and opportunities. We are already on track to continue our support of students through our scholarship program, are in the planning stages of our next *Constitution and Me* program for the fall of this year, and are working toward another run of *The Defamation Experience*, a nationally-acclaimed legal drama of race, class, religion and law, that has students take a stand as the jury. *The Defamation Experience* is now available as a remote program so we hope to bring the experience to an even wider audience of Valley high school students.

More than our core programs, the VCLF is in the planning process for in-person events to recognize our donors and encourage our community to further participate in our charitable activities. We are also interfacing with other charitable programs throughout the San Fernando Valley and the county, like Teen Court, and the Los Angeles Bankruptcy Forum.

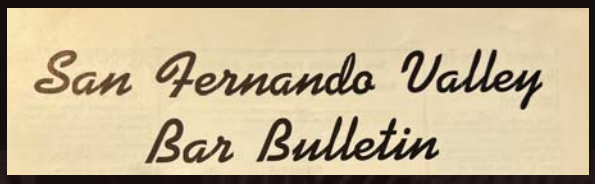
This is an exciting time for the VCLF, and we are happy to be able to share our excitement with you. We thank you for your donations, we encourage you to volunteer, and we would love for any of you who have a passion for charity to contact us to sit in on one of our Board meetings, and even to join our Board. We want to work with you to improve our community and our profession through our charity toward our neighbors.

Valley Retro

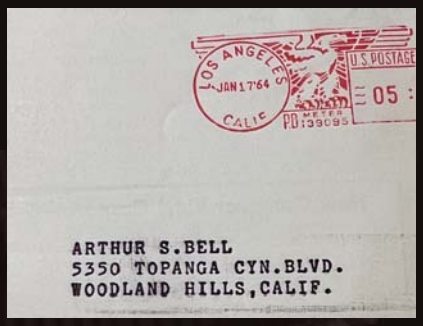
Looking Back at the Bar

By Mark S. Shipow, Interim Editor

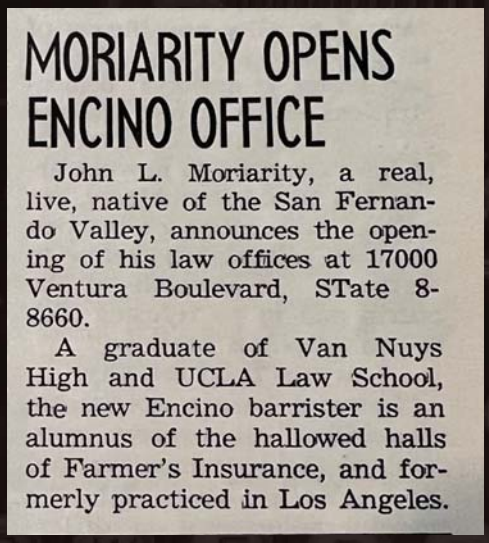
In looking through materials at the Bar office to try to find content for *Valley Lawyer*, I happened upon two spiral-bound notebooks of old issues of the *San Fernando Valley Bar Bulletin*, which I believe was the precursor to *Valley Lawyer*. One notebook has Bulletins from 1964-1966, and the other from 1967-1969. I thought it might be fun and interesting to occasionally share some tidbits from these "ancient" *Bulletins* in this and upcoming editions of Valley Lawyer.


San Fernando Valley Bar Bulletin

Here's what the masthead looked like back then.



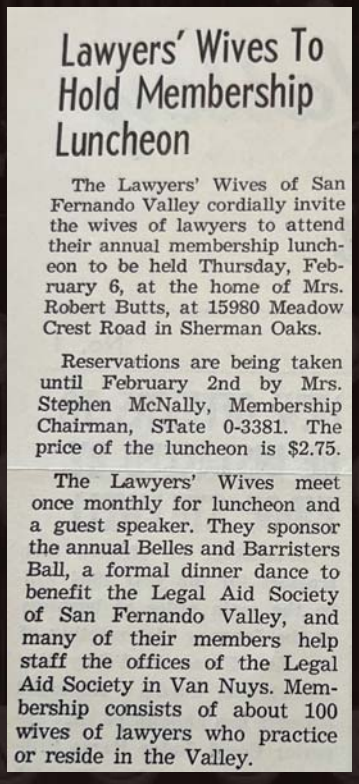
In 1964, the metered postage for mailing the Bulletin was a nickel!


MORIARITY OPENS ENCINO OFFICE

John L. Moriarity, a real, live, native of the San Fernando Valley, announces the opening of his law offices at 17000 Ventura Boulevard, STate 8-8660.

A graduate of Van Nuys High and UCLA Law School, the new Encino barrister is an alumnus of the hallowed halls of Farmer's Insurance, and formerly practiced in Los Angeles.

This is an announcement of John Moriarity opening an office in the Valley in February 1964. About a dozen years later, my then-girlfriend worked at Mr. Moriarity's office. (I have been happily married for nearly 42 years to a woman other than my "then-girlfriend.") Note the reference to "real, live, native" of the Valley. I think there were not many of them back then.


Lawyers' Wives To Hold Membership Luncheon

The Lawyers' Wives of San Fernando Valley cordially invite the wives of lawyers to attend their annual membership luncheon to be held Thursday, February 6, at the home of Mrs. Robert Butts, at 15980 Meadow Crest Road in Sherman Oaks.

Reservations are being taken until February 2nd by Mrs. Stephen McNally, Membership Chairman, STate 0-3381. The price of the luncheon is $2.75.

The Lawyers' Wives meet once monthly for luncheon and a guest speaker. They sponsor the annual Belles and Barristers Ball, a formal dinner dance to benefit the Legal Aid Society of San Fernando Valley, and many of their members help staff the offices of the Legal Aid Society in Van Nuys. Membership consists of about 100 wives of lawyers who practice or reside in the Valley.

Here's a notice from January 1964 of a membership luncheon for "Lawyers' Wives." Is it possible there were no female Valley lawyers at the time, and hence no "lawyer's husbands." I did note that all the photos in at least the 1964-1966 notebook were of male lawyers, with the one exception being a photo taken at a "Lawyer's Wives" meeting that pictured, of course, a lawyer's wife. And did the wives not have their own first names? Thankfully, we have come a long way!

EXCLUSIVE **FREE** MCLE OFFERS FOR SFVBA MEMBERS

San Fernando Valley Bar Association
founded in 1926

OPPORTUNITY TO RECEIVE

FREE

MCLE ANNUALLY WITH SFVBA MEMBERSHIP

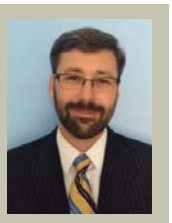
1. **8+ FREE** sponsored live **MCLE seminars** per year
2. **1 FREE** self-study hour **MCLE audio MP3 seminars**—including specialty credit of your choice—with early renewal
3. **1 FREE** self-study hour **MCLE audio CD**—including specialty credit of your choice—at Member Appreciation Dinner
4. **FREE Fastcase webinars**
5. Purchase **MCLE Marathon** in a box! **12.5 MCLE hours** for low purchase price! CD or audio download! Includes specialty credits!
6. And admission to low-cost seminars, webinars, and ***Valley Lawyer* MCLE articles**

THE SFVBA MAKES EARNING YOUR MANDATORY MCLE CREDITS SIMPLE AND EASY!

Find more member benefits at **www.sfvba.org**

Autism Acceptance Month

KYLE M. ELLIS
Member of the Inclusion & Diversity Committee



elliskylem@gmail.com

APRIL IS AUTISM ACCEPTANCE MONTH. Originating from the United Nations' designation of April 2 as World Autism Awareness Day in 2012, Autism Acceptance Month challenges us to go beyond mere awareness of autism, and think about the ways that all of us can make our communities more accepting and welcoming for our neighbors on the autism spectrum.

People with autism may think differently, process their senses differently, move differently, communicate differently, socialize differently, and may or may not need help with daily living. But with the autism spectrum being as wide and individualized as each person with autism, it can be challenging and unhelpful to try to generalize those individual experiences of autism, even if there are some broad commonalities.

While everyone who interacts with the legal field as a Plaintiff, Defendant, Petitioner, or Respondent experiences anxiety, confusion, fear, the autistic members of our community may face magnified challenges. Autistic people may lack communication skills, react to situations in ways that are unexpected, or engage in any other number of behaviors that challenge lawyers and the courts to react in appropriate ways. Our task as members of the legal community is to ensure that we approach these members of our community with the same kindness and patience that we would for anyone else, and strive to understand how we can all work together to ensure that everyone is treated fairly, no matter whether they are neurodivergent or neurotypical.

> "Our task as members of the legal community is to ensure that we approach these members of our community with the same kindness and patience that we would for anyone else."

But with a spectrum so wide, one cannot talk about the challenges facing some autistic people without also recognizing that there are members of our own legal community on the autistic spectrum. Nobody should be surprised to learn that autistic people are perfectly capable of becoming excellent attorneys. While statistics are hard to come by, a December 2022 National Association for Law Placement (NALP) Bulletin indicated that 1.2% of attorneys in 2021 self-reported as disabled, with 4.1% of the Class of 2019 self-reporting as disabled and 5.5% of the Class of 2021 self-reporting as disabled. The numbers are, unfortunately, not broken down, but one can be reasonably certain that at least some of our fellow lawyers are neurodiverse.

So, in this month of April, the Inclusion and Diversity Committee wants to invite you to take a moment to celebrate and recognize Autism Acceptance Month. We challenge you to think of what you can do this month to make our legal community more accepting of our neurodiverse members. And we invite you to contact the Inclusion and Diversity Committee if you want to work with us to make our community a more accepting place for everyone.

CLASSIFIEDS

ATTORNEY-TO-ATTORNEY REFERRALS

STATE BAR CERTIFIED WORKERS COMP SPECIALIST

Over 30 years experience-quality practice. 20 percent referral fee paid to attorneys per State Bar rules. Goodchild & Duffy, PLC. (818) 380-1600.

SPACE AVAILABLE

ENCINO

Encino Office in Class A Bldg. Appx. 14'x16' office w/floor to ceiling windows & 180° view of Valley in shared 1,100 ft 10th Fl Suite w/room for asst. Call Richard (818) 788-8900.

SHERMAN OAKS SUBLEASE

Large executive office (22'x18') with views of hills (btw. Woodman and Hazeltine). $950/month. Secretary space available. Contact David (818) 907-9688.

SHERMAN OAKS

Single Office Space w/Secretarial Bay in Comerica Bldg. Professional suite with CPAs and Tax attorneys in the Sherman Oaks Galleria, 10th fl., 12 mo. lease. Amazing views. Relaxed atmosphere. First month & deposit due upon entry. Call (818) 995-1040.

SUPPORT SERVICES

PROFESSIONAL MONITORED VISITATIONS AND PARENTING COACHING

Family Visitation Services • 20 years experience offering a family friendly approach to high conflict custody situations • Member of SVN • Hourly or extended visitations, will travel • visitsbyllene@yahoo.com • (818) 968-8586/(800) 526-5179.

GRAPHIC ARTIST

Creating affordable, high-quality designs that will promote your business with simplicity and style. Wide range of styles & personal attention, making sure your project is always delivered on time. Call/Text Marina at (818) 606-0204.

HIRING

The Reape-Rickett Law Firm seeks an Associate Attorney with 4-7 years of Civil Litigation or Family Law experience. Send resume and cover letter to scobos@reaperickett.com.

SFVBA Inclusion & Diversity and Membership & Marketing Committees

DINNER AT MY PLACE

A member benefit to help members get to know each other in an intimate setting and spur referrals.

LEWITT | HACKMAN

SHAPIRO | MARSHALL | HARLAN

A LAW CORPORATION

Business Practice Groups:

- Business & Civil Litigation
- Commercial Finance
- Corporate
- Employment
- Environmental
- Franchise & Distribution
- Intellectual Property
- Health Care
- Mergers & Acquisitions
- Real Estate
- Tax Planning

Consumer Practice Groups:

- Family Law
- Personal Injury
- Trust & Estate Planning

16633 Ventura Boulevard
Eleventh Floor
Encino, California 91436

818.990.2120
lewitthackman.com

Best Lawyers BEST LAW FIRMS U.S.News & WORLD REPORT 2023

Serving California for over 50 years.