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# PIERCE LAW GROUP LLP

Who the Independents depend on  
*Film • TV • New Media*

## Entertainment Law Circular

July 2019

PierceLLP.com

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### Events & Speaking Engagements



On **Wednesday, July 31st** from **Noon - 2:30 pm** at the world famous **Comedy Store**, The **California Society of Entertainment Lawyers** ("CSEL") is having a seminar on legal & business topics concerning the representation of comedians & comedy writers "**(Can the Law) Stop Me If You Heard This One Before.**"

### Pierce Law & Friends Again Headed for Laughs In Montreal July 24 - 27



Pierce Law Group LLP is off to Montreal for the Just for Laughs Festival and the annual



The panel will include an assortment of comedy industry professional, including but not limited to: **Thomas Burke, Esq. of Glazer Weil** (defense attorney for **Conan O'Brien** in the recent Joke Theft case); **David Albert Pierce** a n d **Comedian Tony Hinchcliffe** (one of comedy's hottest raising stars and Host of Kill Tony Podcast).

The event also includes a Deli Buffet Luncheon catered by Canter's Deli.

To register for this event, [click here.](#)

The program offers 2 hours of MCLE credit for attorneys (including 0.5 hours of ethics credit)

**Tickets are only \$40 for non-attorneys** (\$45 for CSEL Member attorneys seeking MCLE credit, and \$70 for Non-CSEL attorneys seeking MCLE credit).

*CSEL is a non-profit group composed of attorneys representing authors, screenwriters, stage performers, songwriters, independent producers and other creators of intellectual property in the entertainment industry. CSEL serves as both an educator and advocate for the entertainment community. To learn more about CSEL, [click here.](#)*

ComedyPro industry gathering **July 24th to 27th!** We are particularly proud of our client **Brian Moses**, who will once again be **hosting The Roastmaster's Invitational** along side our friend RoastMaster General **Jeff Ross!**

**Pierce Law Group LLP** is also proud to once again be a Just For Laughs sponsor.

If you are headed to Montreal, [contact us](#) so we can connect while you are there.

## Industry Wisdom

Recent Decisions Relevant to Entertainment

Law by [Michael Peters](#)

*Here is a brief summary of some recently decided cases regarding 1st Amendment, Trademark, Copyright and Contracts rendered in California which touch upon Entertainment Law Issues:*



### Edge v. City of Everett (9<sup>th</sup> Cir., July 5, 2019) - 1<sup>st</sup> Amendment [2019 DJDAR 6205]

Over the last ten years, "bikini barista" coffee stands have been operating in the Everett, Washington area. In response to police reports of such baristas engaging in lewd conduct, baristas being victimized, and other criminal activity associated with such stands, the city adopted a dress code ordinance requiring quick-service facility employees to cover "minimum bodily areas." Several baristas fought this ordinance, claiming it infringed upon their first amendment right to express their "confidence" and "female empowerment." The district court granted preliminary injunction for the baristas, but the 9<sup>th</sup> Circuit vacated and remanded.

The 9<sup>th</sup> Circuit applied the *Texas v. Johnson* test, requiring that expressive conduct be (1) intended to convey a particular message, and (2) that there be "a great likelihood that the message would be understood by those who viewed it." While the first requirement of

On Wednesday, July 17 the Beverly Hills Bar Association Entertainment Law Section will present **The Magical Mystery of the Music Business**.

Panelists will include **Dina Lapolt, Esq.**, attorney and owner of LaPolt Law, P.C., **Lou Taylor**, president of Tri Star Sports and Entertainment Group, **Cheryl Paglierani**, agent at UTA, and **Stephanie LaFera**, artist manager and owner of Little Empire Music.

**David Albert Pierce, Esq.** is the Chairman of the BHBA Entertainment Law Section. The event will be moderated by **Pierre B. Pine, Esq.**, partner at McPherson LLP.

For more information on how to attend this and other BHBA events, [click here](#).



On July 11th, **David Albert Pierce** and **John Baldivia** delivered a private seminar presentation to 50 attorneys and senior production executives at **Lionsgate Film & Television** (and their related distribution labels) on the subject of **Dealing with Minors In the Entertainment Industry**.

**Pierce Law Group LLP** is proud to have an ongoing attorney-client relationship with **Lionsgate** for the past 15 years! During which time our firm has

intent may be present, the Court found that service employees wearing nothing more than nipple pasties and g-strings while accepting tips does not provide a "great likelihood" that their message of "confidence" and "female empowerment" would be understood by the customers from whom the tips are being solicited.



**Jenni Rivera Enters., LLC v. Latin World Entm't Holdings, Inc. (Cal. App., June 28, 2019) - Anti-SLAPP [2019 DJDAR 5971]**

This case concerns a television production that was based on the life of a Mexican-American celebrity Jenni Rivera, who died in a plane crash in 2012. Plaintiff, the entity that controls most of Jenni Rivera's assets, entered into a nondisclosure agreement with Rivera's former manager, Pete Salgado. Salgado was restricted from disclosing and using certain personal information about Rivera and her family. Plaintiff sued defendants "Salgado and the program's producers for breach of contract, interference with contract, and inducing breach of contract," alleging that Salgado breached the agreement by disclosing information to the producers and broadcaster of a television series based on Rivera's life. Additionally, the plaintiff sued the program's broadcaster for "interference with contract and inducing breach of contract," claiming that they knew of Salgado's nondisclosure agreement. In response, the defendants filed an anti-SLAPP motion under Code of Civil Procedure section 425.16.

Under prong 1 of section 425.16 anti-SLAPP analysis, producers and broadcasters argued that plaintiff's complaint arose from protected activity - that "developing, producing, and broadcasting a television series are acts in furtherance of the right to free speech."

Under the second prong, the producers argued that the plaintiff cannot "show a probability of prevailing on the merits because the producers did not have knowledge of the nondisclosure agreement before the development of the Series or before [the producers] entered into the agreement with the broadcasters. Lastly, producers argued that even if the plaintiff could prove the nondisclosure agreement was legitimate, the plaintiff cannot show that the "producers intended to induce a



worked on dozens of film and television projects, including box office smash hits, such as **The Hunger Games** franchise and **The Divergent Franchise**, as well as critically acclaimed films such as **The Glass Castle** and the Academy Award nominated **Wonder**, as well as television series such as **Madmen**, **Nurse Jackie** and **Weeds**.

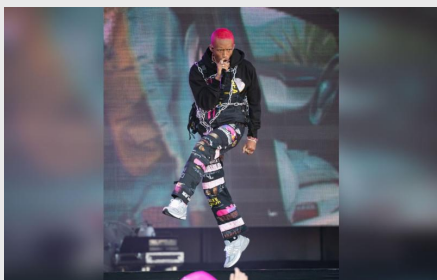
### Congratulations John and Pam Baldivia!



**Pierce Law Group LLP's Litigation Dept Head John Baldivia and his wife Pam had a baby girl this month!**

Born July 5, 2019 weighing 6lb 15oz and measuring 20.5 inches. Congrats, John!

### Congratulations To Our Newest Rising Talent In The World Of Music-- Yuki The DogMan



Our client Yuki's song "Mission" performed by Jaden Smith on Jimmy Kimmel

breach of contract because [the] producers subjectively and reasonably believed Salgado's representations that no valid contract existed." Despite the producers' arguments, the trial court denied the defendants' anti-SLAPP motions. The producers and broadcaster appealed.

During an anti-SLAPP motion, courts accept the plaintiff's evidence as true and evaluate the defendant's showing "only to determine if it defeats the plaintiff's claim as a matter of law." Also, courts must examine if there are any "constitutional or nonconstitutional defenses to the pleaded claims and, if so, whether there is evidence to negate any such defenses."

The appellate court held that the trial court did not err in denying the defendants' anti-SLAPP motion because the plaintiff made a sufficient prima facie case to succeed under Code of Civil Procedure section 425.16 subsection (b)(2) for the interference with contract and inducing breach of contract claims against the producers. The court found in favor of the plaintiff's claims against the defendant producer because plaintiff made sufficient showing of the elements that the nondisclosure agreement was a valid contract and enforceable, that the producers knew of the nondisclosure agreements specifically before they allegedly induced Salgado to breach it, that the producers took action to make the breach substantially certain to occur, that actual breach or disruption occurred, and that damage resulted.

However, the plaintiff's claims against the defendant broadcaster did not survive because the First Amendment of the U.S. Constitution provided a complete defense, as it provides a "blanket protection for the publication or broadcast of truthful information about a matter of general public interest like the Series."

# fuct®

### Iancu v. Brunetti (SCOTUS, June 25, 2019) - Trademark/1<sup>st</sup> Amendment [2019 DJDAR 5637]

Erik Brunetti created a clothing line under the brand "FUCTION," for which he applied for a trademark. The United States Patent and Trademark Office denied protection of the mark under Section 1052(a) of the Lanham Act that bars protection for "immoral or scandalous" marks. Brunetti then challenged this section of the Lanham Act as an infringement of his

Congratulations to our client who is professionally known as "Yuki The DogMan" who produced and wrote on Jaden Smith's recently released album "Mission," which is soaring on the Pop charts! Yuki was a producer on about half the tracks on the album.)

Pierce Law Group LLP is proud to represent this emerging artist in the music world!

### Pierce Law Group Comedy



Each Monday our client Tony Hinchcliffe presents "Kill Tony" at the World Famous Comedy Store. See it live or listen to the podcast!



Once a month our client Stephen Kramer Glickman presents his live show and podcast "The Night Time Show" at the Hollywood Improv. For latest information on the next scheduled show in August: [\[Click here\]](#)

See it live or listen to the

constitutional rights.

The Court of Appeals Federal Circuit found the USPTO's denial of registration to be an infringement of Brunetti's First Amendment rights, and the Supreme Court of the United States affirmed.

The Court reasoned that registration by the USPTO of a mark provides substantial benefit to the mark holder, and that the government is prohibited from discriminating based on message or ideas. Therefore, withholding a benefit provided by the government based on the message or idea of mark is unconstitutional. Thus, the "immoral or scandalous" ban under Section 1052(a) of the Lanham act is a viewpoint-based restriction because it discriminates against those ideas that provoke offense or societal condemnation and has accordingly been declared unconstitutional.



### Gold Value Int'l Textile v. Sanctuary Clothing (9<sup>th</sup> Cir., June 5, 2019) - Copyright [2019 DJDAR 4819]

Gold Value (doing business as Fiesta Fabric) sells textile designs to clothing manufacturers and sued Sanctuary for infringement of one of their designs. However, before Gold Value had registered this mark as an *unpublished* work, they had sold this design as a sample, which constituted a publication. The Copyright Office stated that it would have rejected the application designating the work as unpublished, and therefore work at issue did not satisfy Section 411(a) (requiring that a work be registered to sue for infringement) and granted summary judgment and \$121,423.01 in attorney's fees and costs to Sanctuary.

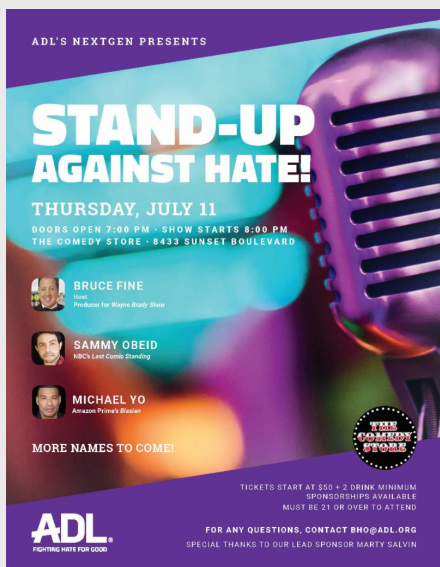
The 9th Circuit affirmed, holding that a "certificate of registration satisfies the registration requirement of Section 411(a), regardless of whether the certificate contains any inaccurate information," unless "the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate," and "the inaccuracy of the information, if known, would have caused the Register of Copyrights

podcast!



Our clients **Jeremiah Watkins & Pat Regan** in conjunction with **Comedy Dynamics** have released their first comedy music album "**Regan & Watkins**" now available for download. For more information: [\[Click here\]](#)

## ADL's Stand-Up Against Hate!



The Anti-Defamation League held its annual Stand-Up Against Hate fundraiser at the Comedy Store. David Albert Pierce has been a part of the ADL's Planning Committee for this annual event for the past 4 years.

to refuse registration." Therefore, in this case, the court found (1) inaccurate information was (2) included with knowledge of inaccuracy and (3) the register would have refused registration had it known the information was inaccurate. In specific, the court held that a designation that a published work is unpublished will be grounds to invalidate a copyright registration and that any suit based on that registered copyright must fail. The court found that Gold Value could not have reasonably believed that the selling of the design as a sample did not constitute publication.

However, note that honest and immaterial mistakes will not invalidate a certificate of registration for 411(a) purposes. An inaccuracy on a registration must be willful and material to affect one's right to sue on the registered copyright within the 9th Circuit.



## Moritz v. Universal City Studios, LLC (LA Superior Court)[Case # 18SMCV00036]

In a suit between film producer Neal Moritz and Universal Studios regarding the film *Hobbs & Shaw*, the latest installment in the *Fast and Furious* film universe, the court has denied Universal's motion to compel arbitration because Moritz had only an oral deal and no written deal was ever entered that contained an arbitration provision. Universal claims that previous written contracts for the franchise included arbitration provisions and those provisions were thus implicated by this dispute. But the court found that, because the film is a spin-off, not a sequel or reboot, it does not qualify as a "Picture" per the definition found in the past contracts. Universal never presented Moritz with a written contract for this "spin-off."

Moritz claims he was orally promised \$2 million and first-dollar gross - numbers based on his previous deals with Universal. Further, Moritz names Universal and Jimmy Horowitz personally, among other individuals, for fraud, claiming they purposefully induced his participation with the intent of revoking their promises. The film is premiering on August 2, 2019 and the case is now in the discovery stage in California State Court.

*Practice Tip:* Universal assumed "Derivative Works" in





DAP hanging out back stage with comedians Sarah Silverman & Bruce Fine

## Congratulations Jeryl Prescott and Melvin Gallien!



Pictured above lovely bride Jeryl and attorney Joshua Edwards

Pierce Law Group would like to congratulate our client Jeryl Prescott on her wedding to Melvin Gallien on July 5 in Katy, TX.

Jeryl can currently be seen in the TV Series "Swamp Thing" and "Big Little Lies" and in Steven Soderbergh's film "High Flying Birds" which was released earlier this Spring.

Our own Josh Edwards was in attendance at the wedding.

the earlier contracts included spin-offs, but the plain language was limited to sequels, reboots, and did not include spin-offs in their definition.



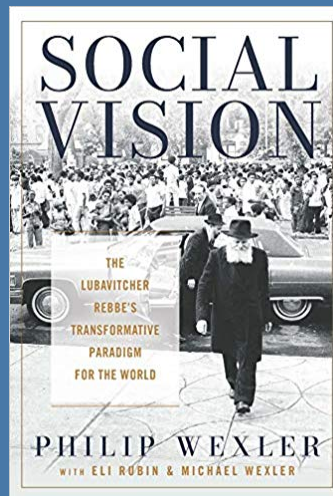
### Lowery v. Rhapsody Int'l (U.S. District Court, Northern California) - Copyright [Case # 16-cv-01135-JSW]

Rhapsody Music Service has settled with rights holders, claiming willful infringement in the form of deliberately using works without mechanical licenses. Rhapsody has agreed to pay a maximum of ten million dollars via thirty-five dollars for each registered work that was played on its service between March of 2013 and February of 2019 and one dollar for unregistered works that meet the same requirements.

*Practice tip:* The disparity between the value of how much infringement of registered works are worth against unregistered works highlights the importance of timely registering copyrights. The incredibly low value of both highlights the importance of diversifying income for your musician clients.

*For more information about these cases and their effects contact Pierce Law Group LLP.*

## New Book Release– Social Vision



Congratulations to our literary client Michael Wexler whose new book "Social Vision" co-written with his father Philip Wexler has been published by Crossroad / Herder & Herder and is now available on Amazon. The book is a bit more academic than Wex's past publications, but a great read if your into mysticism and/or sociology. To read more about this book [\[Click Here\]](#).

## About Pierce Law Group LLP

Pierce Law Group LLP is a full service, boutique entertainment law firm that provides both transactional and litigation legal services.


Our practice areas include entertainment law, intellectual property (copyright, trademarks, right of publicity), film finance, securities law, production counsel, and labor & employment issues affecting the entertainment industry, with an emphasis on film, television, and new media.

We represent production companies and other creative businesses as well as artists including producers, actors, writers, directors, comedians, and other entrepreneurs.

Our client list includes both Academy Award and Emmy Award winners. We utilize an academic and analytic legal approach to accomplish creative solutions to our clients' goals.

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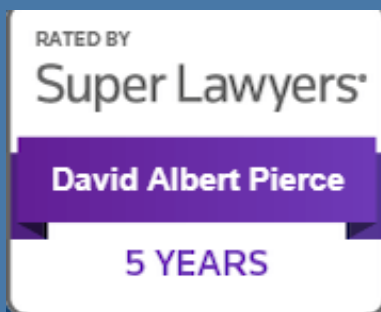


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