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## Entertainment Law Circular

March 2016

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### PLG Delivers Super Service



Congratulations to our client Touchdown Entertainment, producers of the Super Bowl 50 Half-Time show! PLG-LLP is proud to have played a small part in delivering this outstanding production to 112 million viewers. Special thanks to lead production counsel, attorney, and friend

### Important Changes In California Labor Law Affecting Entertainment Industry Employers by Vera Golosker, Esq.

Set forth below are some of the more important new amendments and statutes adopted by California that will affect entertainment industry employers.

#### **Fair Pay for Women.**

The California Fair Pay Act increases wage transparency by permitting employees to discuss their salaries and the salaries of their co-workers, and to bring up any discrepancies with their employer. The Act prohibits the employer from then retaliating or discriminating against the employee for doing so. If an employee can show that he or she is not being paid the same salary

Hillary Bibicoff for trusting us to pitch in.

### Congratulations!

For the second year in a row Managing Partner David Albert Pierce has been named "Super Lawyer" by Thomson Reuters in the areas of Entertainment Law, Securities & Corporate Finance, and Intellectual Property.

### The Carmichael Show Returns

PLG-LLP salutes our client Willie Hunter, Co-Creator of The Carmichael Show as it begins its second season. Catch it on NBC this month!



DAP on the set of The Carmichael Show with Willie Hunter.

### Recent Events

**March 4th** PLG hosted a lunch for the Leukemia and Lymphoma Society's Entertainment Initiatives Committee, which focuses on how members of the entertainment industry can be utilized to further achieve the LLS mission.

for "substantially similar" work, the burden shift to the employer to show that the difference is not gender-based. SB 385. Labor Code Section 1197.5.

*This new law coupled with the media's heightened scrutiny of Hollywood disparate treatment in pay between lead actors and actresses means that studios and production companies may be in for a big shake up in pay practices.*

### Prohibition on Clauses Prohibiting Employees From Sharing Wage Information.

The California Fair Pay Act also provides provisions extending an employer's obligation to maintain wage records for all employees from two years to three years.

In addition, this new law prohibits employers from restricting the rights of employees to discuss wages with others. SB 385. Labor Code Section 1197.5.

*This new protection calls into doubt the enforceability of common provisions of many entertainment contracts that require strict confidentiality of the terms of the agreements.*

### Labor Commissioners Enforcement Powers Enhanced.

Labor Commissioners can now issue a lien on employer's property for unpaid wages owed to employees. The law also provides that owners, directors, officers and managing agents may be held personally liable for violations of minimum wage and overtime laws. SB 588. Code of Civil Procedure 690.020.

*Note for film companies that under this new law the definition of "property" is broad enough to pertain to intellectual property in film masters and their copyrights, thereby permitting a lien to be imposed on a film if the production company is found liable for unpaid wages.*

### PAGA Right to Cure.

David is commencing his 7th year as Trustee on the Board of Directors for Greater Los Angeles Chapter of LLS.

**March 8th** Tulane Law Professor Amy Gajda was a guest lecturer at David's class on Media Law & Ethics taught at Elon University's Semester in LA Program. Professor Gajda delivered a presentation on balancing personal privacy rights and the First Amendment in the internet age.

**March 10th** The Beverly Hills Bar Association's Internet & New Media Section presented a panel on "Video Game Development: How to Protect Your Client's Intellectual Property." Azita Mirzaian is the Section Chair.



**On February 20th** David was a guest of the South Carolina Film Commission and headlined a day long production legal workshop in Columbia, South Carolina.



**On Feb. 26th** litigation department head and Beverly Hills Bar Association IP Section

An amendment to the current Private Attorney General Act that permits employers a right to cure a violation of an itemized wage statement before an employee may pursue a PAGA claim. Note: PAGA continues to present a real liability threat to employers because it permits significant penalties against employers for technical violations of labor laws, even if the violations have caused no real harm to employees. AB 1506. Labor Code Section 2699.

### **Paid Sick Days.**

The Healthy Workers, Healthy Families Act of 2014 that required employers to permit all employees to take at least 3 days (or 24 hours) of paid sick leave has been amended to clarify the law. The amendment requires employees to work in California for the same employer for 30 or more days to be entitled to take sick leave. Employers also have more flexibility to calculate how much leave an employee has accrued. Employers may calculate the rate of accrual at one hour for every 30 hours worked or make the 24 hours available up front. Employers are required to keep records of hours worked, sick pay accrued, and sick pay used for three years. Employees may take paid time off to care for their own illness, to care for family members, or certain other proscribed reasons. The law also permits employees to take time off for preventative care. The time off must be taken in at least 2 hour increments. AB 304. Labor Code Sections 245.5, 246, 247.5.

*Entertainment companies should carefully coordinate and communicate with their payroll companies about when employees seek to invoke paid sick days. Moreover, unlike the more expansive state and federal medical leave acts that provide up to 12 weeks of job protected unpaid leave, this Paid Sick Days provision does not require a certain threshold number of employees in their workforce for the law to be applicable. Anyone who employees even one employee is subject to these paid sick day rules.*

### **Expansion of Family School Partnership Act.**

The law protects employees who are parents from discharge or retaliation for taking time off to enroll

Chairperson Azita Mirzaian moderated a panel on Copyright Law Year in Review.



**On March 5th** David and his Elon University students enjoyed dinner and a night of dancing aboard the SS Entertainer, a Hornblower cruise ship. Despite the rough weather, the Entertainer returned safely after the three hour voyage through the Marina Del Rey Harbor.

### Upcoming Events and Speaking Engagements

**ENROLLMENT IS NOW OPEN** for David Albert Pierce's UCLA-Extension course ***Starting Your Own Production Company.***

The 12 week course begins on March 20th. Classes run from 7 - 10pm on Monday nights on the campus of UCLA. David has been teaching this widely popular course since 1998.

Click [here for further information and to enroll now!](#)

On Wednesday, April 20th, The California Society of Entertainment Lawyers ("CSEL") will hold an MCLE luncheon event entitled,

a child in school, or to tend to a child care provider or school emergency. SB 579. Labor Code Section 230.8 and 233.

### Anti-Discrimination for Accommodation Requests.

An amendment to the Fair Employment and Housing Act, this bill prohibits employers from retaliating or discriminating against someone for requesting reasonable accommodations for disability or religious beliefs, and allows employees to sue an employer for this regardless of whether the accommodation was granted. AB 987. Govt. Code Section 19240(l) and (m).

### E-Verify System Restriction.

E-Verify is a federal online system for employers to confirm that individuals are legally authorized to work in the U.S. However, the new California state law now prohibits employers from using the federal E-Verify system to check the status of current employees or applicants who have not received an offer of employment unless in certain circumstances where specifically required (not just permitted) by federal law. Employers may still use E-Verify to check the employment authorization status of those who have been offered employment. AB 622. Labor Code Section 2814.

*If you regularly use the federal E-Verify system or desire to do so in a specific situation, its best to consult with Pierce Law Group LLP first to ensure your understanding compliance with the sometimes conflicting federal and state laws.*

### Professional Cheerleaders Are Employees.

California law now statutorily recognizes professional cheerleaders as employees, not independent contractors or volunteers. This statutory recognition is in keeping with California's growing scrutiny of the misclassification and misuse of independent contractor status for workers in entertainment and other industries. AB 470. Labor Code Section 2754.

## "Point/Counter-Point: Copyright Infringement Lawsuit Trends."

David Albert Pierce & Vera Golosker serve on CSEL's Continuing Education Committee. Details to follow.

### Art Exhibit

Client Jann Karam put her one-of-a-kind paintings on display from her hit stage show *Reclining Nude on La Cienega* at a reception held Tuesday, March 15th at Muse on 8th.



### What's cooking?

We are proud to welcome Aussie chef extraordinaire Andre Sickinger to the PLG family.

Andre specializes in clean eating and has worked with top athletes and brands such as Kelley Slater and Quiksilver. His good-natured Aussie personality makes him a natural for television appearances.

To find out more about Andre and private catering bookings click [here](#).

Entertainment companies big and small should understand how labor and employment laws apply to them, and that adherence with federal and state laws is essential for avoiding potential liability. PLG-LLP is a leader in helping company's navigate the sea of red tape that these laws can create.

Pierce Law Group LLP providing transactional advice and guidance on litigation avoidance for employers in many facets of the entertainment industry. Our firm also litigates employment cases, representing both seriously aggrieved plaintiffs and wrongfully accused defendants.

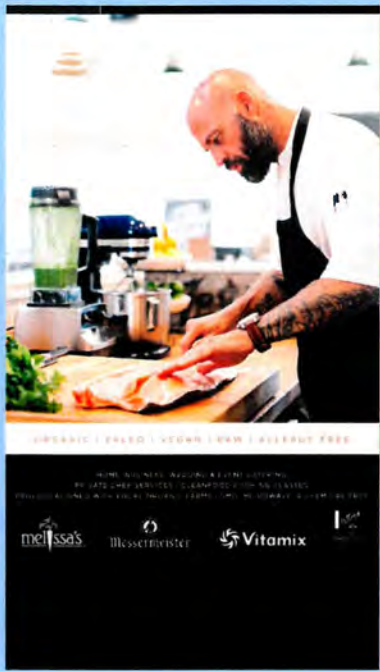
For more comprehensive information about employer obligations under state and federal laws, contact [Vera Golosker](#) or [David Albert Pierce](#).

### Understanding "Moral Rights" By David Albert Pierce, Esq.

Moral rights are a foreign concept to most, both figuratively and literally. These rights stem from early 1800's French law and have force and effect in many foreign jurisdictions. Though moral rights themselves may not be recognized in the U.S., many of their underlying concepts are reflected in negotiated contract terms for artists that have clients in Hollywood.

#### What Are Moral Rights?

Moral rights, otherwise known as "droit morale," revolve around the idea that the reputation of an author or creator should be protected. While traditional copyright law protects an artist's right to profit from his or her work, moral rights protect a creator's ability to claim authorship of his or her work, as well as the right to object to any distortion, modification, or mutilation of a work that would reflect poorly on the author or creator. In essence, moral rights allow the creator of a work to retain some control over how it is used, and allows him or her a legal remedy if the work is used in a way that negatively affects their reputation in those jurisdictions that recognize moral rights.



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There are three types of moral rights that are recognized worldwide: the right of appellation, the right of integrity, and the right of disclosure. The right of appellation gives creators the right to be named in association with their work, the right to remove their name from their work, and the right to not have their name associated with a work they did not create. The right of integrity gives the creator the right to prevent the destruction of their work, as well as the right to stop any alterations to their work. The right of disclosure gives creators the right to determine when a work can be publicly displayed, and when a work must be removed from public display.

These rights are codified as part of the Berne Convention, an international agreement over copyright law signed in 1886 by 168 countries. For over 100 years, the United States refused to ratify this agreement because of conflicts with U.S. copyright law. In 1988, Congress agreed to ratify the agreement on a minimal basis. While some of the provisions of the Berne Convention have been added into U.S. law, the moral rights listed above are not recognized in our federal courts.

Traditional moral rights do exist in a very limited form in the U.S. in the realm of fine art in terms of paintings and sculptures via protection afforded by the Visual Artists Rights Act (VARA). VARA was passed in 1990 and recognizes moral rights for fine artists, referring only to tangible properties such as paintings and sculptures. It did not protect writers, filmmakers, musicians or any other creators of non-physical works and did not protect visual works that were mass produced beyond a quantity of 200. Also, the law enabled artists to waive their moral rights, further distinguishing VARA from traditional moral rights legislation in other countries.

### **How Hollywood Deals With Moral Rights**

Even though moral rights do not have a strong history in the United States, these rights have seeped in contracts used in the film, music, and entertainment industries. For example, credits

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## About Us

Pierce Law Group LLP practices in all area of litigation and transactional matters affecting film, TV, new media and the business of creative entrepreneurs across many industries.

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clauses in contracts and collective bargaining agreements are similar to the rights of appellation and removal. The WGA has strict credit determinations that offer protections to originators of works. Similarly, the DGA collective bargaining agreement further provides certain circumstances when a director can remove their name from a film for which he or she does not wish to be associated.

Contract clauses which allow a "Director's Cut" gives the director the opportunity to create the film that he or she wanted, allowing the director to control his or her reputation in connection to the film and prevent "mutilation" of the director's work. Likewise, a contract right of first refusal for sequels of a film allows an author to control how the sequel will reflect on his or her reputation, as well as the right to control any modifications or additions to the original work.

### Invoking Foreign Jurisdiction Protections

If a writer, director, or other artist is particularly upset over an issue touching upon their "moral rights," they may attempt to engage in "judicial forum shopping" and attempt to bring a lawsuit in a country that does recognize "moral rights." The artist will need to find a logical nexus for invoking the laws of that jurisdiction, such as if the film has been distributed there or perhaps if the plaintiff resides there or the studio has offices in that jurisdiction.

Productions can minimize this (albeit uncommon) threat by including language which forces all individuals with moral rights to promise to disavow them, assign them to the producer or otherwise, recognizing the collaborative efforts of the filmmaking process so as to not invoke moral rights to the detriment of all other artists that share similar moral rights in the project. Such language is standard in most production contracts.

Moral rights become more of a concern and should be seriously evaluated when a film or TV show has an international origin, or is produced in a foreign country. For instance, if an American filmmaker wants to recreate or interpret a foreign

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book or film, he or she may face litigation if the finished product violates any of the original creator's internationally recognized moral rights, unless the matter is thoroughly addressed from the onset.

Well drafted cast & crew contracts are essential for all productions. Pierce Law Group LLP is a leader in providing quality production services.

For further information or help with your next production, call our Client Development Director Lindsey Henderson at (310) 274-9191 ext. 265, or email her at [lindsey@piercelawgroupllp.com](mailto:lindsey@piercelawgroupllp.com)

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