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Entertainment Law Circular

March 2019

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Events & Speaking Engagements



The Beverly Hills Bar Association IP, Internet & New Media Section and the Entertainment Law Section presents **Dancing around the Issue: A Discussion of Developments in Video Game Law.** Speakers include **Michael Donaldson, Stephen McArthur, Dan Nabel, and Vera Golosker.**

David Albert Pierce is Chairman of the BHBA Entertainment Law Section and will provide introductory remarks at the seminar.

For further information and registration info [click here.](#)

Supreme Court Resolves Dispute Among Circuits & Determines Copyright Registration Must Be Duly Completed (not merely filed) Before An Infringement Case May Proceed.

By Michael Peters

Fourth Estate Pub. Benefit Corp. v. Wall-Street.com - March 5, 2019, SCOTUS (2019 DJDAR 1773)

A recent Supreme Court decision further increases the importance of registering all copyright-able works as soon as possible. Until now, the 9th Circuit has held that one can file suit for infringement so long as a copyright registration application has been filed. This is no longer the case. Now, across the nation, a duly approved and stamped copyright registration is required to file suit for infringement.

In this case, Fourth Estate Public Benefit Corp. licensed material to Wall-Street.com on the condition that the latter remove all licensed content from its website before canceling the license. Wall-Street continued to use licensed material after cancellation, and Fourth Estate sued for copyright infringement. Fourth Estate had applied for



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The **BHBA Entertainment Law Section** is co-sponsor of the 43 annual **UCLA-**

Entertainment Symposium. This year's speakers include: **Meg Whitman**, **Jeffrey Katzenberg**, super agent **Kevin Iwashina**, and former Pierce Law Group LLP attorney **Tara Senior** (now partner at **Del Shaw Moonves**), along with our good attorney friends **Ivy Kagan Bierman** and **Hillary Bibicoff** among many, many other speakers who will be there.

David Albert Pierce is Chairman of the BHBA Entertainment Law Section.

For further information and registration info visit [UCLA Annual Entertainment Symposium Info](#).



On Saturday March 23rd, **David Albert Pierce** will be speaking on the **Film Finance Panel** at **Method Fest** from 12pm - 1:30pm at the **Stellar Adler Academy of Acting and Theatre Complex** (6773 Hollywood Blvd, Los Angeles, CA 90028).

Moderating the panel is **Dr. David Offenberg**, the associate Professor of Entertainment Finance and Director of Business of Film certificate program at **Loyola Marymount University**.

For more information regarding Method

registration of the infringing material with the copyright office at the time of filing the suit, but the copyright office had not yet accepted the application.

This case sought to resolve a dispute amongst the circuits as to whether simply filing a copyright application was a sufficient condition for filing a complaint or whether the application needed to be stamped and returned before a lawsuit can commence. The Supreme Court has held that, under section 411(a), registration has not occurred until the copyright office accepts the application and grants registration.

This holding has major ramifications in the entertainment industry because it means that a civil suit for copyright infringement under 411(a), i.e. any suit other than a Section 106 suit for Attribution or Integrity rights, cannot be filed until a copyright registration is formally accepted by the copyright office and returned to the hands of the individual awaiting to commence his/her lawsuit.

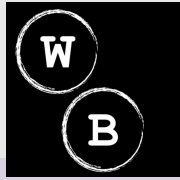
Tips for Clients: It is more important now than ever that all creators register their copyrights as soon as possible because their right to sue and the scope of damages they can recover may depend on their timely filing. Registration without special handling may take months to return with an approval or rejection. To expedite this process, you must pay a special handling fee of \$800 and the Copyright Office while making attempt to process your application within 5 working days will not not guarantee to do so.

This decision was based on an interpretation of the second sentence of the statute detailing an exception regarding how one may none-the-less sue if an application in proper form has been refused by the copyright office. The court held that this exception would be superfluous if one could sue for infringement regardless of the copyright office's acceptance or refusal.

For more information about copyright, contact [Michael Peters, Esq.](#) or [David Albert Pierce, Esq.](#)

Pierce Law Group files an Amicus Curiae Brief with the California Supreme Court on behalf of the Beverly Hills Bar

Fest and getting tickets to panels, screenings, and galas, [click here](#).



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On Monday, March 25th, Writers Bloc and the Beverly Hills Bar Association present Preet Bharara, former United States Attorney for the Southern District of New York speaking about his new book *Doing Justice: A Prosecutor's Thoughts on Crime, Punishment, and the Rule of Law*. A copy of Bharara's book will be included with the price of the ticket.

For more information and ticket purchasing information, [click here](#).

Meet Our Newest Attorney: Michael Peters!



Michael Peters, an LA native, graduated Magna Cum Laude from Southwestern Law School's SCALE Accelerated 2-year program in 2018. While at Southwestern, Michael pursued his passion for the industry by concentrating in entertainment and media law. He is a Biederman Scholar, a member of the Negotiations Honors Program, and a Dean's Fellow.

Prior to his law career, Michael spent 4 years working in the music industry in various creative and administrative roles for music publishers such as Sony/ATV and BMG Rights

Association Challenging Lower Court's finding that an award of \$1.1 Millions Does Not Render a Plaintiff an "Prevailing Party"

By John Baldivia

The Beverly Hills Bar Association appointed Pierce Law Group LLP with the task of filing on the Association's behalf an Amicus Curie brief to the California Supreme Court. This document was filed with the state's highest court on February 27, 2019, David Albert Pierce prepared the document in conjunction with our Litigation Department Head John Baldivia. In it, we argued that the California Supreme Court should grant the petition for review of *Olive v. General Nutrition Centers, Inc.*, Supreme Ct Case No. S253908 ("*Olive*") filed by Johnson & Johnson, LLP.

Olive involved civil claims under Cal. Civ. Code section 3344, where the plaintiff Olive was awarded \$213,000 in actual damages and \$910,000 in emotional distress damages, for a total award of \$1,123,000. Despite the seven-figure award to the plaintiff, the trial court declined to hold plaintiff as the prevailing party for the purpose of awarding attorneys' fees under section 3344! After *Olive* was affirmed on appeal, the Amicus filed by David Albert Pierce on behalf of the Beverly Hills Bar Association (which represents a large segment of entertainment lawyers in California) sought to focus the Court's attention on two important issues for review raised by the Johnson & Johnson firm's petition.

First, the recent decision in *Olive* shifted the burden of proof for apportioning damages to the plaintiff such that it was unduly burdensome for the plaintiff. The Court of Appeal in *Olive* held that the plaintiff in a section 3344 claim had the burden of proving not only "gross revenues" but actual "profits" to the defendant. Whereas, in analog federal statutes involving intellectual property for which section 3344 was modelled (e.g. copyright, trademark, patent), a plaintiff only had the burden to prove "gross revenues" while the defendant had the burden of proof to apportion how much of the damages were classified as "profits."

Management. He earned his Bachelors from Cal State University - Northridge and graduated with a major in Music Industry Studies and a minor in Philosophy.

In his downtime, Michael enjoys writing and performing music. He has been playing guitar in rock bands since his early teens and has performed at many classic venues throughout the greater Los Angeles area. While he no longer does public appearances, we're hoping we can one day convince Michael to put on a private concert for Pierce Law Group!

As a new Associate Michael practices in all areas in which our law firm specializes working under the guidance of the assorted department head partners at our firm.

**Welcome to the team,
Michael Peters!**



Check out Pierce Law Group's Ben Kuerschner and his comedy show **NIGHT CAP** at **THE VIRGIL!** Friday, March 29

Pierce Law Group
Congratulates our Academy
Award Winning Clients, Wachtel
& Rabinowitz, for "Best Adapted
Screenplay"!

Second, the recent decision in *Olive* created ambiguity in defining who a "prevailing party" was in a section 3344 claim. The ruling in *Olive* held that defendant was liable under section 3344, but declined to find that plaintiff was the "prevailing party" because he was awarded substantially less damages than he was initially seeking at trial. However, the reasoning provided by the trial court for reaching that conclusion was suspect, and by affirming the trial court's ruling, the Court of Appeal only created ambiguity in a statute that was - in the Court of Appeal's own opinion - unambiguous.

The petition for review was filed by Plaintiff and Petitioner Olive with the California Supreme Court on February 5, 2019. Defendant and Respondent General Nutrition Center filed an Opposition to the Petition on February 25, 2019, and Olive filed a Reply on March 7, 2019. The California Supreme Court has not yet to render a ruling whether the matter will be heard before the court.

To loosely paraphrase Virgil "The Turk" Sollozzo from the movie *The Godfather*-- *If you think walking away with over Million bucks is a losing day in the courthouse then salute!* {No David didn't include that in our brief. . . but he wanted to}

Pierce Law Group LLP's litigation team practices in some of the most sophisticated litigation matters concerning intellectual property, employment and finance matters. The firm practices in both federal and state courts, as well as, engaging in a limited appellate practice.

New California Labor & Employment Laws for 2019-- Our Yearly Roundup of the ones that entertainment clients and creative entrepreneurs should be most aware of.

By David Albert Pierce, Esq.

Think the maze of red tape confronting employers only increases every year? You are right. Here's just a brief summary of



Congratulations to Charlie Wachtel, David Rabinowitz, and Spike Lee, the screenwriting team that won Best Adapted Screenplay award at this year's Academy Awards for **BlacKkKlansman**. Pierce Law Group is proud to have had a part in negotiating their production and writing services deal.



REMINDER



The year end 2018 business tax filings for Partnerships, LLCs that are treated as corporations, LLPs and S-Corps is March 15, 2019. K-1 needs to be issued to your shareholders and partners on this date (but with the availability of extensions up to September 16, 2019 if needed). If an extension is needed, it can be readily and quickly obtained and we recommend you contact the Certified Public Accountant that handles your Business Tax Returns to secure one.

As for personal individual taxpayers those taxpayers need to file their personal tax returns by midnight April 15, 2019.

If you didn't major in Human Resources in college (or even if you did) and you haven't committed all of the myriad of employment laws to memory, [Pierce Law Group](#) can help. Among other services, we can perform confidential compliance audits to review your current employment policies and practices to help ensure you are compliant with these new laws and all the many employment laws that have preceded them and still continue to be viable.

Let's Talk About Sex Baby:

Employer Sexual Harassment Training Requirements (SB 1343) - By January 2020, all employers of five or more employees must provide harassment training to all employees every two years, including non-supervisory employees, within six months of their start date. The DFEH will develop and make available online one and two hour training videos (*two hours is required for supervisory employees and one hour is required for non-supervisory employees*).

Expanded Sexual Harassment Liability Under FEHA (SB 1300) - This bill expands harassment training to include "bystander intervention training" directed at enabling bystanders to recognize potentially problematic behavior and take action accordingly; expands potential liability of employers for the acts of non-employees, such as interns or volunteers, for any type of harassment, including non-sexual harassment; prohibits employers from requiring a "release of a claim of right" in exchange for a raise, bonus, or as a condition for employment or continued employment; and prohibits employers from requiring employees to sign non-disparagement agreements regarding unlawful acts in the workplace.

Talent Agencies Training Requirements for Clients (AB 2338) - All talent agencies operating in California must provide their artists with education on sexual harassment prevention, retaliation, reporting resources, nutrition and eating disorder information. In addition, Applicants for entertainment work permits for minors between the ages of 14 and 17 (the parents/legal guardians as well as the age-eligible minor) will be required to provide satisfactory proof of sexual harassment

Likewise, individual tax payers (including those corporate shareholders and members of LLCs and LLPs who take draws rather than receive salaries via payroll with tax deductions), should also make quarterly payments on their estimated tax liability for 2019 with the first such estimated tax for 2019 due by midnight Friday April 15th, 2019. When quarterly tax payments are not paid, it means a much larger tax burden at the end of the year, as well as penalties will become due.

For more about your precise tax filing requirements (and what may apply to you on March 15th and what may apply on April 15th) contact your entity's CPA [or click here](#)


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!



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prevention training before obtaining a minor's entertainment work permit. Applicants for 10-day temporary entertainment work permits are exempt from the training requirement. The law went into effect January 2019 however, due to the unavailability of third-party vendors and applicable materials, the Labor Commissioner will not be enforcing these new provisions until June 30, 2019.

Human Trafficking Awareness (SB 970) - Requires 20 minutes of training for hotel or like business employees. The training needs to include the definition of human trafficking, how to identify individuals most at risk for human trafficking, and how hospitality employees can report and respond to human trafficking, and how to contact the appropriate agencies.

CLIENT TIPS: These above referenced new laws create new training obligations for applicable employers. [Pierce Law Group](#) can help you determine how these laws affect your company, and we can help you develop compliant plans.

Limits for Confidentiality in Sexual Harassment Settlement Agreements (SB 820) - Prohibits contract provisions that prevent disclosure of "factual information" regarding sexual assault and harassment, and workplace and housing related harassment, discrimination, or retaliation. Provisions that protect the identity of the claimant, however, may be included at the claimant's request.

Agreements Precluding Sexual Harassment-Related Testimony Are Now Void (AB 3109) - Renders void and unenforceable any contract or settlement agreement entered into after January 1, 2019 that waives a party's right to testify in a proceeding concerning criminal conduct or sexual harassment when the waiving party has been required or requested to testify.

Sexual Harassment Liability Beyond Employment Relationships (SB224) - Expands potential sexual harassment liability to business, service, or professional relationships including investors, lobbyists, elected officials, and directors or producers and removes the requirement that a complainant must demonstrate that the relationship would not be easy to terminate. Instead of needing to prove the existence of a business, service, or professional relationship between the plaintiff and

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dollar verdicts & settlements

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

defendant, now a plaintiff need only establish that the defendant holds him or herself out as being able to help the plaintiff establish a business, service, or professional relationship with the defendant or third party.

Sexual Harassment Defamation Protections (AB 2770) - Provides a "common interest" privilege that protects an employee from defamation when reporting an employer, without malice, relating to a claim of sexual harassment, and the claim is based on credible evidence.

Minimum Required Female Directors for Publicly Traded California Corporations (SB 826) - By the close of 2019, all publicly traded California corporations must have at least one female (meaning an individual that identifies as a woman) on its board of directors. This will increase to a minimum of 2 female directors by the close of 2021 if the board has 5 directors, and 3 female directors on a board of 6 or more. This rule only applies to publicly held corporations that are either domestic to California or whose principal executive offices, according to the corporation's SEC 10-K form, are located in California.

To Hire or Not Hire-- What Are The Permissible Questions?

Clarifications Regarding Ban on Prior Salary History Inquiries (AB 2282) - The prior law that went into effect in 2018 required an Employer to provide Applicants upon "reasonable request" with pay scale information about the job for which they were applying. The 2018 law also prohibits an Employer from asking an Applicant about their past wages and salary history.

The new 2019 amendments to this law clarifies the meaning of these various phrases. Thus the laws requirement that an Applicant upon reasonable request be provided with the pay scale for the job in which they are applying, is now clarified to explain that "Pay scale" means a "salary or hourly wage range;" "Applicant" means an individual seeking employment with the employer as opposed to an employee already employed by the employer and seeking a new position with the same company; and "Reasonable request for pay scale information" means a request made only after an Applicant has completed the

Pierce Dog Group



initial interview with the Employer.

These changes are welcome protection for Employers that prevents them from being forced to disclose sensitive or valuable salary or wage information to competitors or potential plaintiffs that contact Employers early in the application process.

Note: The law continues to prohibit Employers from asking Applicants about their past wage and salary history. Employers that continue to have outdated employment applications that inquire as to past salary information should contact Pierce Law Group to obtain new California compliant forms.

So, Now We Have The Minimum Wage & Then The Real Minimum Wage That Applies Uniquely To You:

California's New Minimum Wage Requirements (SB 3) - Effective January 2019, the minimum wage for employers of 26 or more is \$12.00 per hour (exemption thresholds of \$49,970 annually). For employers of 25 or fewer, the minimum wage is now \$11.00 per hour (exemption threshold of \$45,760).

However, note that certain individual cities have higher minimum wages.

For example, unincorporated areas of Los Angeles will have a minimum wage of \$13.25 or \$14.25 per hour, depending on the size of the business, on July 1, 2019 (up from the current \$12/\$13.25 per hour). To be unincorporated means that area does not have its own local government but is instead governed by the L.A. County Board of Supervisors. For example, Santa Monica has its own city council and is incorporated, Marina Del Rey does not, and is therefore unincorporated.

CLIENT TIP: Minimum Wage has suddenly become quite complex. It pays to double check with legal counsel what rules apply to your size company and your geographical location within the state!

DLSR Computer Professional Salary Exemption - Labor Code Section 515.5(a) (4) provides that, effective January 2019, the minimum exemption rates for computer software employees are as follows: \$45.41

per hour, \$7,883.62 per month, or \$94,603.25 per year. The computer software employee exemption applies if all of the following conditions are met: (1) the employee is engaged in intellectual or creative work and exercises discretion and independent judgement; (2) he or she is primarily engaged in systems analysis, or the design or development of programs or computer hardware; (3) and he or she is highly skilled and proficient in the theoretical and practical application of highly specialized information to analysis, programming, or software engineering. Job titles do not determine the applicability of this exemption.

CLIENT TIP: Again, this unique exemption is often confusing to employers and only applies to very specially defined employees that fall within the definition of "Computer Professionals." Before using this exemption, speak to a [Pierce Law Group LLP attorney](#) well versed in wage & hour law!

Inspection of Wage Records (SB 1252) - Employees have a right to inspect and receive a copy of payroll-related records and employers are required to provide these copies upon employee's request. Note that employees are entitled to *actually receive a copy* of pay-roll records, not just inspect them.

Note: The law continues to permit Employees to inspect their personnel files at a reasonable time, place and manner. Further, Employees are permitted to request and receive a copy of any documents that have their signatures.

Making Workplaces More Family Friendly:

Lactation Accommodation: Cannot Be A Bathroom (AB 1976) - Employers must provide an area for lactation that is not a bathroom. If it is proven to be an undue hardship for a business, the employer must still make reasonable efforts to provide an area that is not a bathroom. This narrow "undue hardship" exception considers the size, nature, and structure of the employer's business.

DISCLAIMER

The information you obtain in this newsletter is not, nor is it intended to be, legal advice. You should consult an attorney for advice regarding your individual situation. We invite you to contact us and welcome your calls, letters, and electronic mail. Contacting us does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established.