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Entertainment Law Circular

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NEW FILM RELEASES BRING BIG LAUGHS



Pierce Law Group LLP is proud to announce that *Handsome: A Netflix Mystery Movie*, written, directed by, and starring our client, beloved comedic actor Jeff

"Walk of Shame" Reveals the Shameful Side of Hollywood by Daniel Lifschitz, Esq.

On April 6, 2017, the 9th Circuit heard oral arguments in the appeal of Shame On You Productions, Inc. v. Elizabeth Banks, et. al for which an amicus brief in support of screenwriter/producer Dan Rosen (Shame On You Productions) was submitted to the 9th Circuit by Pierce Law Group LLP on behalf of the California Society of Entertainment Lawyers ("CSEL").

Back in 2014, Elizabeth Banks and others behind the motion picture "Walk of Shame" were sued for copyright infringement and breach of implied-in-fact contract by screenwriter Dan Rosen who had pitched Banks a similar script back in 2007 and wherein some substantial development concerning the project had taken place between Banks and Rosen. Ultimately, Banks decided not to move forward with Rosen, but did produce and star in a film with a very similar script.

Rosen sued. The case was tossed out in 2015 by the District Court, which wrote that the similarities between the works mostly flowed directly from unprotectable *scenes a faire* obligatory to any film the basic premise of a "walk of shame" (and thus

Garlin (*Curb Your Enthusiasm*, *The Goldbergs* ") premieres on Netflix on May 5th. The film also stars **Natasha Lyonne**, **Steven Weber**, **Leah Remini**, **Amy Sedaris**, **Eddie Peptone** , and introducing The Comedy Store's own **Doc Willis** as "Detective Dino."

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Pierce Law Group LLP served as finance legal & production counsel for this homage to '70s detective movies of the week such as **Columbo** and **McCloud** .



Pierce Law Group LLP is equally proud to have provided legal services for **How To Be A Latin Lover** . This comedy is a crowd-pleaser starring Mexico's clown prince **Eugenio Derbez** along with a collection of mostly gorgeous, talented and funny comedic actors including: **Salma Hayek**, **Rob Lowe**, **Kristen Bell**, **Raquel Welch**, **Rob Corddry** and **Rob Riggle**.

The film opened nationwide in theaters on **April 28th** and is distributed by Pierce Law Group's client **Pantelion Films**, a division of **Lionsgate**.

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constituted unprotectable stock elements) while otherwise telling different stories.

An appeal was filed with the Ninth Circuit on the copyright claim. In this appeal and the amicus brief prepared by attorneys from Pierce Law Group LLP and Lowe & Associates argued that the Ninth Circuit should adopt the "Selection & Arrangement" Test for determining copyright infringement to align itself with other circuits in regard to determining how "similarities" are defined and analyzed. In other words the totality of the work and how the story progresses must be examined rather than merely dissecting individual scenes without reference to overall plot and progression of the picture.

At the recent oral argument, fellow CSEL attorney Steven T. Lowe orally argued the points raised in our amicus brief. An appellate decision should be rendered in the coming months. For those interested in watching the oral argument, please click here: [CSEL argues for Artist's Rights Before 9th Circuit](#) .

Regardless of how the appellate court rules, this unfortunate occurrence demonstrates once again, the vital importance of having at very least some basic written understanding of what each party expects from a collaborative relationship **before** that relationship begins-- and it should include a brief discussion of what is permitted to happen with the intellectual property if the collaboration falls apart.

Pierce Law Group LLP attorney **Vera Golosker** was instrumental in drafting the amicus brief tendered to the court on behalf of Dan Rosen.

Pierce Law Group LLP provides transactional advice for filmmakers entering new collaborative relationships, and we also litigate disputes when such relationships fall apart.

For further information, contact [Briana Hill, Esq.](#) who heads up transactional intellectual property practice or [Dan Lifschitz, Esq.](#) and [Vera Golosker, Esq.](#) in our litigation department.

1st Amendment Trumps Harassment Claim By David Albert Pierce, Esq.

Daniel v. Wayans (CA2/1 B261814 & B263950 2/9/17) Actor Racial Harassment/First Amendment Creative Process.

Pierre Daniel (Daniel), an African-American actor, worked as an extra in a movie entitled, "A Haunted House 2." African-American Hollywood mogul Marlon Wayans (Wayans) co-wrote, produced, and starred in the movie. Daniel sued Wayans and others, alleging that he was the victim of racial harassment because during his one day of work on the movie he

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was compared to a Black cartoon character and called racial slurs throughout the day by Wayans. In response, Wayans, pursuant to Code of Civil Procedure section 425.16, moved to strike Daniel's claims against him as a SLAPP suit (i.e., Strategic Lawsuit Against Public Participation), arguing that all of Daniel's claims arose from Wayans' constitutional right of free speech because the core injury-producing conduct arose out of the creation of the movie and all events occurring on the set reflect humorous anecdotes as potential promotion for the film, in addition to creating an improv-like "in character" environment on set which can lead to improvisational changes to scenes during the filming process.

The trial court agreed with Wayans and also found that Daniel had failed to establish the probability that he would prevail on any of his claims against Wayans. As a result, the trial court entered judgment in favor of Wayans and awarded him his attorney fees as required under the Anti-SLAPP law.

On appeal, Daniel argues that the trial court erred with regard to its determination of the threshold issue in Wayans' anti-SLAPP motion- that is, the conduct at issue was not part of the "creative process" inherent in making the movie because it occurred when the cameras were not rolling and, as a result, did not involve the right of free speech or an issue of public interest. The court of appeals rejected this contention upheld the dismissal of the racial harassment case and required Daniel to pay all of Wayan's legal fees pursuant to the anti-SLAPP rules.

This case, like the 2006, *Friends* harassment case (*Lyle v. WB Television Productions, et al*) (in which a writer's assistant sued the producers of *Friends* because of lewd talk in the writers room), demonstrates that harassment laws are applied quite differently in the entertainment industry as compared to other traditional industries, and that the Constitution's 1st amendment protects the creative process to such an extent that it will trump mere statutory employment laws when such laws may infringe upon those creative artistic rights.

In both cases, the importance of permitting lewd and bawdy humor on the set by the show's creators, is an important and protected part of the creative process particularly in the realm of comedy. Further, while the decision does not depend on it, the fact that both Plaintiff and Wayans were both African-American is an important fact that was not overlooked.

Moreover, as expressly stated in the *Friends* case (despite growing misperceptions in today's society) harassment laws are not civility laws. The test is not were statements were offensive? Rather, the test is: Were statements/conduct so offensive that on both an objective and subjective level, it altered the

June 30th is the deadline for Pierce Law Group to achieve its goal of raising \$50,000 and in so doing receive an LLS grant named in memory of David's father, **Malcolm "Mac" Pierce**.

We are \$35,000 away from our goal. To contribute, please: [\[Click here to Donate\]](#)

(Seriously, folks, please help us, every donation counts!)

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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.

conditions of the workplace and were done with a discriminatory intent.

Nonetheless, in this age of increasing sensitivities particularly among Millennials, producers are always encouraged to be aware of employment laws and should be sensitive of the concerns of all employees-- in other words just because defenses may exist to permit you to be offensive around or even to specific individuals in pursuit of creativity, doesn't mean you necessarily should do so.

Pierce Law Group LLP has been a leader in the area of employment law matters affecting the entertainment industry for nearly 20 years. If you have a question about labor & employment law, contact: [Tony Hanna](#) or [David Albert Pierce](#).

Upcoming Seminars & Speaking Engagements



On **May 10th**, the **Beverly Hills Bar Association Entertainment Law Section** will be presenting at Noon at Lawry's Restaurant a panel, **"Terminated On Friday the 13th: An Update On Terminating Copyright Transfers"** covering the topic of copyright termination with a focus on the *Friday the 13th* litigation. Panelists include **Marc Toberoff & Aaron J. Moss** of Greenberg Glusker who represented the parties in the *Friday the 13th* litigation, **Michael Lovitz** (Lovitz IP Law P.C.). The panel will also provide an overview of copyright termination rights in general, including notification requirements, as well as the potential effect of an author/artist's use of a loan out corporation on his or her termination rights. **David Albert Pierce** is the Exec. Committee Secretary for the BHBA Entertainment Law Section and serves as part of its seminar planning committee. For more information click here: [\[Terminating Copyrights Seminar\]](#)

On **May 31th**, the **Beverly Hills Bar Association Intellectual Property & New Media Section** will be presenting at Noon at the BHBA headquarters (9420 Wilshire Blvd. 2nd Floor) an additional copyright panel entitled, **"Comprehensive Copyright Infringement Remedies."** Panelists include attorneys **Robert F. Helfing** and **Karen Vogel Weil**, as well as **Professor Richard Walter**, Associate Dean of UCLA School of Theater, Film & Television. The panel will be moderated by **Vera Golosker** of **Pierce Law Group LLP**. For more information click here: [\[Comprehensive Copyright Infringement Remedies Seminar\]](#)

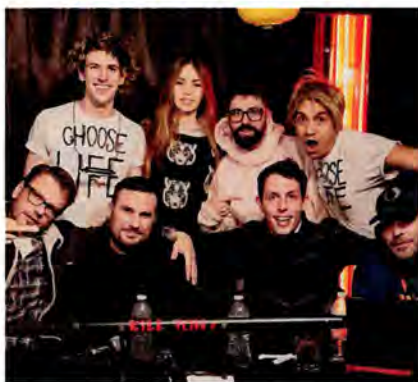
More Deadly Comedy By Our Clients

Are you a comedy fan and not listening to the weekly podcast Kill Tony taped live each Monday night at the world famous Comedy Store? If so, what's wrong with you???



Subscribe to the hilarity led by PLG-LLP client Tony Hinchcliffe, by clicking here:

[\[WATCH KILL TONY\]](#)



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The information you obtain in this newsletter is not, nor is it intended to be, legal advice but rather general educational and informational content. Different jurisdictions, changing laws, and unique fact patterns should always be individually analyzed. You should always 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

\$6.5 Million Wage-Hour Settlement for Strippers is Reminder to Properly Classify Employees by Anthony Hanna, Esq.

A Michigan federal judge on April 17th agreed to stay at least a dozen wage-and-hour suits alleging gentleman's club chain Deja Vu Consulting Inc. misclassifies exotic dancers as independent contractors, two days after giving a preliminary okay to a \$6.5 million settlement covering between 45,000 and 50,000 dancers at 64 clubs nationwide.

Regardless of what aspect of the entertainment industry you may be in (or any industry for that matter), the proper classification of workers is essential. Most employers fail to fully understand the incredibly penalties, back taxes and liability that can result from misclassifying an employee as an independent contractor. Proper classification is based on legal standards and often confusing legal tests. It doesn't matter if the workers themselves strongly desires or even demands to be treated as independent contractors— if the law forbids it, the agreement to treat them as independent contractors will be ignored by courts, the labor board as well as taxing authorities.

Have a question about employees and independent contractors or how to best draft a contract with job duties that promotes bona fide independent contractor status? Contact the attorneys at Pierce Law Group LLP.

such time as an attorney-client relationship has been established.

PIERCE
LAW GROUP LLP

SUITE 225 EAST TOWER
9100 WILSHIRE BOULEVARD
BEVERLY HILLS, CALIFORNIA 90212
T 310 274 9191 F 310 274 9151
WWW.PIERCELAWGROUPLLP.COM

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