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# PIERCE

## LAW GROUP LLP

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

### Entertainment Law Circular

September 2018

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#### PLG at the Movies

Lionsgate Films releases **A Simple Favor**, directed by **Paul Feig** (**Bridesmaids**) is now in theaters.

The film, which stars **Anna Kendrick** and **Blake Lively**, centers around a vlogger who seeks to uncover the truth behind her best friend Emily's sudden disappearance from their small town.

Pierce Law Group LLP is proud to have once again provided legal services for our longtime client **Lionsgate** on this project. You can view the trailer below.



Pierce Law Group LLP Client, **Bold Films** premiered its latest film, **Vox Lux** at the **2018 Venice Film Festival** to strong reviews.

#### Update to Regulations Regard Work Permits For Minors

An amendment to **Labor Code Section 1310** was signed into law on **Sept. 5, 2018** concerning Employment of Minors in the Entertainment Industry. The new amendment deals with the exception to the requirement of obtaining a work permit for minors.

The prior exception stated that written consent of the Labor Commissioner (i.e. a work permit) is not required for minors under 16 working on a radio or tv broadcast in situations when the minor does not receive compensation and it is a single appearance lasting not more than 1 hour and an admission fee is not charged.

The new amendment broadens this exception to include situations where the entertainment broadcast occurs via digital exhibitions. In other words, webcasts and podcasts are now include in the exemption along with radio and tv broadcast, if all of the same factors for the exemption exist. The text of the new law is found [here](#).

#### The Lawyers Role During The Development Stage of Production

By David Albert Pierce, Esq.

*[The following is an advance preview of an article set for publication in the upcoming MovieMaker*

**Pierce Law Group** is proud to have provided legal services for this film which stars **Natalie Portman** and **Jude Law** and features original music by **Sia**.

**Neon Distribution** has acquired the film with the hopes of running an Oscar campaign. It will be released **December 7**.



The indie about the L.A. Music scene titled, "**High Voltage**" has been acquired by up-and-coming distributor, **SP Releasing**. The film stars David Arquette and Luke Wilson. It was written and directed by Pierce Law Group client **Alex Keligian** and produced by Keligian and fellow Pierce Law Group client **Evan Astrowsky**.

**Pierce Law Group LLP** provided production counsel and legal financing services for the project, and negotiated the acquisition agreement.



"Development" is the time when budgets need to be both created and tested. It is also the time when you need to properly secure your rights to the literary work or works that serve as the foundation for the film that will ultimately be produced. And, of course, the Development Phase is when money for the film is raised. Consulting with a production attorney early and often during Development can actually save you a lot in legal fees later on-- it is always cheaper to do things right the first time around than to have to mop up legal messes later. An experienced production attorney can help you in a number of ways well before that "Day Out of Days" production schedule is even established.

### Acquiring the Property

The Development Phase is when the story is not just developed but when rights to the story should be clearly identified and acquired. A production attorney can help you strategize whether it is best to outright buy a script or simply option it while you further develop it via rewrites and polishes.

Likewise, if you've written your own script, at some point in the process you will need to transfer it to your production entity that is producing the film. But should that occur right away through an assignment directly from you to your production entity or should you simply give your production entity an option to acquire it from yourself? Depending on how your financing is set up and who your producing partners are the answer may be different depending on your circumstances.

You will also need to decide when the script purchase price will occur. If you are the writer and producer, you may decide to defer your payment and place it as part of the first money back from the sale of the film ahead of your investors. By deferring payment to yourself you will be allowing more money to be "put on the screen" and free up your production budget. By properly crafting the placement of the deferral among the priority of others who participate in the revenue proceeds (such as investors or other profit participants), you'll stand a better chance of actually get paid. Your production counsel can help you strategize what is best for you.

Further, its essential that this payment structure and the rights acquisition information be properly laid out within any investment documents. For example, so that the investors understand the writer's deferred fee sits ahead of their return on their investment. If not properly laid out or if conflicting promises are made, you, as the producer, will find yourself with a lot of headaches. Coordinating all of this in advance

### PLG Upcoming Seminars & Speaking Engagements

On **Saturday, October 6th** from **10 am - Noon**, **Pierce Law Group LLP Partner Trea Tran Lachowicz** will be conducting a seminar

entitled "Film Finance 101" as part of **Loyal Marymount University's** newly established **Business of Film Certificate Program**. The seminar will be held at LMU's Playa Vista Campus.



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

will save time, money and headaches. Similarly, it is during the Development Phase when you will need to decide what reserved rights you may want to hold back for yourself if you are the original creator. Even the most obscure film can today become the subject of a Broadway Musical or a graphic comic- the ability to hold back some of those rights from the very beginning is a decision that should not be overlooked and it may be the only time when those rights can be separated without a bigger producing partner or distributor insisting on taking them.

The Acquisition documents that are negotiated and created during Development serve as the beginning links of the chain of title that show all the world who actually owns what will become the finished film and explains to E&O insurance carriers and distributors how this ownership changed hands during the life of the project. If additional screenwriters are brought on those individuals need work-for-hire contracts. And even at this very early stage you will need to consider what type of profit participation those writers may receive and how those profits will be calculated and determined.--- These decisions will be very different if you are making an independent film on your own as opposed to selling the film to major studio or teaming up with a more established production house.

Strategic long term planning and the ability to ask "what if?" to all the possible "what ifs" that may arise following Development should be thoughtfully considered when drafting those initial Acquisition documents, particularly if you are unsure how the hell you are actually going to fund and produce the film.

### Developing A Financing Strategy

Development is also the time when producers chart out the strategy for financing the film. Take the time during Development to fully understand the different methods of financing and how they work together. Almost all films today rely to some extent on tax incentive money. Smart producers use the Development Phase to fully research and understand the everchanging state tax incentive systems.

Just because you produced a film 2 years ago in one state doesn't mean their tax incentive program remains the same today. Understanding the difference between tax credits and tax rebates and how those two very different types of tax incentives are paid out and when is information that far too many new filmmakers fail to properly understand until it is too late. A 25% tax rebate from Alabama will actually result in more money in the producer's pocket than a 35% tax credit from Georgia.

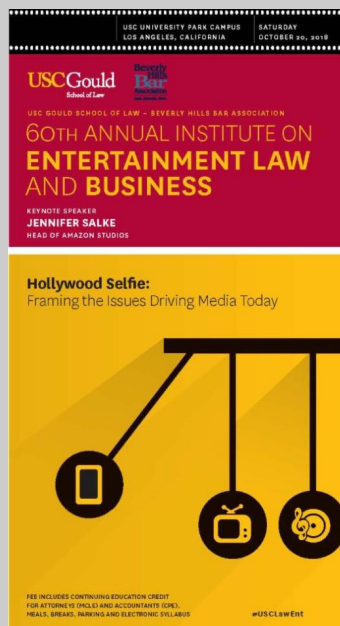


On **Tuesday, October 8th** from **6:30 pm - 8:30 pm**, David will be speaking on a **Beverly Hills Bar** panel entitled "**Breaking Into Entertainment Lawyer**." The program is open to all college and law school students interested in a career in entertainment law. It will take place at the **BHBA headquarters** in Beverly Hills. A wine & cheese reception will occur before the presentation.

For more information and to register, [click here](#).



On **Saturday, October 20, 2018**, **USC Gould School of Law** in conjunction with the **Beverly Hills Bar Association** will be holding the **60th Annual Institute on Entertainment Law and Business** at the USC University Park Campus. This is a full day event. For registration & complete syllabus information, [click here](#).



**David Albert Pierce** serves on the Planning Committee for Institute on Entertainment Law and Business.



There is still time to enroll in **David Albert Pierce's UCLA-Extension course entitled "Starting Your Own Entertainment Production Company"** The course meets **Monday nights from 7 pm - 10 pm** for 12 week from **September 24 - December 10** on the UCLA campus.

This course addresses essential issues regarding the legal and business affairs basics for running a production and discusses planning, implementation, and management issues.

For more information and to register, [click here](#).



## David Albert Pierce assumes Chairmanship of Beverly Hills Bar Entertainment Law Section



On September 25th, the BHBA had its annual Installation and Awards Dinner. **David Albert Pierce** was installed as **Chairman of the Bar's Entertainment Law Section** for 2018 - 2019.

Are you planning on raising money from passive investors with deep pockets? The time to understand the workings of Private Placement Offerings needs to occur before you take their money, not afterwards. Will those investors demand a completion bond? If so, do you know how much to allocate for that bond and what legal documents the bond company will demand to review before issuing one?

A seasoned film finance attorney can answer these and other financing questions for you, introduce you to other financing experts that can help you monetize those tax incentives when you most need the cash flow and ensure that all financing transaction are done in a lawful and compliant manner. Strategic long term planning at the start of the process will not only save you money, it can actually earn you money.  
Ensuring Accurate Budgets

Most Line Producers exit the production process when Principal Photography ends. An unfortunate result of this is that cost overruns and unforeseen budget expenditures often do not reveal themselves until well into the Post-Production and Delivery phases of the Picture. This allows the Line Producer to proclaim to both the producers on the film that he or she just departed, as well as, to future prospective employers, "The film was entirely on time and on budget while I was in charge!"

Sometime this happens because Line Producers are just entirely unfamiliar with all of the true costs tied with Delivery since they are often working for another production long before Post-Production is completed and may not even comprehend what a distributor may actually require for Delivery. Other times it can be for less innocent reasons, such as, the Line Producer wanting to impress his bosses by delivering a budget within their strict orders and limitations within a precise dollar range-even when the Line Producer know all too well the numbers just won't work. In those situations, there is a real incentive for Line Producers to do the most drastic and unrealistic shaving of lines on the budget from the Post-Production and Delivery phases. Cheating on the music budget is a classic way of meeting the bosses dictates. When the Music Supervisor is attempting to secure that essential Springsteen song for the most important scene, the Line Producer will be far gone just as that underbudgeted item reveal themselves.

A sophisticated production counsel can consult with you early on and share some of the horror stories and mistakes of other producers who failed to properly consider all of the budget needs that exist long after Production wraps. They can also share

## Pierce Law Group New Faces

**Dhara J. Patel** is an associate attorney at Pierce Law Group, LLP focusing on litigation, intellectual property and employment law matters.

Dhara is admitted to practice law in California, New York and New Jersey.

Dhara completed both her undergraduate studies and law school at the **University of Pittsburgh**. During law school, she served as an Associate Editor of Pitt's **Tax Law Review** and completed a certificate in International and Comparative law. Prior to joining Pierce Law Group, Dhara served as a law clerk for the **Honorable Michael A. Toto** in New Jersey where she gained extensive experience in general civil matters.

She enjoys college football, traveling, running, dogs and is a big foodie! She also engages in charitable endeavors as a volunteer for **Education First** and **Amnesty International**.

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**Jillian Saint Rodenberg** is an executive assistant at Pierce Law Group, LLP.

She began her collegiate career at **Florida State University** and she finalized her entertainment management studies with a **NBC Universal** work study in Orlando, FL.

Prior to joining Pierce Law Group, Jillian served as an administrator for several years for a law firm in Studio City gaining extensive experience in legal services and law firm operations. Jillian is also an accomplished comedian so feel free to catch her around town doing stand-up or see her in Hollywood performing/producing a character-driven, comedy variety show called **The Color Collective!**

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## Face Forward Charity Raises Big Bucks For Worthy Cause

wisdom and techniques for avoiding Deliverable shortages that arise from unforeseen Deliverable requirements.

One such technique is to employ a Post-Production Supervisor to carefully and critically review your line item budget during the Development Phase at the time the budget is being crafted. A good Post-Production Supervisor should be able to spot flaws quickly and you need only pay her perhaps the equivalent of a day's pay provided in return she is also guaranteed to return as the actual Post-Production Supervisor, if and when, the film actually moves forward with financing and production (and of course subject to her then availability).

Another technique is to obtain early on at the Development Phase a full set of "Deliverable Requirements." A friendly distributor will provide that list even without any promised involvement as the ultimate distributor in the film. If you don't know a friendly distributor, your attorney probably does. Your attorney will probably also have a few different sets of Deliverable Requirements that were previously used for similar projects to your own that he or she may be able to share with you.

The Delivery Requirements consist of the complete checklist of absolute essential items which the distributor will demand before you get paid your promised Advance and before the film is deemed ready to exhibit. These items include both "Technical Deliverables"- i.e. the manner in which the master must be delivered, the digital format, the required sound quality, the type of M&E tracks they will require, etc.; and "Legal Deliverable"- i.e. the types of insurance you must have, the minimum duration and amounts of insurance coverage needed, copyright and title reports, as well as, things such as the music licenses, cue sheets, cast & crew contracts, paid ads obligations, etc. By carefully reviewing these two lists and understanding how much each item on the list will cost to create and deliver, the real actual budget requirements will come to be known and no surprises (or at least far fewer surprises) will arise.

## Closing Thoughts

They say in politics, if you want a true friend, get a dog. In independent filmmaking, if you want a true friend, get a trusted attorney. The attorney is your watch dog, guard dog, attack dog and loyal companion. The more they know about you, your needs, and your objectives, the better they can loyally serve you. While every crew member is essential, and many are downright bona fide masterful artist geniuses, the one member of the production who most often stands by your side-- from the inception of the project until long after



Dr. David Alessi (center) alongside a handful of the other highly specialized surgeons that volunteer their time to the Face Forward mission.

On Saturday, September 22nd, the Face Forward charity held its annual gala at the Beverly Wilshire Hotel and raised over a Half Million Dollars.

Face Forward was created by Pierce Law Group LLP clients David and Deborah Alessi and provides, via a group of highly specialized volunteer surgeons, extensive and radical reconstructive surgery for victims who suffer disfiguring acts of domestic violence, human trafficking, and acid attacks.

Actress/Producer Christina DeRosa, also a Pierce Law Group Client served as the Chairwoman of this year's gala.



delivery to the Distributor has occurred-- is your attorney. Woof!

## Hollywood Teamsters Reach A Deal

By Anthony Hanna, Esq.

Hollywood's Teamsters and the basic crafts unions have reached a tentative agreement on a new three-year contract. Terms of the deal, which must be ratified by the unions' members, were not disclosed.

Said Carol Lombardini, president of management's Alliance of Motion Picture & Television Producers, "The new agreement will keep productions working without interruption in the Los Angeles area and provide certainty for producers and labor for the next three years."

The basic crafts unions include Teamsters Local 399, International Brotherhood of Electrical Workers Local 40, Plumbers and Pipe Fitters Local 78, Studio Utility Employees Local 724 and Plasterers and Cement Masons Local 755.

## Game Changing Updates to California Mediation Law by Dhara Patel, Esq.

On September 11, 2018, Governor Jerry Brown signed SB 954 into law, which amends Section 1122 of the California Evidence Code and adds Section 1129.

Under current law, anything said in the course of retaining mediation consultation or mediation for the purposes of settling or resolving a civil dispute is confidential. In other words, such statements are not admissible as evidence or subject to discovery.

Under the new law, attorneys representing clients in mediation are required to provide a written disclosure, contents of which are set forth in the statute, about mediation confidentiality. The written disclosure must be provided to clients before clients agree to participate in mediation. If, however, an attorney is retained after a client has already agreed to participate in mediation, then an attorney must provide a written disclosure as soon as possible after being retained.

The law will go into effect on January 1, 2019. The text of the new law is found [here](#).

David Pierce with FaceForward founder Deborah Alessi at the charity's annual gala

Comedian/Screenwriter Heather Marie Zagone models the Pierce Law Group cap



**someday is today**

September is blood cancer awareness month. Pierce Law Group is a proud sponsor of the Leukemia Lymphoma Society.

Pierce Law Group LLP recognized as industry leader by peers and professional associations

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Lawyers®**

**Avvo** **10.0**  
Rating   
Superb



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.

#### 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.

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