

# PIERCE

## LAW GROUP LLP

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*Film • TV • New Media*

Entertainment Law Circular

September 2019

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### Seminars & Events



L-R: BHBA Entertainment Law Past Chair Piere Pine, Program Chair Susan Rabin, Ken Ziffren, Section Chair David Albert Pierce, Section Secretary Larry Vrbit

On **August 21st**, the **Beverly Hills Bar Association's Entertainment Law Section** presented the esteemed entertainment attorney/guru **Ken Ziffren's 11th Annual State of the Industry Address** titled, "**Features/TV 12.0**" at **Lawry's Prime Rib**. **David Albert Pierce is the Chairman of the BHBA Entertainment Law Section and introduced and welcomed Mr. Ziffren to this annual event in which** he addressed recent changes and trends and their impact on the rights of various entertainment industry parties.



Indie Law: Our Entertainment Law Expert Pulls Your Legal Questions From The MM Mailbag  
By David Albert Pierce, Esq.

**[The following is David Albert Pierce's most recent article that appears in the Summer 2019 issue of MovieMaker Magazine now on newsstands and online at MovieMaker.com]**



**For this edition of Indie Law, we asked readers to send us their burning legal questions to be answered by our long-time favorite independent film counselor, David Pierce of the Pierce Law Group in Beverly Hills.**

First, we'll address Unions: You can't violate Taft-Hartley laws with them, and can't get distributors interested in your film without them.

Q: I'm in pre-production on a SAG ultra-low budget film. The first 10 minutes of the film are to be filmed in ancient China and the rest of the movie is set in modern-day L.A. I heard from a friend that SAG wouldn't allow any filming to take place outside of the country-that it would all have to be filmed in the U.S., so we can't film part in China. Is that true?

A: SAG-AFTRA will gladly allow any American-based producers who sign on to the union's Basic Agreement to film anywhere in the world with their talent, assuming the rules of the Basic Agreement are observed. Likewise, producers based outside the U.S. can also



**Ken Ziffren** co-founded **Ziffren, Brittenham, LLP**, considered one of the country's premiere entertainment law firms, over thirty years ago. Highly respected in both the legal and entertainment communities, Ken Ziffren is universally recognized as a master negotiator of complex entertainment matters.

### Upcoming Seminars



On **Wednesday, October 2, 2019**, **BHBA Entertainment Law Section** will present a seminar titled, "**The Effects of AB-5 on Entertainment Loan-Out Corporations.**" The event will take place at **Lawry's Prime Rib** from Noon - 2 pm. and will discuss the newly passed California law which greatly overhauls the definition of who is a bona fide independent contractor.

**Pierce Law Group LLP's** Litigation Dept Head, **John Baldivia** is the Program Chair. The speakers for the event include: **David Albert Pierce, Esq.** **Schulyer Moore, Esq.** and **Greg Zblut, CPA/Esq.**

Tickets can be purchased at the BHBA website:

<https://bhba.org/events/2019-10/>



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 **Loyola Marymount University's** newly established **Business of Film Certificate Program**. The seminar will be held at **LMU's Playa Vista Campus**.

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



Film Finance 101 Seminar & Business of Film Certificate Program Info Session

There are many sources of money available to finance your film, but knowing which to use and how to tap them can be tricky. Come learn from the instructors in LMU's Business of Film Certificate Program about how to get your film financed and how to pay your talent, your investors, and yourself through participation. This free seminar is open to anyone interested. There will also be time for networking with the instructors and the other participants at this event (but there will not be time to pitch your film).

Register [here](#).

utilize SAG-AFTRA actors, provided that if those foreign producers film within the U.S. they adhere to the rules of the Basic Agreement. Alternatively, if the foreign producers are filming on foreign soil, special rules known as "GR-1," foreign production rules will apply. SAG-AFTRA therefore makes it easy for producers-no matter where they're based or where they plan to film-to utilize SAG-AFTRA talent.

However, all of the above referenced situations presume that the Basic Agreement is applicable to the film. So if you're a producer utilizing one of the assorted alternative agreements that SAG-AFTRA has created for low-budget moviemaking, a number of differences apply between the rules governing the assorted Low Budget Agreements and the Basic Agreement. One of these differing rules is that if you're going to utilize one of the SAG-AFTRA Low Budget Agreements, all filming must occur solely within the United States. If a producer attempts to film in a foreign country while using a Low Budget Agreement, that producer will be in violation of the eligibility terms of that agreement and SAG-AFTRA can declare that the preferential fees and actor rates contained within the agreement no longer apply. In such a case, the producer will be held to the full acting fees and rates established under the traditional Basic Agreement.

SAG-AFTRA can likewise impose the Basic Agreement rates in the event the production goes over budget beyond the maximum cap permitted under the assorted Low Budget Agreements. Far too many novice producers fail to fully understand the importance of the maximum budget caps that must be adhered to in order to take advantage of the assorted Low Budget Agreements. And that can often lead to dire consequences for the producer who is suddenly faced with a union demand that all of the actors receive retroactive payments to match the Basic Agreement's minimum rates.

SAG-AFTRA has an assortment of Low Budget Agreements that provide for reduced rates and relaxed union rules for situations when a film falls under the maximum dollar amount permitted by the assorted agreements. It offers five alternatives to its Basic Agreement for Theatrical films. These include:

1. Low Budget Agreement: Governing films with budgets less than \$2.5 million which increases to \$3.75 million if the "Diversity-in-Film" criteria applies.
2. Modified Low Budget Agreement: Governing films with budgets less than \$700,000 which increases to \$1,050,000 if the "Diversity-in-Film" criteria applies.
3. Ultra-Low Budget Agreement: Governing films with budgets less than \$250,000.
4. Short Film Agreement: For projects under 40 minutes in length with budgets less than \$50,000.
5. Student Film Agreement: For projects that are a part of an accredited school's curriculum with budgets less than \$35,000.

Producers should fully understand which SAG-AFTRA contracts are best for their needs and all of the rules that are connected with each of those contracts. Remember: Just because your best friend made a film under the Modified Low Budget Agreement doesn't automatically

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**2019 INSTITUTE ON ENTERTAINMENT LAW AND BUSINESS**

KEYNOTE SPEAKER  
**JOHN LANDGRAF**  
CHIEF EXECUTIVE OFFICER, FX NETWORKS

On **Saturday, October 26, 2019**, 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](#).

PLG-LLP managing partner **David Albert Pierce** serves on the Planning Committee and our Litigation Dept. Head **John Baldivia** serves on the Syllabus Committee for the Institute on Entertainment Law and Business.



There is still time to enroll in **David Albert Pierce's UCLA-Extension course** titled, "**Starting Your Own Entertainment Production Company**." The course meets **Monday** nights from **7pm - 10pm** for 12 weeks from **September 23 - December 10** on the **UCLA** campus.

This ten week course addresses essential issues regarding the legal and business affairs basics for running a production and discusses planning, implementation, and management issues. This is a great class for anyone planning on producing television, film or new media projects.

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

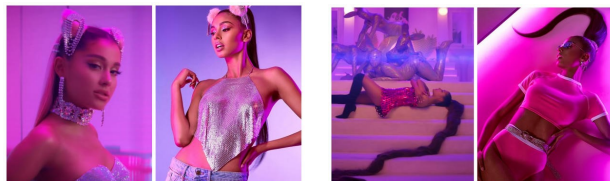
Pierce Law Group LLP Client Visits

mean that your particular situation will permit you to utilize that agreement.

Regarding the situation in which you need to film the opening 10 minutes in ancient China, your friends are correct: If you are planning on shooting your film under the Low Budget Agreement (i.e. budgets of under \$2.5 million or \$3.75 million if the Diversity-in-Casting Incentive is met) then as stated above you will not be able to travel outside the U.S. with your actors to shoot. So, you'll need to be creative. First, let's recognize that unless you have a working time machine to travel to ancient China, you won't be actually filming in "ancient China." Even modern China doesn't look like ancient China, so even if you were in China, you'd still need to rely on some heavy-set dressings, costumes, and set construction. As a producer working on a low budget, this is not the only area in which you will likely need to "cheat the shot" to stay in your budget. If moving up to the SAG-AFTRA Basic Agreement is not a viable alternative for permitting you to film in China, then to "cheat the shot," you might consider: [to continue reading the entire article please [click here](#)

### Industry Wisdom

Recent Decisions Relevant to Entertainment Law  
by Michael Peters



### In re to Ariana Grande v. Forever 21

Ariana Grande has filed a lawsuit against Forever 21 for misappropriation of name, image, likeness and music, seeking no less than ten million dollars. Grande is accusing Forever 21 of using a "strikingly similar" model in an internet campaign, appropriating her lyrics, and imagery from her "7 Rings" music video. Forever 21 had contacted Ariana Grande regarding a marketing partnership but no deal was ever entered.

This case may raise interesting questions regarding how protectable a "look" or "style" is under theories of right of publicity and trademark. Grande has pointed out such similarities as her signature ponytail hair style, which raises a similar issues as was heard on the Vanna White (Wheel of Fortune) case, where a robot adorned in a wig, dress, and jewels potentially infringed on White's right of publicity and trademark because the robot used by Samsung in the commercials could reasonably be understood to be a representation of her (White prevailed on summary judgement as there was an issue of material fact regarding both right of publicity and Lanham act claims). Similarly, here, Forever 21 has apparently appropriated identifiable characteristics of Grande's public persona (the ponytail) and a substantially similar phrase (one ad read "you want it, we got it" as compared to Grande's "I want it, I got it"). Further, Forever 21 used a



Martin DeLuca (left) and David A. Pierce (right)

We love when our clients stop by to see us at our office in Beverly Hills! Here is David Albert Pierce with screenwriter and client **Martin DeLuca**, who visited our office wearing the official Pierce Law Group LLP cap.

At the end of August, PLG closed an Option/Purchase deal for DeLuca's latest film project currently entitled, "**Gardel: The King of Tango.**"

Pierce Law Group LLP New Faces



Paige Blankenship  
Client Director



Matthew Rochester  
Executive Assistant to  
David Albert Pierce

Welcome **Paige Blankenship**, our new **Client Director**.

She formerly worked at Artistry Agency as an assistant. She holds a **Bachelors of Arts in Film Studies** from the **University of North Carolina Wilmington** with a Leadership Studies minor. During her enrollment, Paige served as an Honor Board Member for all four years, earning multiple awards. She got involved in the community, leading volunteer efforts with the organizations Step Up for Soldiers and Heart of the Matter. She also started, and then ran, the only paid internship in the UNCW Film Studies program through the **UNCW Center for Innovation and Entrepreneurship**.

After graduating, the industrious Paige started a production company in Downtown Wilmington, NC where she stayed involved in the local community with organizations such as **Cucalorus Film Festival**, the **Rotary Club of Wilmington**, and in April 2017, she founded the **NC FILM forum** (a monthly networking event for film professionals).

Paige enjoys watching MMA every Saturday. In her free time, she hula-hoops (sometimes for hours). We are confident Paige will be a great asset as a liaison serving as an extra support mechanism for our clients.

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**Matthew Rochester** has joined our firm as an **Executive Assistant** to David Albert Pierce.

seemingly identical "7" from the Grande's "7 Rings" video in one of their advertisements.



**In re NFL Sunday Ticket Antitrust Litigation (9<sup>th</sup> Cir., August 13, 2019).**

**Media Antitrust [2019 DJDAR 7581]**

A class action antitrust suit has been filed against various defendants, including the NFL, alleging that the pooling of broadcast rights of all 32 professional football teams within the NFL is an illegal conspiracy to suppress competition under the Sherman Act. Currently, fans must subscribe to DirectTV and NFL Sunday Ticket to view out-of-market games not offered on over-the-air television via CBS or Fox. The district court dismissed the action for failure to state a claim and the 9<sup>th</sup> Circuit has reversed.

The claim was properly plead, according to the 9<sup>th</sup> Circuit, and the plaintiffs have established antitrust standing because they properly alleged that the agreements at issue harmed competition by monopolizing professional football telecasts and such agreements were designed to maintain power over the market.

As media companies become less numerous by way of mergers and acquisitions, antitrust claims against rightsholders of "essential" intellectual property are becoming more and more viable. Similar to the suit arising from the AT&T-Time Warner merger (*U.S. v. AT&T*, 17-2511), the outcome of these disputes may have a substantial impact on the landscape of the future entertainment industry.



**Dawson v. NCAA (9<sup>th</sup> Cir., August 12, 2019) - Sports, Employment [2019 DJDAR 7547]**

Lamar Dawson, a USC football player, sued the National Collegiate Athletic Association and PAC-12 for various labor violations, alleging an employment relationship between these organizations and student

Matthew double-majored in **Film Studies and Creative Writing** at the **University of North Carolina Wilmington**. During his undergrad enrollment, Matthew served as a member of the CIE Media Team at **UNCW's Center for Innovation Entrepreneurship**. He followed this with an **M.F.A. in Screenwriting at Chapman University**. During his time at Chapman, he wrote shorts for various Directors, assisted the head manager of a management company, and interned in the development department at **Palm Star Media (John Wick, Hereditary)**.

Prior to joining Pierce Law Group, Matthew was the personal assistant to, director and writer, **Mark Christopher**.

Matthew enjoys photography, learning new instruments, travelling, dogs, and reading and writing screenplays. In his spare time, he enjoys using his photoshop skills to make movie posters for indie film projects.

#### In Other News



**The Edgar Allan Show** runs every Friday and Saturday night from **Sept. 27 - Oct. 19** and is a comedic celebration of Edgar Allan Poe's master works, just in time for Halloween, featuring original songs by **PLG client, Ari Stidham** (best known as 'Sylvester Dodd' on CBS' *Scorpion*).

All ages welcome. The show is running at the **Two Roads Theater Company** at 4348 Tujunga Ave, Studio City, CA 91604.

For tickets, [click here](#).



**MovieMaker Production Services** has helped multiple productions get deals, make connections, publicize their films and save tens of thousands of dollars of their budgets since its inception in 2016. They have a limited number of productions that they work with per year, and positions are going fast for 2019.

[Apply now](#) for your 2019 or 2020 project .

**SAG-AFTRA** now offers direct deposit of residual payments for its members. By registering

athletes that were bound by the terms and conditions for performance set by the organizations. A motion to dismiss was granted for both organizations and the same has been affirmed by the 9<sup>th</sup> Circuit.

Student athletes are not employees of the NCAA or PAC-12 for many reasons. The Fair Labor Standards Act determines employment under a test of "economic reality" and evaluated with regard to "the circumstances of the whole activity." There was no compensation paid by the organizations, Dawson received his scholarship from the school. The organizations had no authority over players in any hiring, firing, or supervisory capacity. Finally, the revenue generated by student athletes for these organizations is insubstantial towards establishing the existence of an employer-employee relationship as "revenue does not automatically engender or foreclose the existence of an employment relationship under the FLSA."



**Patel v. Facebook, Inc. (9<sup>th</sup> Cir., August 8, 2019)**  
**Right of Privacy, Constitutional Standing [2019 DJDAR 7421]**

Facebook added a "tag suggestion" feature on its social media platform that utilized a massive database of face templates and scanned uploaded photos against that database to suggest the names and profiles of individuals who may appear in those photos. Illinois Facebook users filed a class action alleging that this function and database violated the Illinois Biometric Information Privacy Act (BIPA). Facebook moved to dismiss for lack of standing, claiming that the class had not suffered an injury in fact, nor were they materially at risk of such a harm.

The trial court denied Facebook's motion to dismiss and the 9<sup>th</sup> Circuit has affirmed the decision. The Court held that the BIPA protected a concrete privacy interest and therefore violations of the BIPA via storing individuals' facial profiles without consent invaded those interests and presented an actionable risk of material harm. Therefore, the trial court's decision to deny the motion to dismiss and certify the class was not an abuse of discretion.



for the service at [sagaftra.org](http://sagaftra.org), residual payments will be aggregated across studios and payroll houses, distributed twice a week to the bank account of your choice. Residual check images, stubs and a statement will be available to view online, along with an email notifying you each time a deposit is made. The diagram to the left shows the easy step-by-step process.



**Brown v. Showtime Networks, Inc. (N.Y. Southern Dist., August 2, 2019)**  
**Name and Likeness Rights [18 Civ. 11078 (CM) (JLC)]**

The New York Southern District Court ruled on August 2 that Showtime did not need the consent of Bobby or Kristina Brown to use their name and likeness in the Whitney Houston documentary *Whitney: Can I Be Me*. The film contained thirty minutes of footage depicting Bobby and Kristina, all of which was taken from a reality television program entitled *Being Bobby Brown*.

Bobby Brown sued for claims concerning right of publicity, 3344, and Lanham Act violations. Each of these claims were dismissed on First Amendment grounds because the Defendant's film is both an expressive work and a report on a matter of public interest.

This reflects a trend in recognizing the strength of filmmaker's 1st Amendment rights in cases of these types involving real life figures depicted in both documentaries as well as narrative features.

**Call For Entries - Digital, Interactive & Gaming**



The **deadline** for submissions to **Slamdance's DIG** showcase is **August 31st** and approaching fast.

Slamdance DIG is a showcase of the most compelling productions in digital, interactive, and gaming. To be held **October 23-26 in downtown Los Angeles**, DIG provides a platform for independent creators who innovate outside of traditional media.

If interested in submitting: [click here](#)

**French Film Festival in Los Angeles**



**COLCOA**, which stands for "City of Light, City of Angels," celebrates relationships between filmmakers from two capital cities of cinema.

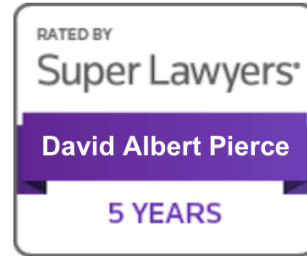
**COLCOA FRENCH FILM FESTIVAL** is committed to promoting new French films and series in the U.S., while showcasing French cinema, television, and shorts in Hollywood. These new television series, documentaries, and shorts will premiere **September 23rd - 28th, 2019** in various theaters around Los Angeles. For more information, and to buy tickets, [click here](#).

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Pierce Law Group LLP recognizes as industry leaders by peers and professional associations



**AVVO**  
Rating

**10.0**



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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