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# PIERCE

## LAW GROUP LLP

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

### Entertainment Law Circular

August 2019

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#### PLG at the Movies



On **August 16th**, our client, **Lionsgate Films** releases **Good Boys**, a hysterical comedy about three 12 year old friends learning about life and what may best be described as "R Rated innocence." **Pierce Law Group LLP** is proud to have provided legal services for Lionsgate on this project.

And if you'd rather be frightened by children rather than laugh at them, also continuing to play in theaters this Summer, is our client **MGM's** release of the remake of the horror classic "**Child's Play**." **Pierce Law Group LLP** is proud to be a part of Team Chucky! You can view the trailer below.

#### Industry Wisdom

Recent Decisions Relevant to Entertainment Law  
by Michael Peters



#### **Butowsky v. Wigdor (Tex. Eastern, August 1, 2019) - Defamation**

Former Fox Commentator Ed Butowsky has filed a \$118 million defamation suit against Douglas Wigdor and Rod Wheeler. Butowsky claims the defendants falsely accused him of disseminating fake news related to Donald Trump, Russia, WikiLeaks, and the death of DNC staffer Seth Rich in 2016. This is in response to the suit filed by Wheeler regarding the story Fox aired after Rich's death (which was quickly retracted), claiming he was misquoted by Fox and used as a distraction from the DNC email leak, that Trump had read the Fox story before it aired, and that Butowsky had an agenda to show that the DNC was behind the death of Seth Rich.



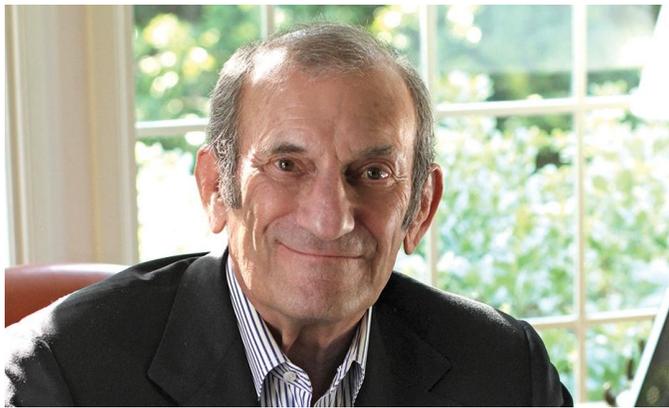


### Marcus Gray v. Katy Perry (Cal. Central, July 30, 2019) - Music Copyright

Katy Perry and her writing/producing team has been found liable for copyright infringement to the tune of \$2.8 million. The plaintiff was Marcus Gray (p/k/a Flame), a Christian rapper whose song *Joyful Noise*, set over a simple, minimalist trap-style beat, was found to be infringed upon by Katy Perry's *Dark Horse*, which also features a simple, minimalist trap-style hook. The comparison of the segments at issue show considerable similarity, but they consist of merely quarter notes, the rhythm a metronome or click-track makes by default, with little or no melodic movement. Naturally, this decision has caused much concern in the musical community as it seems, between this decision and the infamous *Williams v. Gaye* decision, that the fundamental building blocks of music theory are being granted protection under copyright law.

Another controversial aspect of this decision was the fact that the "access" requirement for infringement was satisfied by "wide-spread dissemination," which, in light of the modern era of streaming and exponentially easier access to distribution than ever before, is increasingly less meaningful than it used to be. Any artist can put their material on Spotify and it is then immediately available all over the world. Granted, for something to be considered widely disseminated it must be more than available, it must have been popular enough, or at least prevalent enough, that the defendants had a reasonable opportunity to have heard the song, even if they were not aware that they heard it. But in a market as segmented and saturated as the music industry is today, that line seems to be getting harder to reliably draw.

### Seminars & Events



### On August 21st, the Beverly Hills Bar Association's Entertainment Law Section presents the esteemed entertainment attorney/guru Ken Ziffren's 11th Annual State of the Industry Address entitled "Features/TV 12.0"

The event will be at **Lawry's Prime Rib** from **Noon to 2pm**. **David Albert Pierce** is the Chairman of the BHBA Entertainment Law Section and will be introducing and welcoming Mr. Ziffren to this annual event in which he addresses recent changes and trends and their impact on the rights of various entertainment industry parties.

**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.

This event always sells out! For more information and tickets, [click here to register](#)



At issue: **Horizon image (left)** ,compared to **Marvel poster (right)**

### Horizon Comics Productions, Inc. v. Marvel Entertainment, LLC (N.Y. Southern, July 15, 2019) - Copyright

Horizon Comics filed suit claiming Marvel copied one of their characters for the *Iron Man 3* movie poster (comparison above). The district court granted summary judgement for Marvel, finding that Horizon did not provide sufficient evidence that Marvel had access to Horizon's work. The court denied Horizon's theory that the responsible Marvel employee may



On July 31, 2019, The California Society of Entertainment Lawyers (CSEL) held an event at the Comedy Store for attorneys, comedians, and other entertainment industry professionals. Our live panel discussed the legal analysis of joke theft & other legal issues pertaining to stand-up comedians & comedy writers.

Comedian **Argus Hamilton** provided some introductory remarks and regaled the audience with a brief history of the club. The panel then consisted of **Thomas Burke, Jr., Esq.** (Defense counsel for Conan O'Brien in joke theft case); **David Albert Pierce, Esq.** (transactional & litigation counsel for multiple comedians & The Comedy Store); **Tony Hinchcliffe** (one of today's hottest rising comedians); **Bruce Ferber** (Emmy and Golden Globe-nominated comedy writer and former executive producer/showrunner of Home Improvement); **Bob Wheeler, CPA and CFO** of The Comedy Store.

The event was moderated by **Steven Lowe, Esq.** (veteran Plaintiff-side Copyright expert).



## UCLA Extension

Entertainment Studies

Fall Registration now open for UCLA Extension Course: Starting Your Own Entertainment Production Company, taught by David Albert Pierce, and Patrick J. Gorman

On Mondays 7 pm - 10 pm from September 23rd - December 9th, David Albert Pierce will

be teaching his annual class at UCLA-Extension on how to effectively start your own entertainment production company.

The course will cover starting an entertainment business, staying in business, and thriving, whether in motion pictures, television, new media, and other entertainment industry ventures. This course

have seen their work at a comic convention, denied the theory that access arose from a friendship between employees of the two companies, and denied a finding of access on the "widely disseminated" theory. Finally, the court found that the level of similarity did not preclude independent creation.



### Universal Cable v. Atlantic Specialty Ins. (9<sup>th</sup> Cir., July 15, 2019) - Insurance / Force Majeure

Plaintiffs Universal Cable Productions and Northern Environment Productions were filming the television series "Dig" in Jerusalem during the summer of 2014 when their production was interrupted by Hamas firing rockets from Gaza into Israel. In response, Plaintiffs moved their production at great expense and filed an insurance claim for such expenses. Atlantic, Plaintiff's insurance provider, denied coverage, claiming the policy excluded coverage for expenses resulting from acts of "war." Atlantic won in the trial court as it applied a "plain meaning" interpretation to the term "war."

The 9<sup>th</sup> Circuit Appellate Court reversed this decision, holding that terms are "understood in their ordinary and popular sense...unless a special meaning is given to them by usage, in which case the latter must be followed" citing Cal. Civ. Code 1644. Plaintiffs successfully showed that "war" has a special meaning in context of insurance agreement and refers to hostilities between governments that are at least de facto in character. Because Hamas has been designated a terrorist organization and never been recognized as a sovereign, either *de jure* or *de facto*, nor has Gaza been recognized by the Executive branch as a state, Hamas' actions against Israel in 2014 could not constitute an act of "war." Therefore, the expenses incurred by Plaintiff's as a result of such actions were not exempt from the insurance policy.



addresses essential issues regarding the legal and business affairs basics, planning, implementation, and management. Guest speakers include industry experts in entertainment financing, intellectual property, union issues, distribution, film and television production, and other matters relating to managing and operating independent production companies.

If you are interested in taking this course, [CLICK HERE](#) for further course information and to enroll. Enrollment closes on September 23rd.

Pierce Law Group LLP Serving The Community



Pierce Law Group salutes our litigation Associate Dhara Patel for her volunteer efforts on behalf of Education First.



Since 1996, Education First has awarded over \$800,000 in college scholarships.

Education First is comprised of a diverse group of volunteers who work together toward a common goal: Improving the lives of disadvantaged students through college scholarships and coaching. EF volunteers provide one-on-one coaching to disadvantaged youths, select scholars, raise money, plan events, work on national initiatives, and more.

To learn more about Education First and/or make a donation to their scholarship fund [click here](#).

Was Your Data Part of the Equifax Breach? If so, you can sign-up to receive restitution or free long term credit monitoring

## Monster Energy Company v. Schechter (Cal. Supreme Court, July 12, 2019) - Anti-SLAPP / Confidentiality Provisions

Defendant Schechter represented a deceased woman's parents in a wrongful death claim against Monster Energy which resulted in a settlement agreement signed by the parties and Schechter himself. Schechter then released information about the settlement and made statements regarding the harmful effects of Monster Energy drinks. Monster then sued Schechter for breaching the confidentiality provision in the settlement agreement, among other related claims. Schechter filed an anti-SLAPP motion, which was denied regarding the contract claim, but upheld as to others, such as breach of good faith and fair dealing and unjust enrichment. The appellate court then reversed the decision regarding the breach of contract claim, to which Monster appealed.

The California Supreme Court reversed the appellate decision, holding that Schechter met his burden on the first prong of an anti-SLAPP analysis (i.e. that the conduct does arise from protected activity), but Monster had also met its burden on the second stage of analysis by showing a probability of success on the merits of the case. Because Schechter had signed the agreement under the notation "approved as to form and content," a fact finder could reasonably conclude that Schechter agreed to be bound by the confidentiality provisions of the settlement agreement. Therefore, the anti-SLAPP motion was denied as to the breach of contract claim.

*Practice Tip:* To ensure true confidentiality when settling a case, include language binding opposing counsel as well as the opposing party and insist the opposing attorney signs the agreement as well.

## Remembering Howard Lapidus



# EQUIFAX DATA BREACH

In 2017, Equifax suffered a data breach affecting over 147 million customers.

Those with jeopardized data, can collect \$125 in restitution (limited to a set number who register), or long term free credit monitoring.

If you think your data may have been breached, you can find out for certain and file a claim to collect your free credit monitoring benefits (or potential cash payout) by clicking here: [visit this link](#).

## Summer Fun



Pierce Law Group celebrates the departure of our great summer associates with an end-of-summer dinner at Cafe Roma.



Top left: Jacquiline Bagumyan (Loyola Law), Partick Migliore (Client Director) Sam Kaufman (PLG assistant), Matt Rochester (personal assistant), Bottom Left: David Albert Pierce (Managing Member), Andrew Kazmer (Southwestern Law), Dhara Patel (Litigation Associate), Angelica Panosian (Loyola Law), Michael Peter (Litigation and Transactional Associate).

## Burbank Comedy Festival



The Burbank Comedy Festival runs from Sunday August 11 - Sunday August 18. Top celebrity headlining comedians, and over 200 of the hottest new talent from around the world converge on Burbank for The Burbank Comedy Festival. The Festival offers the next generation of comedy talent the opportunity to perform and

Longtime Pierce Law Group LLP client and friend Howard Lapidès passed away on Thursday, August 1st at the age of 68.

Howard Lapidès was best known for being a highly successful personal manager in Hollywood, representing numerous comedians, such as TOM GREEN and MIKE McDONALD, and he created a winning formula of taking one KROQ DJ after another and launching their television careers-- this included, JIMMY KIMMEL, ADAM CAROLLA, CARSON DALY, KENNEDY, and of course his longtime and ongoing client, friend and business partner DR. DREW PINSKY. Howard also served as the managing partner of Dr. Drew Productions.

Howard had a colorful and full career. He first started out as a radio personality, and through the years he was a comedy club owner, television producer and film producer. Howard had a true knack for developing a business plan for each of his celebrity clients and seeing those plans to fruition.

He was also a die hard Buffalo Bills and Los Angeles Dodgers fan. Howard opened his home up to all from Buffalo along with anyone else willing to root for his long suffering Bills each Sunday. David Pierce has many found memories of over 20 years of Sundays on Howard's couch watching their favorite team in action.

Howard is survived by his wife Maria and their two children Olivia and Max. A memorial celebrating Howard's life and laughter was held at The Comedy Store on Wednesday, August 7th

You can help honor his memory by making a donation to either Emerson College Lions for Lions Fund or the National Multiple Sclerosis Society.

To donate to Emerson College in Howard's memory: [click here](#).

To donate to National Multiple Sclerosis Society in Howard's memory: [click here](#).

To read the obituary appearing at Deadline.com: [click here](#). To read the obituary appearing at BuffaloNews.com: [click here](#).

## JUST FOR LAUGHS



David Albert Pierce continued his annual tradition of attending Montreal's Just For Laughs

connect with top entertainment professionals.

In addition to performances, the Festival is jammed back with panels and workshops. For more information about the Burbank Comedy Festival and its line ups, [click here](#)

## 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](#)

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of attending **Montreal's Just For Laughs Festival ("JFL")** and the annual **ComedyPro** industry gathering from July 26th to 29th! And in keeping with tradition, **Pierce Law Group's** comedy clients were again well represented at this year's JFL.

We are particularly proud to have our client **Punky Johnson** selected as one of **JFL's "New Faces Of Comedy."** And true to form, **Punky's** stand-up performances stood out among this prestigious group.



JFL's "New Face of Comedy" & PLG Client Punky Johnson with DAP

Also at JFL, our client **Brian Moses** in conjunction with the **Roastmaster General Jeff Ross** presented and hosted **The Roastmaster's Invitational Tournament**. This four day event saw some of the top comic minds going head-to-head roasting one another in an elimination tournament of wits.

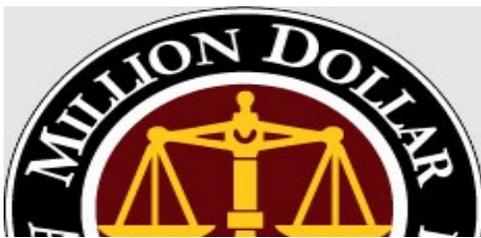


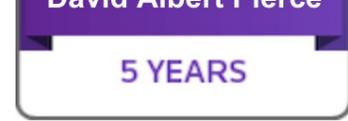
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Pierce Law Group LLP recognizes as industry leaders by peers and professional associations





# 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.

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