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Who the Independents depend on
Film • TV • New Media

Entertainment Law Circular
February 2020

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Each year, only five percent of the lawyers in the state are selected by the research team to be named a Super Lawyer. Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multi-phase process that includes a statewide survey of lawyers, an independent research evaluation of candidates, and peer reviews by practice area.

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John Baldivia

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Congratulations to John Baldivia for being named by Thompson Reuters as a Southern California Rising Star. Less than 2% of all licensed California attorney's under 40 years old are awarded this honor which recognizes outstanding achievement in the practice of law by those under 40.

These public acknowledgments are great honor, but we've always known these guys to be super.

Client Slamdance Film Festival Has Another Successful Festival Run



Pierce Law Group LLP was again in full force in Park City, Utah for the 2020 Sundance Film Festival and 2020

Understanding Labor & Employment Laws That Affect The Entertainment Industry



*In the latest edition of **MovieMaker Magazine**, on newsstands (and online) now, **David Albert Pierce's** latest article focuses on labor & employment laws affecting film productions. The excerpt below is courtesy of **MovieMaker Magazine**.*

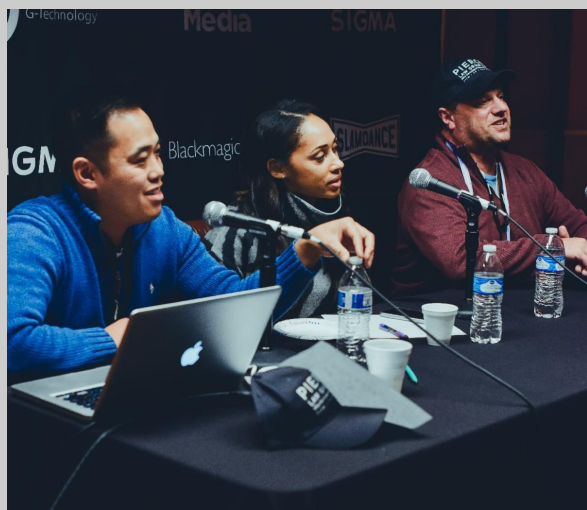
A typical film production, even a relatively small, independent one, often sprouts from the initiative of one or two individuals. But it can quickly grow into a multimillion-dollar company, often with a substantial number of employees, when you tally the entire cast and crew.

As a filmmaker, you chose a creative path. Business school and law school were never part of the plan, as you may have had to tell your parents in an awkward conversation. But as the producer of a decent-sized production, you are now the CEO of a company, bestowed with certain attendant responsibilities and liabilities.

In the early 2000s, the biggest workplace issue on the minds of most hip CEOs was how to attract talent with videogames, ping-pong tables, and free snacks in the break room. Those were the days when free volunteer workers in the entertainment industry were called "unpaid interns," even if they didn't meet the legal definition of interns and weren't tied to programs run by academic institutions. It was a simpler time, when many of us believed the concept of a "casting couch" was a salacious legend from the old studio system of the 1940s.

While employment and labor laws has been in place since before the new millennium, prudent producers today need to be more mindful of what these laws are and what they require. There is a mistaken belief that these laws simply don't apply to independent filmmakers, because making an indie movie is just a more grown-up version of putting on a show in the backyard. In reality, a wide body of federal and state laws govern how producers must interact with their cast and crew and the proper working conditions that must be afforded to them. In addition, various union collective bargaining agreements (See: SAG, WGA, DGA, IATSE, Teamsters) can further dictate what is and is not permissible by employer-producers. Real penalties and monetary damages can result from failure to be aware of these laws. And you are also subject not just to courts of law, but to the court of public opinion, which has a wider jurisdiction than ever before, thanks to social media.

*Read David full **MovieMaker Magazine** article here:*



The Firm provided a Daily Legal Clinic as a long-time sponsor of the Slamdance Film Festival where they advised indie filmmakers on intellectual property, distribution, and any other burning legal questions they brought to the table over free homemade hot cocoa and cookies.



This year, attorneys, David Albert Pierce, John Baldivia, and, Cassandra Johnson, along with Client Director, Paige Blankenship traveled to Park City to participate in the daily panel events and one-on-one pro bono counseling sessions for filmmakers.

Pierce Law Group Client & Friends Steak Dinner at Sundance



DAP holds court and renders a toast at the Firm's dinner for clients and friend.

Meanwhile across town at the Sundance Film Festival, Pierce Law Group entertained 25 clients and friends of the Firm at Pierce Law Group's annual wine & steak dinner at Butcher's Chop House in Park City.



Industry Wisdom
NEW Requirements: CA Entertainment Work Permits
by Tony Hanna, Esq.



Effective March 2, 2020, the manner in which entertainment work permit applications for minors may be filed will change.

Effective March 2, 2020, work permit applications seeking same day turnaround by filing it via an in person drop off to a DLSE office unless it is accompanied by a letter from a production entity or audition entity articulating that a role has actually been offered to the minor and their is an exigent need for an immediate turnaround. Please note that a letter from an agent or manager will not be accepted.

The letter must include at minimum:

- Minor's name
- Date minor will be working or auditioning (within 7 days)
- Signed and dated by an authorized representative of the entity writing the letter

Those applications submitted in person without a valid letter will be processed within seven (7) calendar days instead of the same day turnaround. The work permit applications may also now be submitted online. On September 23, 2019, a new online system for submitting minor work permits was implemented.

Remember: All child actors must have a work permit and all production entities seeking to hire child actors must likewise have a permit to hire child actors. Both of these forms can be acquired from the DLSE website:

<https://www.dir.ca.gov/dlse/entertainment-work-permit.htm>

Pierce Law Group LLP is a preeminent expert on all issues concerning child labor in the entertainment industry and provides counseling and advice to major studios, independent productions and parents on issues affecting child labor in the entertainment industry.

If you have questions concerning the employment of children in film and TV projects, contact: [Anthony J. Hanna](#) or [David Albert Pierce](#) at Pierce Law Group LLP.

New Employment Laws Affecting the Entertainment Industry enacted in Jan 2020
By Arya Mansour, Esq., Associate Attorney

Once again the new year marks more legislation and regulation affecting employers in all industries throughout California.

This is not a complete list of new employment laws and amendments that take effect in 2020 in California, but rather simply a summary of some that are most likely to affect entertainment industry employers. For a complete list of employment laws that affect your company, contact a Pierce Law Group LLP attorney or our Client Director Paige Blankenship.





DAP with General Manager of Butcher's Chophouse Deano Severson and guest Dao Ly.

Events & Speaking Engagements



On Tuesday, February 11th, David resumed his role as Adjunct Professor at Elon University's semester in L.A. Program and is again teaching his semester-long course entitled "Media Law & Ethics" to the undergrads enrolled in the Semester in L.A. Program.

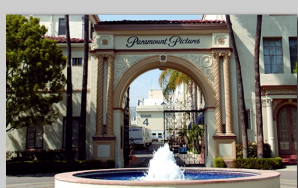
This is the sixth year that David has taught this course which runs through May 12th.



On Wednesday, February 26th the Beverly Hills Bar Association presents "The New Wave of Defamation Cases" The panel will feature Bobby Schwartz (Partner, Quinn Emanuel Urquhart & Sullivan LLP), Donald Trump's attorney Charles Harder (Partner, Harder LLP), and moderator Alexander Rufus-Isaacs (Partner, Rufus-Isaacs Acland & Grantham LLP).

David Albert Pierce and John Baldivia serve on the Executive Board of the BHBA Entertainment Law section with David serving as its immediate past Section Chair.

Pierce Law Group Alums Move Into Studio Jobs



Codification of Dynamex's "ABC" Test for Independent Contractors (AB 5)

Codifies the 2018 California Supreme Court landmark decision in *Dynamex Operations West, Inc. v. Superior Court*, for determining whether someone is an independent contractor or employee, and protects it from legislative or judicial rollback. Labor Code 2750.3 provides that the *Dynamex* ABC Test for independent contractors will apply to all provisions of CA Labor Code, the Industrial Welfare Commission's Wage Orders or the Unemployment Insurance Code, unless those provisions discussing an "employee" specifically contain an alternative definition.

Furthermore, AB 5 strictly prohibits an employer from reclassifying anyone from an employee to an independent contract as of January 1, 2019. AB 5 will also authorize law enforcement officers (the state Attorney General and some city attorneys) to pursue injunctive relief to prevent the continued misclassification of employees as independent contractors. Note that due to significant opposition to Dynamex's holding, AB 5 also contains certain exceptions in various occupations, but jobs in the entertainment industry were not among those industries. Amendments to AB 5 to carve certain exceptions including certain exemptions for the entertainment industry are being proposed to the California Legislature. Our own David Albert Pierce is working in conjunction with the Hollywood Chamber of Commerce and the California Society of Entertainment Lawyers to craft amendments in favor of certain artists and performers that have traditionally been recognized as independent contractors.

TIP FOR CLIENTS: For further information as to how AB 5 may affect you or your workplace and to learn more about our law firm's lobbying efforts on behalf of the entertainment industry, contact David Albert Pierce or John Baldivia at Pierce Law Group LLP.



Changes to Cal-OSHA's Definition of "Serious Injury or Illness" (AB 1804 & 1805)

AB 1804 establishes a new online mechanism for reporting "Serious Injuries" to Cal-OSHA replacing the prior method in which reports could be sent simply via email.

AB 1805 redefines "serious injury or illness" and "serious exposure" for triggering an employer's duty to notify the Division of Occupational Safety and Health by removing the 24-hour minimum time requirement for qualifying hospitalizations (other than medical observation or diagnostic testing), which includes the loss of an eye as a qualifying injury, and amputation rather than loss of a body member. "Serious exposure" is redefined to include exposure to a hazardous substance creating a "realistic possibility" (rather than "substantial probability") that death or serious physical harm in the future could result from the actual hazard created by exposure.

TIP FOR CLIENTS:

Many companies overlook the assorted requirements mandated by OSHA and Cal-OSHA. This can prove to be a costly mistake in the event a workplace accident occurs. Pierce Law Group LLP can explain these obligations. We can also prepare a customized Safety Plan which is Cal-OSHA compliant, in addition to ensuring all proper posting requirements are adhered to in your workplace.



"No Rehire" Provisions Prohibited in Settlement Agreements(AB 749)

Prohibits any settlement agreement related to an employment dispute from preventing or restricting an aggrieved person from obtaining future employment with

PLG says goodbye to our partner **Trea Tran-Lachowicz** who after 11 years with **Pierce Law Group LLP** focusing on film finance and distribution issues has accepted a **Legal Affairs** position with **Paramount Motion Pictures**. Her friendship, loyalty, counsel, diligence and caring for both clients and co-workers for over a decade is much appreciated and will be missed. Although we look forward to dining with her on the Paramount studio lot!

Prior to her departure, Trea was presented with a desk ornament commemorating her 11 years of service with Pierce Law Group LLP.



Also headed to the Studio world is one of **Pierce Law Group LLP's** favorite past partners **Azita Iskandar** who has commenced a new job in Business Affairs at **NBC Universal**. Azita worked at Pierce Law Group LLP from 2012 - 2017 and ultimately was both a partner and the firm's Litigation Department Head. During her tenure, Azita oversaw a number of noteworthy cases, and worked closely with **David Albert Pierce** as second chair on a plaintiff-side copyright and right of publicity case which resulted in a \$1.7 Million Dollar settlement for our celebrity client. She also co-authored an Amicus Brief to the Supreme Court in support of a Petition for Certiorari in a copyright case seeking to align the differing court tests used by the federal circuits.

Pierce Law Group LLP has a long list of past alums who we have well trained and gone on to excel at studios and other major in-house entertainment law positions.

PLG-LLP COMEDIANS DOMINATE THE CLUBS & THE PODCASTS!

PLG Comedian Client **Eric Schwartz a/k/a "Smooth-E"** will open two sold-out **Jo Koy** shows at **The Forum** February 21st and 22nd just before announcing his March 12th Irvine Improv and March 13th Ontario Improv shows.

To see all of Eric's tour dates, click here: <https://www.eric schwartzlive.com/tourdates>

the employer against whom the claim was filed. Any such provision entered into on or after January 1, 2020 shall be deemed void.

TIPS FOR CLIENTS: This prohibition is in furtherance of the trend to limit what can and cannot be in employment dispute settlement agreements.

Last year, California prohibited settlement clauses that purport to prevent the releasing party from cooperating with actual investigations into harassment claims. Last year, California also prohibited confidentiality provisions in any settlement agreement for a claim based in harassment if such claims have been actually filed with a government agency or wherein a court complaint or arbitration proceeding has actually been made. Confidentiality provisions continue to be enforceable for those settlements which arise before any claims or filed at the agency or court level.

Pierce Law Group LLP can advise you on the proper drafting of any Severance Agreement or Settlement Agreement to ensure maximum enforceability and compliance with the law.



Minimum Wage Increases (SB 3)

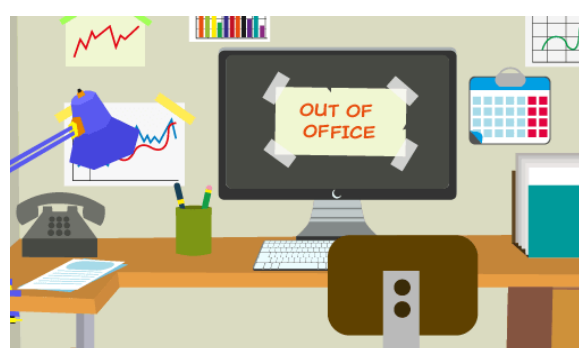
Sets the state of California minimum wage to \$13.00 per hour for employers with 26 or more employees, with a salary threshold for exemption purposes at \$54,080 annually, and \$12.00 per hour for employers with 25 or fewer employees, with a salary threshold of \$49,920 annually.

However, the growing trend in California has been for numerous cities and municipalities to set their own higher Minimum Wage standards for which employers in their jurisdiction must comply. For example, the current Minimum Wage, for employers with 25 employees or less, in the city of Los Angeles and unincorporated areas of Los Angeles County is presently \$13.25/hour, and \$14.25 for employers with 26 or more employees.

Increase in Computer Professional Salary for Exemption Purposes (Labor Code Section 515.5)

California has long had special exemptions to overtime for certain well defined computer professionals that are paid large regular hourly rates. Effective January 2020, the select computer professional employee's minimum hourly rate of pay which will exempt an employee from the need to pay overtime will increase from \$45.41/hr to 46.55/hr, alternatively those computer professionals paid via a salary basis will need to receive a minimum salary increase of \$8,080.71/month (up from \$7,883.62/month) in order to qualify for an exemption to overtime. Thus, the minimum annual salary exemption for computer professionals increases from \$94,603.25 to \$96,968.33.

TIPS FOR CLIENTS: PLG-LLP can help you navigate through the redtape maze of wage-hour regulations which seem to become more complex with each new legislative session!



Leave Laws

California has several laws governing leave of absences beyond the basic Family and Medical Leave and Pregnancy Leave laws. Some of the newest additions to



PLG Comedian Client **Tony Hinchcliffe** records his podcast, "Kill Tony," live in the Main Room at The Comedy Store every Monday night at 8:00 PM (with the exception of those nights when he records on the road).

[CLICK HERE](#) for more info on Kill Tony!



PLG Comedian Client **Brian Moses** hosts the mother of all competitive roast shows and international sensation, "Roast Battle," in the Belly Room at The Comedy Store every Tuesday night at 10:30PM.

You can also catch Brian on the Verbal Violence podcast that recaps all the action in the world of competitive roasting!

[CLICK HERE](#) for more info.



PLG Comedian Client **Stephen Kramer Glickman**, along with **Matt Walker**, **Mike Black**, and **Mike Glazer**, record their podcast, "The Night Time Show," live every month at the Hollywood Improv.

The show's guests consists of a who's who of Hollywood heavyweights who join Stephen in this comedy centered talk show.

these numerous leave laws include:

Lactation Accommodation Requirements (SB 142 & AB 1976):

These new laws enhance the workplace lactation accommodation requirements enacted in 2018, and sets a myriad of lactation location requirements, some of which include, but other not limited to: (1) Employers must provide a reasonable amount of break time "each time" the employee needs to express milk, (2) provide a location that is safe, clean and free of hazardous materials, other than a bathroom, in proximity to the employee's work area, shielded from view, and free from intrusion, which contains a place to sit, has access to electricity, (3) adding retaliation protections for employees who request lactation accommodations, and (4) the Labor Commissioner may award a civil penalty of \$100 for each day an employee is denied reasonable break time or adequate space to express milk. However, some employers may comply by designating temporary lactation locations that require not all of the above requirements.

Increased Leave Time for Organ Donations (AB 1223):

Employers must also allow employees to take an additional unpaid leave of absence of up to 30 business days within a one-year period for organ donations, in addition to Labor Code Section 1510's requirement of allowing employees take a paid leave of absence of up to 30 business days within a one-year period, or five business days for bone marrow donations.

State Gov't Benefits for Employees On Family Leave Extended (SB 83):

California has now extended the duration in which Employees can receive pay via the state government's Employment Development Department during extended absences for leave that qualifies as "Family Care Leave." This government provided supplemental assistance benefit will now be available for eight weeks (up from the prior 6 weeks) beginning July 1, 2020 and is available for those taking time off to care for a "seriously ill family member" or to bond with a minor child within one year of birth or placement. Note: This is a state sponsored benefit and payment is not required to be rendered by private employers themselves.



Extended Sex Harassment & Discrimination Statute of Limitations (AB 9)

The Statute of Limitations for Harassment and Discrimination claims under the State anti-discrimination statute (Government Code 12965) was previously one year. An employee now has three years to file an administrative charge with the Department of Fair Employment and Housing (DFEH) after an unlawful employment practice occurs.

FEHA Amendments for "Protective Hairstyles" (SB 188)

California's anti-discrimination statute ("FEHA") also has been expanded to amend the definition of "race" to include "traits historically associated with race, including, but not limited to, hair texture protective hairstyles." Protective hairstyles, in turn, are defined as "including, but ... not limited to, such hairstyles as braids, locks, and twists."

Delay of and Clarification for New Sexual Harassment Training Deadlines (SB 778)

California requires employers to educate its workforce about harassment. The newest statutory revisions to these requirements concerning harassment training modify the law as follows:

- (1) the deadline for most employers to comply with the new harassment training requirements has been

[CLICK HERE](#) for more info,



PLG Comedian Client **Theo Von** is on his worldwide [Dark Arts Tour](#), but you can also listen from anywhere on his podcast, "This Past Weekend."

Settle in for some bona fide southern hospitality and Theo positively unique view of the world around him.

[CLICK HERE](#) to access the latest.



Looking for even more Theo Von to fill your podcast listening hours? Then join Theo & fellow PLG Comedian Client **Brendan Schaub** on their "King and the Sting" podcast.

[CLICK HERE](#) to access the latest.

extended from January 1, 2020 to January 1 2021 (this is good news for employers who have yet to implement such a training program);

(2) employers who provided legally-sufficient training in 2019 will not be required to provide any further refresher training until two years thereafter, and, moving forward all employers must provide this sexual harassment training to each California employee once every two years; and

(3) all non-supervisory (rank & file) employees must now be trained within 6 months of hire.

TIPS FOR CLIENTS: In this era of MeToo and TimesUp all employers, and particularly entertainment industry employers must fully understand and comply with all of the many obligations imposed by anti-harassment laws. Pierce Law Group can provide such counselling. In addition, our Firm has created special California compliant training programs that focus on the unique issues that confront the entertainment industry, including but not limited to how an employer in the creative expression of ideas workspace can balance the sometimes competing goals of fostering 1st Amendment rights versus creating a workplace free of harassment (as illustrated by the Cal Supreme Court case Daniels v. Wayans which is discussed further in this newsletter).

Wayans First Amendment Protection Case Revisited-- Court Affirms Protections Against Harassment Case



Daniel v. Wayans, (California Court of Appeal 2nd District, January 31, 2020,) Anti-SLAPP [B263950]

The dismissal of a movie extra's racial harassment lawsuit against Marlan Wayans for a racially heated tweet and offensive language while on the set of the comedy film "A Haunted Mansion 2" was affirmed as to the prior ruling granting Wayans' anti-SLAPP motion (i.e. a dismissal on the grounds that the plaintiff's complaint was deemed brought primarily to interfere with the defendant's rights of free speech).

In the Wayans case, Daniel sued Wayans in 2014 for among other things tweeting a picture of Daniel next to Family Guy character 'Cleveland Brown' with the comment, "Tell me this N*gga doesn't look like... THIS N*GGA!!!" Daniel also alleges that throughout the film, Wayans subjected him to similar repeated offensive statements directly involving Daniel's race while working as an extra on the set of A Haunted Mansion 2.

The trial court dismissed the case and awarded Wayans attorney fees under the California Anti-SLAPP law. Dainels' appealed and the court of appeals affirmed the decision. Daniel then in 2017 appealed that decision to the California Supreme Court. The California Supreme Court in turn instructed the court of appeals to re-consider its earlier decision in light of the California Supreme Court's two recent decisions which set forth the proper analysis that the court of appeal was to now use for rendering its opinion.

On January 31, 2020, the court of appeals again rendered a decision based on its second new analysis which now applied the exact tests that the California Supreme Court instructed it to use. In applying those tests, the court of appeals again upheld the dismissal of Daniel's case and awarded attorney fees (which is now several hundreds of thousands of dollars) to Wayans, pursuant to Anti-SLAPP law.

#datefails

with *Kate Quigley*



PLG Comedian Client **Kate Quigley** is as funny as she is gorgeous, yet her love life is a mess and she's not afraid to talk about it. Be a voyeur and listen in on both her and her friends sexy and stupid adventures on her "#datefails" podcast on All Things Comedy.

[CLICK HERE](#) to access the latest.

In specific, the California Supreme Court had instructed the court of appeals to review the decision with reference to two California Supreme Court rulings which had not existed the first time the court of appeals reviewed the Wayans case. Those two cases were FilmOn v. DoubleVerify and Wilson v. CNN decisions.

In FilmOn, the California Supreme Court granted review of a libel suit, finding that the context and content of the speech (speaker, identity, audience, and purpose of speech) were necessary when determining whether there was a functional relationship between the form of speech and the type public discussion which the anti-SLAPP statute is designed to protect. Here in the Wayans case, the speaker was a comedian/improvisational filmmaker who himself was African-American, and his statements were part of the film-making process (including the improvisational "riffing" that occurs off camera, on the film set), and the purpose of the speech was to further the film's humor, much of which centered on race.

In Wilson v. CNN, the California Supreme Court held that discriminatory motive can be protected under the anti-SLAPP statute if the act was made to further that Defendant's exercise of free speech. Thus, the Plaintiff who sued CNN for employment discrimination (but where CNN claimed he was terminated for plagiarism which negatively impacts its role as a 1st Amendment broadcaster) likewise lost and was required to pay CNN's attorney fees. As evidenced by the analysis of Wayans' statements under the FilmOn test, Wayans' statements were in furtherance of his free speech as a comedic artist. The question of discriminatory motive didn't even need to be addressed, but note, if it had, Daniel would be hard pressed to show that Wayans, who was also African-American, harbored a discriminatory motive against a fellow member of his own race.

The Second Appellate District court of appeals thus held that overall, Wayans' statement and actions showed a close functional relationship that existed between the form of speech and the public conversation that was protected under anti-SLAPP statutes. Both the tweet and off camera horseplay and comedic statements by Wayans were justified as being part of Wayans' creative process. The court acknowledged that the tweet that contained photos comparing Daniel to Cleveland Brown, a cartoon character, provided a glimpse to Wayans' one million followers on social media leading up to the release of the film's massive release. Therefore, the statement was of public interest. As demonstrated by Wayans' extensive film career, many of his past projects made fun of pop culture, racial stereotypes, and current events that added to the public interest of his work. Nothing from his statement or conduct suggested that it was intended to be private or confidential (and as the court's earlier anti-discrimination analysis had determined, Wayans' activity was not racially motivated.)

Thus, Daniel's harassment case was dismissed, and he was forced to pay Wayans' monumental attorney fees as provided by the Anti-SLAPP protections afforded to Wayans.

THE STORE HORSEMEN



Live from the world famous Comedy Store, the most dominant faction of pro wrestling fans and PLG-LLP Clients (consisting of Chris Burns, Tony Hinchcliffe, Johnny Skourtis, Mat Edgar and Josh Martin) weigh in on the state of the pro wrestling industry.

[CLICK HERE](#) to access the latest.



PLG-LLP's own **Ben Kuerschner** directs a weekly live on-stage "late night talk show" that explores politics and pop culture through rosé-colored glasses: **The Night Cap**, hosted by **Stacy Rumaker** and **Kristal Adams**, includes a dynamite panel of the funniest comics in the LA scene.

This month's SHOTS AT THE NEWS panelists are **NIKA KING** (HBO's Euphoria; Netflix's Kevin Hart's Guide to Black History), **DANIEL WEINGARTEN** (truTV's Adam Ruins Everything; The Hollywood Improv), and **KIRAN DEOL**

[CLICK HERE](#) for tickets & more info.

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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.

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