LENHOFF v UTA & ICM
Federal Appeal Transcript

Gretchen Nelson
Kathleen O'Sullivan

Judge Bybee
Judge Berzon
Judge Gleason

GN: Good morning, your honors. May it please the court, Gretchen Nelson on behalf of Lenhoff Enterprises, the plaintiff in the underlying case and the appellant. I would like to reserve four minutes of your time. The case that we have today is a case that addresses the sufficiency of allegations in a complaint that claims injuries and damages, as well as injunctive relief for anti-trust violations, first under The Sherman Act, also under California's Cartwright Act, California's Unfair Competition Law, and two common law claims for intentional interference. I think it is fair to say that courts around the country have struggled since the issuance of the Supreme Court's decision in Twombly and [ECKWALL?] over the question of what meets the standard of plausibility as it was articulated in those cases. This court has grappled with it on a number of occasions, notably in the [STARR? Vs BACKA?] case, coming to the conclusion that where there are factual allegations that are plausible on both sides, the plaintiff and the defendant, essentially create a situation where…

JBERZON: …is not exactly a complaint problem. I agree with you that Twombly & [ECKWALL?] can create problems about how much specificity is needed, but my understanding here is the main problem is how much inference of agreement can you do in a Sherman Act Section I case. Section 2?

GN: Section I.

JBERZON: Section I. And whether this was in a complaint or whether this was all the evidence you had in summary judgment, we'd be in the same place, right. I mean you're unlikely to get any more evidence, are you?

GN: Well, I think it's fair to say that if the court reverses, we would be back in the district court and discovery would occur, and thereafter, we…

JBERZON: And you could ask with who met with whom and maybe you could come up with an agreement.

GN: That's correct. And that will lead to…

JBYBEE: But it's a total fishing expedition.

GN: No, I don't…

JYBEE: That's the way the District court saw it.

GN: Well, I…

JBYBEE: I'm not saying that Judge O'Connell used that phrase. It's just that she didn't think you had alleged enough in terms of who, what, when and where.

GN: I think that's correct. That is precisely what the court came to a conclusion…

JBYBEE: And you've got names. And you've got where. But it's just the vaguest of allegations. It's just these folks were here, something happened that we don't like later on, and therefore, they must have conspired.

GN: Yes. I disagree. And let me say why. In this case, there is no question but that there were factual allegations distinct from conclusions, and the court in Twombly, the court in Starr, all make the point that what you can do is eliminate the conclusions but you need to look at the facts, and from those facts you need to decide.

JBYBEE: Well, tell us what facts will lead us to?

JBERZON: Also it seems important to focus discreetly on the different sets of purported grievances, right? In other words, the price fixing and the 16b and whatever.

GN: if I can, your honor, let me take that and then I will turn to Judge Bybee's here question. One thing that we do know throughout all of the cases, not only from this court but the U.S. Supreme Court, and the U.S. Supreme Court cases were [???] and otherwise, you treat the complaint in its entirety. This was not a claim where the plaintiffs were alleging that there was a discreet little conspiracy here, there was a discreet little conspiracy there. That was the arguments that the defendants attempted and I think successfully did, in the District Court, make the point so that you were essentially looking at little buckets as distinct from one entire conspiracy in its whole form. This was a claim--

JGLEASON: Without the 16g issue. Let's say the whole exploration of that agreement, would you have a case at all?

GN: I'm sorry. Is that all we have?

JGLEASON: No, if you didn't have that. Isn't that the foundation?

GN: It is the foundation.

JGLEASON: And so, as I understand it the Screen Actors Guild was the group behind this 16g coming to its end. Am I right on that?

GN: That was the argument accepted by the District Court but I think that fails to give credence to the allegations in the complaint which make clear that a group, a committee, of the ATA, which is the talent association's organization had decided, collectively amongst themselves, and these are the defendants and two other non-named defendants to eliminate 16g.

JBERZON: Tell me how 16g hooks up with the ultimate…and 16g was itself an agreement, right? So either keeping it or leaving it is an agreement.

GN: Correct. But it was an agreement between the Screen Actors Guild and the Talent Agencies.

JBERZON: Right. And so then the question is, how does the 16g elimination hook up with what you say ultimately happened. i.e. that these four entities become so predominant and in particular changed the whole finance… not the finance… the whole financial system or scheme. I understand that it meant that money was flowing from the (travel) agents…

GN: Talent agencies.

JBERZON: Talent agencies to the studio. Is that right? The talent agencies could invest in the studios.

GN: It actually was a little… It essentially is that rule 16g proposed limits on what talent agents could take financially from entities that had a relationship with the ultimate product. For want of a better explanation…

JBERZON: Is the reason they were able to set up this alternate scheme, where they could get part of the profits.

GN: Absolutely. And to…

JBERZON: Well, I completely missed that—and maybe I don't read well – I thought it had more to do with vestments, not with actual financing.

GN: No, it actually was the core of it, and to return to Judge Gleason, your question, what is alleged in the complaint, and in facts, is the committee of the ATA made it clear that what they were going to do was to draw up the demise of 16g.

JGLEASON: But they were only half of the agreement. So there's no allegation, as I read it, that the committee somehow infiltrated or was part and parcel to the other half of the agreement that is the Screen Actors Guild, as I understand it. That's not part of this, so how can there be a….

GN: Very simply. In order to enter into negotiations over 16g, the Talent Agency had to give notice to the Screen Actors Guild that they were imposing a request that they now negotiate. There has always…

JBERZON: But 16g was about the talent agency couldn't have a financial interest in the production or distribution company. This 3-3-10 or whatever it's called scheme was not about a financial interest in a production or distribution company, was it?

GN: No, but what is critical to this is the financial interest that flowed into Talent Agencies, those we claim are the defendants and the two others, as a result of the demise of 16g. 16g was ultimately voted down by SAG, but it was voted down by SAG…

JBERZON: But you're still not. What your representation to me was before which I said I didn't understand was wrong. I did understand. So I still don't understand the connection between 16g and your ultimate complaint. I'm sorry if I'm being thick.

GN: No. You're not. I understand. Let me see if I can articulate this much clearer. The point…

JBERZON: What was the prohibition on in 16g?

GN: Investments in talent agencies by entities that were producing the product.

JBERZON: I thought it was the other way around.

GN: No.

JBERZON: No. Ok, alright. So now the production companies can invest in talent agencies. How does that lead to the change in the compensation scheme and so on?

GN: What it did was allowed for the extraordinary growth of the defendants and the other two entities in a manner that was unparalleled. And after having that infusion of money, you can then engage in the balance of the activities you are intending to do which is to concentrate the market on packaging of scripted television series, as opposed to what the talent agencies were doing before which was providing essentially a service industry at a 10% commission. As a result of the infusion of money, you now have the ability, the defendants as we've alleged it, have the ability to grow exponentially to be able to hire much more, to essentially be able to develop what we say to be a conspiracy to ultimately eliminate smaller talent agencies so that they can concentrate on the 3-3-10 packaging. To go back to Judge Gleason, your question. Ultimately, SAG voted this down, but it came about after negotiations, and after there was a deal in place, which is the deal that SAG voted down. The deal that they had in place, that SAG voted down, was a deal that essentially allowed the camel in anyway. Because it allowed for the investment of money…

JGLEASON: That deal was never replaced, as I understand it.

GN: That's because SAG voted it down. But no matter how you look at it, had SAG not voted it down, the Talent Agencies had gotten a lot of what they wanted. And if SAG voted it down, the net result was that 16g was going to die because the ATA did not need to negotiate further, and it would die of its own terms. So no matter how you looked at it, the Talent Agencies, the defendants, that we are asserting a claim against were sitting in the driver's seat.

JBYBEE: But where's the conspiracy?

GN: So the conspiracy derives itself from, as we've alleged, the idea that what you have is a conspiracy to basically make these four agencies the sole..

JBYBEE: It sounds like a business model.

GN: Well, it could…

JYBEE: What makes it a conspiracy? They could either get SAG to agree to give them what they wanted or 16g was going to die of its own terms. That's not a conspiracy. If the rule is going to die of its own terms, and the members of the ATA think that that will give them the opportunity to leverage a different deal with the studios, that's a business plan. Where's the conspiracy?

GN: That, your honor, is where you need to look at the entirety of this whole package of allegations in the complaint. It is not simply 16g. That was the start of it. That allowed the money to flow. Next, the

packaging of these scripted television products began to be overwhelmingly the business model, if you will, but in our view, a conspiracy, and the evidence—

JBERZON: They sat down and talked to each other and said, now we are going to get into packaging.

GN: I think that is obviously something that we would have the right to look into, but I think it's fair if you look at the numbers that that is precisely what occurred.

JBYBEE: But do you have any evidence that would suggest that they talked to each other, or arranged for this? Something that demonstrates a conspiracy as opposed to independent actions by a couple of very large companies?

GN: We have, your honor, alleged in the complaint all of the activity that was occurring with respect to the committee of the ATA as it related to rule 16g.

JBERZON: You actually have them sitting down to gather and doing something.

GN: We have them sitting down and doing something in the late 1990s to early 2000. What we also have is in 2014, the four agencies sitting down publically announcing that they are going to set the price at which everything will be charged.

JBERZON/JGLEASON: Where is that?

GN: That is, your honor, in the excerpts of record—

JBERZON: In the complaint?

GN: It's in the complaint. Page 49, and its paragraph 47 on page 15.

JGLEASON: Is that related to scripted TV series or something else?

GN: It is related to scripted TV. What occurred in the lower court is that the defendant argued that had to do with Netflix. But it had to do, no doubt, with the scripted television series. The District Court below made a comment that was either in jest or was unrelated, but at the end of the day, what that statement related to was the decision by these four individuals to say publically, at least one of them, speaking for all, that we are going to draw it. We will come up with a system of mathematics in which the four of us will judge what everything's worth and it related to the issue of the 10. So if I can get back to this packaging fee that they charge which is 3-3-10, 3% at the beginning, 3% at the end, and 10% on the back-end. And what we have here is evidence—

JBERZON: Just a minute. Just to clarify – that was in place well before October 2014.

GN: The 3-3-10, yes. Absolutely.

JBERZON: Go ahead.

GN: And it is alleged in the complaint that that is what all four of these agencies charge for every scripted television series. There are facts—

JBERZON: Now, you, in your brief, make a pretty separate argument with regard to that evidence being, creating an inference of an agreement about that precise scheme – and your opponents say that wasn't argued before, which sort of surprised me, but… As I understand it, they say that horizontal price fixing was never argued before.

GN: I understand they say that horizontal price fixing wasn't argued before. I disagree with it, and certainly the District Court below disagreed with it in her order—

JBERZON: It says price—

GN: Her order. Docket 65, page 8 starts out that plaintiffs are alleging horizontal price fixing. So I don't know. Their argument is that we never argued it before. We did argue it. It was an allegation in the complaint. The argument in terms of that, the 3-3-10, I think it is important to recognize the significance of these four agencies charging that and we've discussed this at length in the opening brief. How that figure, number one, was a sea change, a dramatic sea change in terms of how they were billing before. Before it was a 10% commission based upon what a client earned, and it then turned into an amount that the agencies would say to the potential clients, we aren't charging you any commission. We're going to get it all from the studio. So under the text messaging case where you have a dramatic difference in the change in the manner in which you are charging, courts upheld that can be evidence of a conspiracy. So that's number one.

JBERZON: And consistent. That's your other evidence. It's been consistent. Nobody has tried to cut it or –

GN: No one has ever endeavored to break it. And in fact, we have facts in the complaint that are alleged where talent has argued that that deal should be changed because it is impacting their ability to properly produce a series. This is the Meredith Stiehm evidence that is alleged in the complaint. The studio refused to do anything because they were afraid if they did so, that the agency would somehow or other do something harmful to them.

JBERZON: Yes, but that's a different problem. That's not our _____. Anyway your time is up. We'll give you a couple minutes.

KO: Good morning, and may it please the court, Katie O'Sullivan, and we have submitted separate briefs but I am here today to argue the common issues on behalf of both United Talent Agency and my client, International Creative Management Partners. And Mr. [MARENBURG?] would like two minutes to cover issues related to his client at UTA. The District Court properly dismissed the Plaintiff's 1st, 2nd, and 3rd amended complaints, and was well within its discretion of ruling that after 4 tries, the Plaintiff should not be given leave to file a fifth version of its complaint. The third amended complaint failed at the most fundamental levels. It failed to sufficiently plead a conspiracy or any anti-trust injury flowing from that conspiracy and its state law claims were equally deficient. To respond to some of appellant's points, first the argument is well you need to consider these allegations in their totality. And the District Court did so. The District Court understand that there was some kind of one sprawling conspiracy spanning nearly twenty years with disparate elements over that period. And zero plus zero plus zero is still zero. It was

simply not plausible whether in its component parts or viewed as a whole. And secondly, a major part of the conspiracy argument argued on appeal, the 3-3-10, was not pleaded in the third amended.

JBERZON: That's what I'm having trouble with. First of all, it is true that the order does say that there was an allegation – and it just says that it was inadequate.

KO: Well, what the order has, and thank Judge Berzon, I wanted to address that, there's one paragraph in the order dismissing the third amended complaint. It cites three paragraphs and says the plaintiff adds no factual details to support this conclusion.

JBERZON: That's different than say in an argument. You can argue that she was right that she says it was inadequately done, but not that it wasn't there.

KO: Here's what wasn't there. What wasn't there was that there was a fixed and uniform agreement that all the large talent agencies had to impose the same 3-3-10.

JBERZON: Do you know what price fixing means?

KO: Well, what the complaint actually said in paragraph 73 was that the system encouraged price fixing which is, of course, a far cry from actually alleging price fixing. But if you look at paragraph 53 of the third amended complaint, that's where's actually a reference to the words 'packaging fee'. That paragraph has nothing that says anything about an agreement to set that fee, that it was uniform among all the large talent agencies, and that there was no deviation. That is something they have alleged in theory and in their appeal briefs, but it has not been pleaded. I'd like to then go to the 16g—

JGLEASON: Was that due to cause of action in your mind?

KO: No, it would simply not be sufficient, let's say even this belated conversation comes in that there was some kind of agreement. And it's simply too little, too late. The allegation that came from a conversation with Mr. Haskell was from a different time period, apparently 1995 to 1996, whereas the 16g conspiracy supposedly started in 1999. So you have a different time period. You have a different subject matter. 16g is not connected. I think you had it understood correctly the first time, Judge Berzon. The dots are not connected.

JBERZON: I did understand.

KO: And so it's simply too little, too late.

JBERZON: What about this 2014 press conference or whatever, I don't understand what its implications are? That was the other thing she brought up.

KO: Yes, and I did want to respond to that. This was an interview with the Hollywood Reporter and the full transcript of that interview is available in the supplemental excerpts of record. If you look at pages SER 134 to 135, you can see that statement was in response to the following question: Do you care that you don't know how many people are watching on Netflix and Amazon? In other words, we have these new streaming platforms that didn't even exist when this supposed conspiracy began. How are you going to value or quantify that? Well, we're going to have to figure that out. The District Court mentioned that in a footnote. It was unnecessary to the outcome of the decision. And it's simply not

_____ here. I was about to turn to 16g and wasn't it the Screen Actors Guild that killed this and the answer is yes, and that is pleaded in the third amended complaint. If you look at paragraph 37, of the third amended complaint, it says quote "dysfunctional leadership of SAG" is what was the cause of the demise of that rule. So it was not some kind of conspiracy by the large talent agencies that ended that. So—

JBYBEE: According to the plaintiffs, it was a little bit of a win-win for them. You either were going to force SAG to negotiate what you wanted or the rule was going to die. So it seems like either way they were going to be in a position to start taking percentages from the studios.

KO: But in terms of a conspiracy, it seems an awfully far-fetched and attenuated conspiracy that we're going to propose something reasonable and negotiate with the Screen Actors Guild board. They're going to agree with us but then somehow that the rank and file are going to--

JBERZON: This goes back to the question at the beginning. Was 16g the reason they couldn't take a percentage from the studio? I thought that 16g had to do with equity investment.

KO: Right, and 16g really goes to your point, Judge Bybee, about it being a rational business model. It's just as consistent with rational economic interests and having access to capital.

JBERZON: Was 16g ever read as precluding a payment by the studios to the talent agencies for a particular product as a percentage of profits?

KO: I—

JBERZON: Was that an understanding or not an understanding?

KO: I think it was not an understanding. And so—

JGLEASON: Wasn't it the allegation that I understood it that the elimination of 16g enabled the cash infusion which in turn enabled this different form of compensation?

KO: Right. That's certainly the allegation, but in terms of the who, what, when, where, the only time they actually get some people in the room together is in a Trade Association meeting and every Trade Association—

JBERZON: But there – at some point, you can have a constructive allegation of an agreement. There has to be an agreement but even after Twombly and so-on, you don't necessarily need people in a room in a complaint, do you?

KO: Well this court said in [KENDALL?] that you do need the who, what, when, where, who did what to whom when, and whether the people are in a room or exchanging it by e-mail, you may not need them literally in the room, but you do need—

JBERZON: But that seems highly unrealistic that somebody. I mean, if for example, like in the texting case that she talked about before seems somewhat to the contrary, that there is some way at which you can say there is no way this could have happened without an agreement without saying who, what, when, where, no? No way?

KO: First of all, that is the law of this circuit, [KENDALL] requiring that. But, secondly, they have nothing else beyond that. These other supposed interests in excluding the smaller talent agencies from package deals. There's no there, there. The District Court said very patiently ruling on the first, excuse me, yeah, ruling on the first and second amended complaints, you haven't had sufficient detail here. Other words, come up with something, and they come up a list with all these packages but not one where a small talent agency asked to be included and wasn't given the opportunity, let alone something that Lenhoff, the plaintiff, asked for, and wasn't included. And then these allegations—

JBERZON: What? To go back to [KENDALL], [KENDALL] actually says is a specific time, place or person. I mean, they had persons.

KO: The one place where they added to the third amended complaint was people.

JBERZON: But it doesn't say what you said it said. At least, so far I can't find it.

KO: I'm sorry, your honor. But the one instance where they have any of that is for 16g which was killed by the Screen Actors Guild. And it's totally disconnected to these other allegations where there are really no additional details at all, let alone coercion. And coercion is pleaded if you look at paragraph 76, a veiled threat against the studio. Well a veiled threat by definition is one we don't know who was making it or to whom. My favorite, since I'm ICM's lawyer, is when ICM supposedly cajoled ABC, paragraph 42, because there's nothing unlawful about cajoling. Trying to lawfully persuade a network to take one of your shows. So the District Court ruled on the Sherman Act claim, really on two grounds, one of which, there's simply no conspiracy here, no agreement. And secondly, on no injury. And the most straightforward path of evaluating anti-trust injury is the one the District Court reached. They hadn't pleaded the predicate agreement. But it would be equally straightforward to conclude that there was no injury allegedly suffered by this plaintiff from the supposed conspiracy.

JBERZON: Let's go back to the who, what, when and where. I have a question. Let me just be upfront about what's troubling me. Whether or not they sufficiently pled the horizontal price fixing is a separate question, but frankly seems to be their strongest argument if adequately pled. And the [STARR V BACCA?] case, which was three years after [KENDALL?], seems quite clear about the fact that you can have circumstantial evidence to prove an agreement. Right?

KO: Of course, you can have circumstantial evidence.

JBERZON: But you said no. You said you had to know who, what, when, where and how. So how can you have circumstantial evidence of that?

KO: I found what I believe is the quote from [KENDALL] which—

JBERZON: Well, I understand that. But this was three years later and it said that if you plead a set of facts from which it is plausible from the meaning of Twombly & [ECKBALL?] that there must have been a conspiracy, because this wouldn't have happened without a conspiracy, that is enough. Does it not say that?

KO: Yes, in [STARR V BACA], and the principle in that case is that there are two equally plausible theories.

JBERZON: Yes, but I'm going into something else, which is that it can be inferences from what happened and you don't need to know who was in the room or when, where or how. Is that right?
KO: Fair enough, but whether—

JBERZON: But you were quite misleading in saying otherwise.

KO: I. I. I- am sorry, your honor. But this court has not disavowed the ruling in [KENDALL] which says that the complaint there does not answer the basic questions: who did what to whom, or with whom, where or when.

JBYBEE: But there are circumstances which we could say, ok, it's clear that somebody got together and conspired to do this because the result of this is just so utterly implausible. Let's suppose that the Uber-Agency, that each one of them demanded but also the studio saw the same provision coming up in every contract, that said all funds are to be paid into an account number, some long account number in the Bahamas, and everybody had the same account number. We could go, ok, not sure who got together when, but it's pretty clear somebody's been talking.

KO: Absolutely, your honor, and like the Court said in Twombly, you have a historically unprecedented change, all at the same time, numerous companies all doing the same thing for no discernible reason, then of course you are much more likely to infer that the theory was plausible.

JBERZON: The argument here would be something along the lines, and I understand you say that it wasn't arranged and maybe it wasn't, but it would be something along the lines of there was a complete change and it was a change to a specific set of numbers, not just the general notion that you're going to have a scheme of upfront and back compensation from the studios, but specific numbers. Those specific numbers never change and have never been undercut by any of these four people – and why wouldn't someone start fooling around with the numbers, if they were trying to get a better deal, so then, they must have agreed.

KO: Right. And that's not what they alleged here. What they alleged at the last minute that they didn't file an amended notice of appeal from related to a conversation that one of the talent agencies, not a named defendant, actually lowered its packaging price in response to pressure from the studio. And so, it's entirely opposite of the scenario where they all act in concert to do—

JBERZON: That was earlier. Way earlier, right?

KO: That allegedly happened in 1995.

JBERZON: But since then, nobody's done that.

KO: No, but…

JBERZON: Alright. That's why I was trying to put aside your waiver point. Suppose those allegations were in the complaint in the way I just recited them.

KO: Suppose they were. They were fixed, and uniform and no one varied from it, which of course is not what they alleged here.

JBERZON: Ok.

KO: If—

JBERZON: And it was a huge change from what was there before.

KO: Well, putting aside that none of that has been alleged, it can be a perfectly lawful practice, industry practice to charge the same base fee.

JBERZON: But, but, see what's odd about this is it's not just everybody's charging $1.99. It's that it's a very specific scheme with specific numbers at different stages. And it's not varied from.

KO: Well none of that was alleged. They admit that. They actually acknowledge in their opening brief, that plaintiff did not plead the 1990s price fixing agreement. So to get up here and say that this is somehow what they have pleaded is simply not constituent with the third—

JBERZON: You still haven't answered my question.

KO: I think it would be a different case is the answer, your honor. It would be an entirely different case. The District Court was extremely patient here, gave the plaintiffs four chances. They were deficient at every stage and the notice of appeal was the final deficiency. It's not a case where they asked for limited discovery to do anything more to support their complaint until it had been dismissed three times. So the District Court was well in its discretion and ruling that they should not get a fifth shot.

JBERZON: Thank you very much.

KO: Thank you.

GN: Thank you, your honors. Let me first take an issue that I think is important. And the court has touched on it. In the complaint, in paragraph 53, it is alleged that UTA and ICM were charging 3-3-10 across the board. In paragraph 78 of the complaint—

JBERZON: But you don't really say that they don't vary it and so on, see.

GN: We say a packaging Uber-Agency receives a guaranteed fee of 3% of the budget which is often already more than the talent receives, in addition to 3% deferred, and 10% gross profit participation, before the talent's net talent participation. And in paragraph 78, it is alleged that, as follows, on page 24, in lines 1 or 2, I'm sorry – starting at paragraph 78, the beginning of paragraph 78, defendants conduct has caused injury in at least two respects. And then it goes on to say that they allocate the market amongst themselves by limiting to co-packaging agreements that are exclusive and they set the price or the packaging fees paid by the studios. So there are allegations that were in there and the District Court recognized that. In the [KENDALL] case as well as in the [MUSICAL INSTRUMENTS?] case, there was a very significant distinction to be made in those cases. Both of those cases came up to this court after having had an opportunity for discovery to occur. And so in those cases there was a record as

the court recognized in the earlier case we heard today involving San Ysidro and Calexico, it is important to be able to have a record that you can go to.

JGLEASON: So what weight should we give to the fact that you didn't seek to have an opportunity for discovery prior to the court entering the final judgement?

GN: I don't know that there is much to be stated other than to say that it did not occur. Whether it would have or would have not, I don't know. But it is fair to say that the request was not made. In addition, the argument is being made that the 3-3-10 is a business decision. It is not and it makes no _____ sense. As Judge Berzon mentioned, this is not a case involving a product that is standard in the industry. It's not a widget that one competitor can make and another competitor can make. We're talking about packaged scripted television series and it belies belief, at least to me, that where you have a situation where talent agencies are able to say I have a packaged scripted television series. And let's just take as for example, I've got a series that involves a newspaper. And I will bring to you Tom Hanks. And I will bring to you Meryl Streep. And I will present this to you. It defies belief that they would accept 3-3-10 for that series when they are accepting 3-3-10 for a series by young artist, not developed, and a program that has no basis in reality as my hypothetical of the Washington Post would be. So what makes this interesting, and what I think the court, I believe, the facts do demonstrate is that this is a case where you don't necessarily always need to always say, here's the who, here's the what, and here's the why. And I think, Judge Bybee, you recognized that also. There has to be the case out there. There are two. Text messaging –there was no indication, that's not from the 9th circuit, but it is from the 7th circuit. The Sony v MGA, I believe, is a case out of the 2nd circuit where there was no who, what, when or why that was necessarily specifically pled. So what you have in anti-trust cases is a very difficult situation right now that has developed on the plausibility front. I think the facts that we have alleged, not the least of which is the existence of this agreed-upon pricing for these packaged series, the limitations in the numbers of times that the defendants will co-package with small talent agencies, the demise of many talent agencies from this period in 2001/2002 to 2014 where there's been a drop of approximately 71% in small talent agencies. And you have, there are comments in here. There are comments from talent who are frustrated by this system, who can't seem to get their studio to break it, which demonstrates, if anything, a stranglehold that the agencies, these four agencies have over these studios as a result of the volume of these package deals. There is testimony in this complaint – and it's not testimony – but it's a statement and a record by Gavin Polone, a talent agent that was paid money for doing nothing because of this, what we say is an agreement in its entirety to try to monopolize this market to create one group, the four, who are all you can do and they are the only ones that anyone can go to. And with that, I know the time has drawn nigh, and the court has been very indulgent and lunch is twenty minutes past. Thank you.

JBERZON: That was a difficult case so thank you very much. The case of Lenhoff Enterprises and United Talent Agency is submitted.