

Suit Claims Silicon Valley Anti-Poaching Scheme

Marcus Wohlsen, Associated Press

SAN JOSE, California (AP) — In Silicon Valley's white-hot competition for tech talent, programmers can face a daily barrage of calls from recruiters seeking to woo them to rival companies with offers of better pay and perks.

But workers for some of the biggest names in the business claim their phones fell silent because of a conspiracy among their employers. And they claim the world's biggest tech icon was at the center.

A lawsuit filed in federal court in San Jose claims senior executives at Google Inc., Intel Corp., Adobe Systems Inc., Intuit Inc., Lucasfilm Ltd., Pixar and Apple Inc. violated antitrust laws by entering into secret anti-poaching agreements not to hire each other's best workers. In doing so, the suit contends the companies were able to keep wages artificially low by preventing bidding wars for the best employees.

The plaintiffs also claim that company emails show Steve Jobs himself sought and orchestrated at least some of the so-called "gentlemen's agreements" while Apple's CEO.

"I believe we have a policy of no recruiting from Apple," then-Google chief executive Eric Schmidt wrote in a 2007 email cited by the plaintiffs. The email was originally furnished to the U.S. Justice Department, which investigated similar allegations in 2010. The same email included a forwarded message from Jobs complaining that Google's recruiting department was trying to lure away an Apple engineer.

"Can you get this stopped and let me know why this is happening?" Schmidt wrote. Google's director of staffing replied that the recruiter "will be terminated within the hour."

The companies' attorneys said the facts even as presented by the plaintiffs show no evidence of a conspiracy.

Rather, they said in court filings that some companies had separate one-to-one pacts among themselves as they worked together on various business ventures.

"The obvious explanation for the existence of these agreements were the collaborations," said Apple defense attorney George Riley, as the two sides squared off Thursday in U.S. District Court in San Jose. Riley told Judge Lucy Koh that such arrangements were common.

The case hinges on a practice described in court documents as "cold-calling." Under the practice, recruiters from one company will call an employee at another company who has the skills the company needs. The practice can lead to bidding wars as workers play the companies off one another to get the highest pay.

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Cold-calling, the suit contends, helps workers get a sense of what they're worth in a free market for employment in which all the companies are competing against one another for top employees. When the cold-calling stops, workers lose the knowledge and the leverage they could otherwise use to demand higher pay.

The Justice Department's 2010 investigation included all the same companies except Lucasfilm, and the plaintiffs in some ways mimic the language from the department's original case. The companies settled without admitting any wrongdoing but agreed not to enter into future agreements preventing them from cold-calling each other's employees to recruit them.

Because the Justice Department's case was settled quietly without any public dispute, court records contain little detail about any specific alleged agreements among companies.

Some of those details did come to light, however, in a recent filing by the plaintiffs, which quotes emails they obtained from the companies that had previously been given to the Justice Department.

In a 2005 email describing a purported agreement between former Adobe CEO Bruce Chizen and his then-counterpart at Apple, an Adobe human resources executive wrote: "Bruce and Steve Jobs have an agreement that we are not to solicit ANY Apple employees, and vice versa," according to court documents.

Ex-Palm Inc. CEO Ed Colligan wrote to Jobs in 2007: "Your proposal that we agree that neither company will hire the other's employees, regardless of the individual's desires, is not only wrong, it is likely illegal," the plaintiffs' filing said.

In internal company communications, Intel CEO and Google board member Paul Otellini described a gentlemen's agreement between the two companies: "Let me clarify. We have nothing signed. We have a handshake 'no recruit'" between himself and then-Google CEO Schmidt. "I would not like this broadly known."

Defense attorneys contend the emails are being distorted by the plaintiffs and show nothing beyond legitimate one-to-one agreements. Apple declined to comment.

"Intel disagrees with the allegations contained in the private litigation related to recruiting practices and plans to conduct a vigorous defense," said Sumner Lemon, an Intel spokesman.

Adobe said the company does not comment on pending litigation.

The other companies named in the lawsuit did not immediately respond to requests seeking comment.

Whichever side prevails, the case underscores the high wages talented tech workers can command in Silicon Valley, where the tech industry added thousands of jobs last year. According to federal labor statistics, mid-level tech workers in the

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region such as computer security specialists, web developers and network architects earn more money than anywhere else in the country, with average annual salaries topping \$110,000.

Many of those workers could get thousands more if the case goes their way, lead plaintiff's attorney Joseph Saveri said. Given the potentially tens of thousands of workers affected if the plaintiffs succeed in turning the suit into a class-action case, Saveri said the combined damages for the companies could reach into the hundreds of millions of dollars if decided at trial.

Such penalties would sink many companies. But Apple recently reported cash reserves of more than \$97 billion. Google also has billions in cash on hand.

One anti-trust attorney not involved in the case doubts the companies have much to worry about anyway.

Antitrust cases that revolve around hiring practices are difficult to win, said David Balto, a Washington, D.C.-based antitrust lawyer who investigated Microsoft as a staff attorney for the Federal Trade Commission in the 1990s. Among the legal challenges they face is defining who exactly makes up the class of workers harmed by the alleged violations, since people with different jobs have different employment options, he said.

"I don't think anybody at these companies is losing a nanosecond of sleep because of this lawsuit," Balto said.

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