

Silicon Valley no-poaching settlement in doubt

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Casting some doubt on a proposed \$324 million settlement with four Silicon Valley powers, a lead plaintiff in a lawsuit alleging illegal hiring practices in the tech industry has urged a federal judge to reject the pact, calling it "grossly inadequate."

In a letter sent this weekend to U.S. District Judge Lucy Koh, Michael Devine, one of several plaintiffs in the class action, argues that the deal with Apple, Google, Adobe and Intel should be nixed because it does not punish the companies sufficiently for entering into side agreements not to hire from each other.

"There's no justice for the class in that, nor is there any real deterrent to future wrongdoing," wrote Devine, who now lives and works in Seattle. "We want a chance at achieving real justice."

Lawyers for an estimated 64,000 tech employees reached the proposed [settlement](#) in April, calling for the four companies to pay the \$324 million to resolve the case as it approached a trial at the end of this month. Lucasfilm, Pixar and Intuit previously settled for a total of \$20 million.

It is unclear how much influence Devine's opposition will have with the judge, who recently approved the Lucasfilm, Pixar and Intuit settlement. The other three named plaintiffs in the case support the settlement, according to a lawyer familiar with the case. Mark Fichtner, a former Intel engineer who now lives in Arizona, submitted a declaration

Monday calling the deal "fair, adequate and reasonable."

Plaintiffs' lawyers were going to seek about \$3 billion in damages if the case went to a jury, one of the reasons Devine now says the settlement should be rejected. "This settlement," he told Koh, "... will amount to less than one percent of the compensation for each class member over the duration of the illegal agreements."

Koh is expected to hold a hearing on the proposed settlement on June 19.

The lawsuit alleged top executives for the companies, including late Apple CEO Steve Jobs and Google CEO Eric Schmidt, cut deals not to poach from rival work forces between 2005 and 2009. Evidence in the case revealed emails discussing the alleged agreements, which the employees argued stifled hiring in the valley and suppressed pay and benefits for engineers and others in a competitive market.

The companies previously settled an identical antitrust case with the U.S. Justice Department, agreeing not to enter in such anti-competitive hiring arrangements. EBay recently settled a separate antitrust case with federal and state regulators.

Kelly Dermody, a lawyer for the employees, declined comment. The four companies involved in the settlement could not immediately be reached for comment. Devine also could not be reached.

Devine is one of five original named plaintiffs in the lawsuit, although one, Brandon Marshall, a former Adobe engineer, was shot and killed last year in a confrontation in Saratoga with Santa Clara County sheriff's deputies. It is not uncommon for opposition to surface to [class action](#) settlements, as there are typically concerns about legal fees or terms of a deal, but it is considered unusual for named plaintiffs to balk.

Recently released documents show that one valley power, Facebook, rebuffed pressure to take part in the no-poaching agreements. Sheryl Sandberg, Facebook's chief operating officer, is quoted in court papers saying she declined in 2008 to restrict Facebook's hiring of Google employees. Devine cites Facebook's approach as one of the reasons Koh should allow the case to proceed to a trial.

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