

Disney settles for \$100 million in anti-poaching case

By Steven Crighton

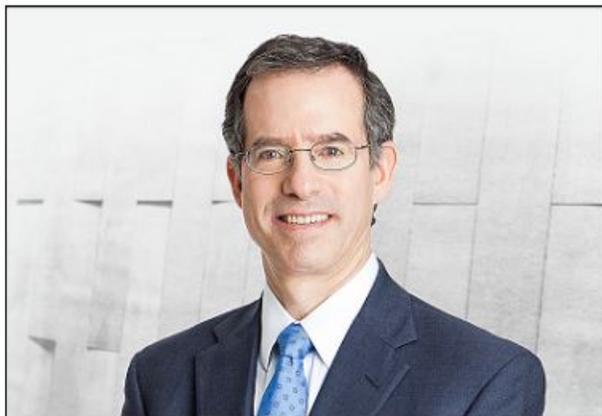
Civil litigation stemming from a 2010 U.S. Department of Justice investigation into anti-poaching agreements among technology companies has drawn to a close, as The Walt Disney Company and the plaintiff class of animators have tied up the last loose end with a \$100 million settlement.

The last case, tentatively resolved Wednesday, was filed in 2014 by animators who accused Disney and other top studios of engaging in an anti-poaching agreement.

Plaintiffs' attorney Daniel A. Small of Cohen Milstein Sellers & Toll PLLC said that the final amount that each of the roughly 10,000 class members in the studios case would receive, after expenses and attorney fees are factored out, remains to be seen. But he estimated that it would be "on average in the thousands per class member."

"We're very pleased with the results we were able to achieve in this case," Small said. "I believe they show that class actions are capable of providing, and did in this case, very meaningful relief."

The lawsuit was filed after evidence came to light in another case involving similar accusations against top Silicon Valley tech companies, including Apple Inc. and Google Inc. That lawsuit, in turn, stemmed from a complaint filed in 2010 by the Department of Justice accusing the tech companies of engaging in "no-poach" pacts.



Cohen Milstein Sellers & Toll PLLC

Daniel A. Small of Cohen Milstein Sellers & Toll PLLC represented plaintiffs in a \$100 million settlement with The Walt Disney Company, the last of a series of cases that accused studios of making anti-poaching agreements.

Brian Kabateck, a partner at Kabatack Brown & Kellner LLP who was not involved in the cases, said the Disney settlement marks the end of the litigation stemming from the 2010 investigation and, at least for the immediate future, for California anti-poaching class actions.

"As we saw here and as we saw up in Silicon Valley, these are some very distinct business areas. There are two factors involved, where you're looking at a closed industry filled with very highly talented, highly desirable employees," Kabateck said. "It has to be that perfect mix of those two, and I don't think you're going to see it in a lot of areas."

The studio lawsuit, filed by digital animator Robert A. Nitsch, said the studios had entered into a "gentleman's agreement" where one studio would not try to poach employees from the others specifically to suppress the wages of animators and graphic designers.

The agreement allegedly dates back to the 1980s when George Lucas, then head of Lucasfilm Ltd., and Steve Jobs, then head of Apple, agreed not to "raid each other's companies," the complaint said. The agreement was later extended to Disney, DreamWorks Animation SKG Inc., and Sony Pictures Animation, among others, according to the complaint. *Nitsch v. DreamWorks Animation SKG, Inc.*, 14-CV04062 (N.D. Cal., filed Sept. 8, 2014).

Disney was the last studio to settle in the digital animators' case. Fox subsidiary Blue Sky Studios was the first to bow out, settling for \$5.9 million in April. Sony followed suit in June with a \$13 million settlement, and DreamWorks settled for \$50 million in October.

All told, the settlement for class members comes just short of \$170 million, which, according to court documents, is nearly one-third of the \$553.4 million a plaintiff's expert witness had testified the class was owed in damages.

The success of the lawsuit could encourage workers in the field to take a closer look at their employment agreements, Kabateck said, adding, "the world of entertainment employment is fertile" for future litigation.

"I continue to believe the entertainment industry is ripe for employment cases, and this might be kind of like priming the well for other people in the industry to take a look at things," Kabateck said. "If I were advising a studio today, I'd tell them that they should be checking their employment practices pretty closely and making sure they're complying with the law, because something could be coming."

Emily Henn, a Covington & Burling LLP partner who served as lead counsel for Disney, did not respond to a request for comment. A Disney spokesperson could not be reached for comment.

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