



Unclassy Action

By Andrew Jacobson

The class action lawsuit that engineers brought against seven of the biggest Silicon Valley companies has been [tentatively settled](#) for about \$324 million. If it were to be divided equally among the 64,000 class members after attorneys' fees are paid, each engineer would get about \$3,500 – about one paycheck per engineer, hardly the mother lode some were expecting. A few days before the settlement was announced, I was asked to contribute my two cents in an interview with [Inc.com](#). Lief, Cabraser, the law firm representing the class of plaintiffs, announced the [settlement](#), saying that the settlement “is an excellent resolution of the case that will benefit class members. We look forward to presenting it to the Court and making the terms available.”



I'm sorry for asking, but are they nuts?

Assuming the rumored amounts are accurate, this was not a great settlement for the engineers. The damages were claimed to be \$3 billion, almost ten times the settlement amount. Even allowing for puffing, a 10% return is not great. There was solid evidence Apple's Steve Jobs bullied the other defendants into no-poaching agreements – the defendants entered into a consent judgment with the US Attorney General on the same grounds (though, of course, they denied liability). Under [the Sherman Antitrust Act](#), “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce . . . is declared to be



illegal.” Entering into agreements whereby companies agree not to hire away the others’ engineers is an illegal restraint of trade. Solid evidence existed of the agreements, to the point where Steve Jobs passed on a Google surrender email with a [little smiley face](#).

More important, for antitrust violations, damages can be tripled, so a \$1 billion award could become \$3 billion with a wave of the judge’s pen. The defendants, some of the largest companies in America, have literally hundreds of billions of dollars in the bank, so collecting would be highly likely. This case could have generated billions of dollars for the plaintiffs, for some egregious conduct. Why let them slip out at about pennies on the dollar?

Granted, there were hurdles to a big award. First, while causation could be proved, proving damages to particular groups of engineers would be far more difficult. There are few equivalent sets of engineers being hired by the top companies in Silicon Valley to which a jury could compare. It would also require expert testimony on market value that could be ripped apart by a good lawyer – which the defendants had in depth. Lieff, Cabraser is a large, well-respected class action firm, but even it would have been taxed to keep up in a case against these defendants that would last for many months. Moreover, juries are unpredictable, regularly finding against heavily-favored parties for reasons that no one, even the victors, thought would be important.

This settlement will not change Silicon Valley hiring culture. Steve Jobs instigated this scheme, and with his passing almost three years ago, it is unlikely that anyone would be crass enough to revive this practice; indeed, the evidence suggests that the other companies merely sought to stay out of a hiring war with Apple.

What is lost here is the situation of the commoner – the engineers who create the magic for these highly-successful companies. Whenever a new iPhone model comes out, there is worry about the [many workers in the Guangzhou factories](#) where they are made. However, there is little worry about the Silicon Valley engineers who work the same number of hours, because their time, surely, must be full of foosball and chef salads, while picking up a big paycheck before getting enough stock to retire on.

Reality isn’t as pretty. The work is often enjoyable and challenging, but the long hours take their toll on even the ability to start a family, let alone participate as a parent in one. The pay isn’t bad, but relatively few engineers get the multimillion dollar stock incentive packages so often



featured in the news, especially if, as here, the company is already well-established. While their companies are putting billions of dollars in the bank, they lead a hermetic life solving problems.

This case not only is not a panacea, it is barely even a band-aid. Silicon Valley will not enter into an orgy of job-switching. Restrictions on trade secrets will still limit engineers' mobility: if you know too many secrets of your current employer, hiring you may become too great a risk for a competitor, as it may be opening itself to a misappropriation of trade secrets lawsuit; experience becomes a liability, because experience means exposure. The constant influx of engineers from around the world who want to work in the planet's hottest, most cutting-edge industries will also dampen wage rises. Steve Jobs wins another round, even beyond the grave.