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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VAN PHAN, individually and on behalf of all others similarly situated,

Plaintiff,

v.

DREAMWORKS ANIMATION SKG, INC.; PIXAR; LUCASFILM, LTD.; THE WALT DISNEY COMPANY; DIGITAL DOMAIN 3.0, INC.; IMAGEMOVERS LLC; IMAGEMOVERS DIGITAL; SONY PICTURES ANIMATION, INC.; and SONY PICTURES IMAGEWORKS, INC.

Defendants.

Case No:

CLASS ACTON COMPLAINT

DEMAND FOR JURY TRIAL

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Plaintiff Van Phan, on behalf of himself and all others similarly situated, brings this class action suit against DreamWorks Animations SKG, Inc.; Pixar; Lucasfilm Ltd.; The Walt Disney Company; Digital Domain 3.0, Inc.; ImageMovers Digital; ImageMovers LLC; Sony Pictures Animation Inc.; Sony Pictures Imageworks, Inc. (collectively "Defendants"). Plaintiff makes the following allegations based upon personal knowledge as to his own acts, and upon information and belief as well as upon his attorneys' investigative efforts as to Defendants' actions and misconduct, and alleges as follows:

I. INTRODUCTION

1. Defendants are companies that are each involved in creating visual effects and animation for motion pictures who entered into agreements not to actively solicit each other's employees and to fix their employees' salary ranges as part of an established conspiracy to suppress the compensation of their employees.

2. These employees and class members include animators, digital artists, software engineers, graphic designers, and other technical, artistic, or creative workers who are in the business of creating effects and animation for major motion pictures. Defendants' conspiracy deprived Plaintiff and other class members of hundreds of millions of dollars in compensation.

3. The conspiracy was initiated in the 1980s as part of a bilateral agreement between Pixar and Lucasfilm. Originally, Pixar and Lucasfilm agreed that they (1) would not actively recruit or cold call the other's employees; (2) would notify the other company when making an offer of employment to an employee of the other company, if that candidate independently applied for the position; and (3) the company making an offer would not increase its offer if the original employer made a counteroffer.

4. This non-solicitation agreement was eventually adopted by all Defendants. The conspiracy became widespread as Ed Catmull, President of Pixar, described to Dick Cook, then the President of Walt Disney Studios, "[w]e have avoided wars up here in

Norther[n] California because all of the companies up here – Pixar, ILM, DreamWorks, and couple of smaller places [sic] – have conscientiously avoided raiding each other."

5. The conspiracy among the Defendants was not limited to the non-solicitation agreements. The conspiracy also included agreements designed to establish, suppress, and fix compensation for employees with similar job titles. Throughout the year, Defendants discussed, agreed upon, and set compensation ranges for their employees during informal meetings. The purpose of these discussions and compensation-suppressing agreements was to cap pay for prospective hires thus preventing bidding wars.

6. The non-solicitation and compensation-suppressing agreements were kept secret from Defendants' employees and other industry players. Only Defendants' top executives and recruiting and human resources personnel were involved in the conspiracy. These top executives and personnel only communicated about the conspiracy orally or in emails among themselves and stressed that the agreements not be put into writing.

7. These agreements unreasonably restrained trade in violation of the Sherman Act, 15 U.S.C. § 1, and the Cartwright Act, Cal. Bus. & Prof. Code §§ 16720, and constituted unfair competition and unfair practices in violation of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq*. Plaintiff Van Phan, on behalf of himself and on behalf of the class defined herein, seeks to recover the difference between the wages and salaries that Class Members were paid and what Class Members would have been paid in a competitive market, and to enjoin Defendants from continuing their unlawful agreements.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject of this action pursuant to 15 U.S.C. §§ 4 and 16, and 28 U.S.C. §§ 1331 and 1337. This Court has supplemental jurisdiction under 28 U.S.C. §§ 1367 because the California state law claims under the Unfair Competition Law are part of the same case or controversy.

9. This court has personal jurisdiction over Defendants because each resides in or has its principal place of business in the State of California, employed Class Members in California during the Class Period, and has had substantial contacts within the State of California in furtherance of the conspiracy.

10. Venue in this District is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this district and Defendants conduct business within this District. In addition, assignment to the San Jose division of this Court is also appropriate because the underlying antitrust lawsuit against several of the world's largest technology companies is currently pending in the San Jose division before The Honorable Lucy Koh. Pursuant to Civil Local Rule 3.2(c) and (e) and principles of judicial economy, this matter is appropriately brought within the San Jose Division.

III. PARTIES

A. Plaintiff

11. Plaintiff Van Phan is a former employee of Defendants DreamWorks and Digital Domain. Plaintiff Phan worked as a junior animator, animator, and digital trainer at DreamWorks from 2002 to 2005. Plaintiff Phan later worked as a senior animator for Digital Domain in 2011. Plaintiff Phan returned to DreamWorks as a layout artist from September to November 2011. He is a resident of the State of California.

B. Defendants

12. Defendant DreamWorks Animation SKG, Inc. ("DreamWorks") is a Delaware corporation with its principal place of business located at 1000 Flower Street, Glendale, California. DreamWorks also has a studio in Redwood City, California, located in San Mateo County.

13. Defendant Pixar is a California corporation with its principal place of business located at 1200 Park Avenue, Emeryville, California. Defendant The Walt Disney Company has owned Pixar since January 2006.

14. Defendant Lucasfilm, Ltd. ("Lucasfilm") is a California corporation with its principal place of business in California located at 1110 Gorgas Avenue, San Francisco, California 94129. Industrial Light & Magic ("ILM") is a division of Lucasfilm. Lucasfilm and ILM have been owned by The Walt Disney Company since 2012.

15. Defendant The Walt Disney Company ("Disney") is a Delaware corporation with its principal place of business located at 500 South Buena Vista Street, Burbank, California. Walt Disney Studios is a division of Disney with its principal place of business located at 500 South Buena Vista Street, Burbank, California. Walt Disney Studios oversees the operations of both Walt Disney Animation Studios and, since 2006, Pixar. Walt Disney Animation Studios is a division of Disney with its principal place of business located at 2100 W. Riverside Drive, Burbank, California. Walt Disney Animation Studios was formerly known as Walt Disney Feature Animation.

16. Defendant Digital Domain 3.0, Inc. ("Digital Domain"), also doing business as DD Digital Domain 3.0, Inc., is a Delaware corporation with its principal places of business in California located at 300 Rose Avenue, Venice, California and 12641 Beatrice Street, Los Angeles, California.

17. Defendant ImageMovers, LLC is a California corporation with its principal place of business located at 1880 Century Park East, Suite 1600 in Los Angeles, California.

18. Defendant ImageMovers Digital (together with ImageMovers, LLC, the "ImageMovers Defendants") is a California corporation located at P.O. Box 10428, San Rafael, California, 94912. From February 2007 to January 2011, ImageMovers, LLC and Walt Disney Studios participated in an entity called ImageMovers Digital that had its principal place of business at 9 Hamilton Landing, Novato, California.

19. Defendant Sony Pictures Animation, Inc. is a California corporation with its principal place of business located at 9050 W. Washington Blvd., Culver City, California.

20. Defendant Sony Pictures Imageworks, Inc. (together with Sony Pictures Animation, Inc., the "Sony Defendants") is a California corporation with its principal place of business located at 9050 W. Washington Blvd., Culver City, California.

IV. FACTUAL ALLEGATIONS

A. The Conspiracy

21. This class action challenges a conspiracy among Defendants to fix and suppress the compensation of their employees. Defendants are companies that are each involved in creating visual effects and animation for motion pictures. Creating and producing visual effects and animation for motion pictures is specialized work that requires thousands of trained and skilled animators, graphic artists, software engineers, and other technical and artistic workers. A limited number of studios have the capability to provide the experience and technological resources to provide visual effects and animation services.

22. This type of business depends on a large number of highly skilled workers. These visual effects and animation workers typically obtain formal training or schooling to obtain the necessary skills and tools required in the industry.

23. In a properly functioning and lawfully competitive labor market, each Defendant would compete for these highly skilled employees by soliciting current employees of one or more other Defendants by directly contacting and communicating an offer to another firm's employee. This recruiting method, referred to as "cold calling" is a chief competitive tool companies use to recruit employees. When a current employee receives a cold call from a rival company with an offer that exceeds his current compensation, the current employee may either (1) accept the offer and gain higher compensation; or (2) negotiate increased compensation from his current employer. In either instance, the employee has the opportunity to gain increased compensation and mobility.

1. Defendants Agreed Not to Actively Solicit Each Other's Employees

24. Because cold calling in a competitive labor market could increase employee compensation, Defendants' top executives and human resources and recruiting personnel, without the knowledge or consent of their employees, entered into express agreements to eliminate competition among them for skilled labor.

25. The conspiracy was initiated in the 1980s as part of a bilateral agreement between Pixar and Lucasfilm. George Lucas, the former Chairman of the Board and CEO of Lucasfilm, and Ed Catmull, the President of Pixar, along with other senior executives, entered into an express non solicitation agreement.

26. Specifically, Pixar and Lucasfilm agreed: (1) not to actively solicit or cold call each other's employees; (2) to notify each other when job offers were made to the other's employee; and (3) to decline to increase its offer if the company currently employing the employee made a higher counteroffer.

27. Had Defendants acted in their own self-interests, they would not notify competitors when offering employment to a competitor's employee and they would not refuse to bid against their competitors. Defendants' non-solicitation agreements effectively took the visual effects and animations industry out of a normal competitive labor market.

28. Pixar and Lucasfilm's misconduct was eventually investigated by the Antitrust Division of the United States Department of Justice (the "DOJ") in 2010. The DOJ found that Pixar and Lucasfilm's agreement "eliminated significant forms of competition to attract digital animators and, overall, substantially diminished competition to the detriment of the affected employees who were likely deprived of competitively important information and access to better job opportunities." The DOJ also explained that the agreement "disrupted the normal price-setting mechanisms that apply in the labor setting" and "were not ancillary to any legitimate collaboration." The DOJ ultimately concluded that the non-solicitation agreement entered into between Pixar and Lucasfilm

constituted a *per se* violation of the Sherman Act because it was "facially anticompetitive."

29. After its investigation, the DOJ filed complaints against both companies in federal court. Pixar and Lucasfilm eventually entered into stipulated proposed final judgments with the DOJ on March 17, 2011 and June 3, 2011. In these stipulated proposed final judgments, Pixar and Lucasfilm agreed to be enjoined from entering into such non-solicitation agreements.

30. Before the DOJ investigation in 2010, the original conspiracy between Pixar and Lucasfilm expanded. The non-solicitation agreement was eventually adopted by all Defendants. According to Catmull, "[w]e have avoided wars up here in Norther[n] California because all of the companies up here – Pixar, ILM, DreamWorks, and couple of smaller places [sic] – have conscientiously avoided raiding each other."

31. DreamWorks became a member of the conspiracy in 2004 and has entered into non-solicitation agreements with at least Pixar, Lucasfilm, Walt Disney Animation Studios, and Digital Domain. Before February 2004, Steve Jobs, who was then both the CEO of Pixar and Apple, and Jeffrey Katzenberg, the CEO of DreamWorks, discussed and entered into a non-solicitation agreement between their companies. Catmull confirmed that DreamWorks agreed to participate in the non-solicitation agreements and, according to Catmull, Pixar has "an agreement with DreamWorks not to actively pursue each other's employees" that has "worked quite well."

32. Walt Disney Animation Studios became a member of the conspiracy in 2006 and has entered into non-solicitation agreements with at least Pixar, DreamWorks, Lucasfilm, ImageMovers Defendants, and Sony Defendants. In January 2006, Disney bought Pixar. Following its acquisition of Pixar, the non-solicitation conspiracy expanded to include new visual effects and animation companies, such as ImageMovers, who later became partners with Disney.

33. Sony Defendants became members of the conspiracy in 2004 or 2005 and have entered into non-solicitation agreements with at least Pixar, Walt Disney Animation

Studios, and Digital Domain. Catmull met with various Sony executives in 2004 to obtain an agreement from executives not to solicit Pixar employees. After meeting with Sony executives, Catmull believed that an understanding had been reached although Sony subsequently breached that agreement.

34. ImageMovers Defendants became members of the conspiracy in 2007 and have entered into non-solicitation agreements with at least Pixar, Walt Disney Animation Studios, Lucasfilm, and DreamWorks. In an email to Disney, Catmull assured Dick Cook, Walt Disney Studios' then-chairman, that ImageMovers Defendants "will not target Pixar." But Pixar was concerned that ImageMovers Defendants would poach other Defendant employees which, by offering higher salaries, would cause employees to hear about it and leave. When ImageMovers Defendants set up a joint venture with Disney in 2007, ImageMovers Defendants were required to abide by the non-solicitation agreement. Marjorie Randolph, Disney's Senior Vice President of Human Resources confirmed that ImageMovers Defendants agreed to adhere to the rules of the non-solicitation agreement.

35. Digital Domain became a member of the conspiracy in 2007 and has entered into non-solicitation agreements with at least DreamWorks, Lucasfilm, and Sony Defendants. Digital Domain's Head of Human Resources, Lala Gavgavian, and other Digital Domain executives directed employees not to solicit other Defendants' employees. If an employee of Lucasfilm, Dreamworks, or Sony Defendants contacted Digital Doman regarding employment, that contact had to be reported to Gavgavian.

36. Leaders of the conspiracy actively sought to expand the conspiracy and police any violation of the non-solicitation agreement. If a studio threatened to disrupt the conspiracy's aim by recruiting employees and offering higher compensation, the leaders of the conspiracy acted to eliminate the threat. For example, in 2007 Catmull intervened to stop ImageMovers from recruiting other Defendants' employees for its digital wing. Again in 2007, Pixar contacted Lucasfilm about possible violations of their agreements. Lucasfilm subsequently abandoned the solicitation activity Pixar complained about. In 2008, Lucasfilm sought a non-solicitation agreement from a small

twenty person studio named Lightstream Animation even though Lucasfilm believed Lightstream would not have "a significant impact on [Lucasfilm's] ability to recruit.

2. Defendants Agreed to Suppress and Fix Their Employees' Wage and Compensation Ranges

37. The conspiracy among the Defendants was not limited to the non-solicitation agreements. The conspiracy also included agreements designed to establish, suppress, and fix compensation for their employees.

38. The most senior personnel from the human resources and recruiting departments in each of the Defendant companies routinely met to discuss job titles and internal salary plans, and to participate in an industry compensation survey.

39. At least once a year, Defendants met to set the guidelines and criterion of a compensation survey called the Croner Animation and Visual Effects Survey. This survey reflected wage and salary ranges for the Defendants' artistic and technical employees, which was further delineated by position and experience level. Defendant Digital Domain referred to this assembly as the "salary council," because it was attended by executives and senior human resources and recruiting personnel from DreamWorks, Pixar, Lucasfilm, Disney, Digital Domain, ImageMovers Digital, and Sony Defendants. Defendants met outside of the official Croner Survey meetings to exchange information regarding employee compensation and to fix the salary ranges of their employees.

40. Defendants also participated in meetings aside from the annual Croner Survey meeting. Senior human resources and recruiting personnel often met for lunches, dinners, drinks, and other informal meetings throughout the year. Defendants also met at industry events including, the annual Siggraph conference and FMX, the Conference on Animation, Effects, Games, and Transmedia. These meetings provided opportunities for Defendants to develop and execute their anticompetitive agreements.

41. Defendants' communications were not limited to in-person meetings. Defendants also communicated via e-mail, telephone, and other means. Pixar's Vice President of Human Resources, Lori McAdams, for example, e-mailed a message to

senior human resources personnel at DreamWorks, Sony Pictures Imageworks, Lucasfilm, Walt Disney Animation Studios, and others requesting and providing salary increase information.

42. Company disclosure of future salary increases was not in the independent self-interest of the Defendants absent an agreement not to fix compensation. A company sharing such information would otherwise give competitors a roadmap to outbid it for acquiring creative talent. The communications were not ancillary to any legitimate collaboration. Instead, the only reason for such disclosure is that the Defendants participated in a conspiracy to fix compensation.

V. HARM TO COMPETITION AND ANTITRUST INJURY

43. Defendants have conspired to systematically suppress and fix the compensation of Plaintiff and other Class Members. Defendants did so through entering into agreements that restricted active recruitment and fixed the salary ranges of its employees.

44. Cold calling is a particularly effective method of recruiting because current employees of other companies are often unresponsive to other recruiting methods. Specifically, the most valuable and qualified potential employees are those who are currently employed by rival companies who are not actively looking for other employment. As a result, it is difficult to reach these potential hires without active solicitation, including cold calling. In a properly functioning competitive labor market, each Defendant would utilize cold calling as a key competitive tool to recruit employees with advanced skills and abilities.

45. In addition, such solicitation has a significant effect on employee compensation. Cold calls from rival companies may include offers of higher compensation, which allows the current employee to receive increased compensation by either changing employers or negotiating a salary increase from his current employer. Further, when an employee receives information regarding increased compensation from a rival company through a cold call, that employee will often inform other employees of

the offer. These other employees may then use that information themselves to negotiate a higher salary or change employment.

46. Solicitation also provides information to the cold caller regarding its rival company's compensation practices. The recruiter may learn that their compensation offer must be increased to attract their competitor's employees. On the other hand, to avoid losing current employees to rivals, some companies may preemptively raise compensation to reduce the appeal of a rival company's offer. As a result, increased information and transparency regarding compensation levels often leads to an increase in compensation for all current employees.

47. These exchanges would normally lead to increased compensation, but the Defendants' non-solicitation agreements made increased salary opportunities difficult to find and thus allowed Defendants to suppress compensation for its employees. George Lucas explained that this was the purpose of the non-solicitation agreements—to suppress wages and keep the visual effects industry out of "a normal industrial competitive situation" and to "avoid a bidding war with other companies because we don't have the margins for that sort of thing."

48. The effects and common injury of eliminating cold calling pursuant to the non-solicitation agreements impacted all of the Defendants' employees and Class Members. By suppressing compensation levels, the Defendants deprived their employees of wages they would have received in a competitive market situation.

49. Defendants additionally fixed wages for their employees, which deprived their workers of the opportunity to have rival companies bid to pay increased salaries for their employees. In addition, these wage fixing agreements suppressed the wage ranges on which all Defendants based their employees' salary.

50. Defendants carefully monitored and managed their internal compensation levels to maintain internal equity, meaning similarly situated employees were compensated similarly and fair pay distinctions were made across employees at different

levels in the organization. Each Defendant established a fixed pay structure to regulate these internal compensation levels.

51. Lucasfilm, for example, always considered internal equity when setting its compensation. Lucasfilm reviewed employee compensation to "align the employee more appropriately in their salary range" and their "internal peer group." All compensation determinations and adjustments for current and potential employees were decided by an internal compensation committee that reviewed "Peer Relationship" information about how the subject employee's or prospective employee's colleagues were compensated.

52. Pixar also compared salaries of similar employees to ensure that they were not "out of whack." To justify changing salaries, Pixar kept "a consistent framework for evaluating the expected contribution of software engineers" and, as a Pixar official stated, compensation that did not fit into this framework would "raise[] a bit of a flag."

53. Upon information and belief, all other Defendants employed a similar pay structure and adhered to their narrow wage and salary ranges.

54. Defendants' efforts to maintain internal equity and to establish non-solicitation agreements ensured that Defendants' conspiracy caused the compensation of all of their employees to be suppressed.

VI. INTERSTATE COMMERCE

55. During the Class Period, Defendants employed Plaintiff and other Class members in California and other states.

56. Visual effects and animation companies exist throughout the country and these visual effects and animation companies compete to attract skilled employees, including Class members, that moved between and among states to pursue employment opportunities at these companies.

57. Defendants' conduct substantially affected interstate commerce throughout the United States and caused antitrust injury throughout the United States.

VII. CLASS ACTION ALLEGATIONS

58. Plaintiff Van Phan brings this action as a class action under Federal Rule of Civil Procedure 23(b)(2) and (b)(3), on behalf of himself and the following class:

> All persons who worked at any time from 2004 to the present in technical, artistic, creative, and/or research and development positions for Pixar, Lucasfilm, DreamWorks Animation, Walt Disney Animation Studios, Walt Disney Feature Animation, Digital Domain, ImageMovers Digital, Sony Pictures Animation or Sony Pictures Imageworks in the United States. Excluded from the Class are officers, directors, senior executives, and personnel in the human resources and recruiting departments of Defendants. Also excluded from the Class are the claims against Pixar, Lucasfilm, and Disney released in *In re High-Tech Employees Antitrust Litigations*, No. 11-cv-2509 (N.D. Cal.).

59. This Class is so numerous that individual joinder of all of its members is impracticable. The precise number of Class members is unknown to Plaintiffs at this time but can be determined during discovery. Plaintiff believes that there are thousands of Class Members.

60. Plaintiff's claims are typical of the claims of the Class in that Class Members sustained damages arising out of Defendants' common course of conduct in violation of law as complained herein.

61. Plaintiff will fairly and adequately protect the interests of the Class Members. Plaintiff is a member of the Class and his interests do not conflict with the interests of the Class Members he seeks to represent. Plaintiff has retained counsel highly experienced in complex antitrust and class action litigation.

62. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class Members. These common questions include, but are not limited to, the following:

a. Whether Defendants agreed to not actively solicit or recruit the other Defendants' employees, to notify other Defendants when making an offer to their employees, and to limit counteroffers;

b. Whether Defendants agreed to fix compensation and salary ranges for positions held by class members;

c. Whether the agreements between Defendants were *per se* violations of the Sherman Act and/or Cartwright Act;

d. Whether the agreements between Defendants constituted unlawful or unfair business acts or practices in violation of California Business and Professions Code § 17200;

e. Whether Defendants fraudulently concealed their conduct;

f. Whether, and to what extent, Defendants conduct suppressed compensation below competitive levels;

g. Whether Plaintiff and the other Class Members suffered injury as a result of Defendants' agreements;

h. Whether any such injury constitutes antitrust injury;

i. The nature and scope of injunctive relief necessary to restore a competitive market; and

j. The measure of damages suffered by Plaintiff and the Class.

63. A Class action is superior to all other available means for the fair and efficient adjudication of this litigation since individual litigation of the claims of all Class Members is impracticable. Even if every Class Member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts, in which individual litigation of thousands of cases would proceed. Individual litigation presents a potential for inconsistent or contradictory judgments, the prospect of a race for the courthouse, and an inequitable allocation of recovery among those with equally meritorious claims. Individual litigation increases the expense and delay to all parties and the court system in resolving the legal and factual issues common to all claims. By contrast, the class action device presents far fewer management difficulties and provides the benefit of a single adjudication, economies of scale, and comprehensive supervision by a single court.

64. Individualized litigation would also create the danger of inconsistent or contradictory adjudications arising from the same set of facts which would establish

incompatible standards of conduct for Defendants. By contrast, a class action provides the benefits of adjudication in a single proceeding, protects the rights of each Class member, and presents no unusual management difficulties under the circumstances here.

65. Defendants have acted or refused to act on grounds generally applicable to the entire Class, thereby making appropriate injunctive relief with respect to the Class as a whole.

VIII. STATUTE OF LIMITATIONS

66. Defendants have committed continuing violations of the antitrust and unfair competition laws as alleged herein resulting in injury to Plaintiff and other Class Members. Defendants repeatedly injured Plaintiff's and Class Members' interests by adhering to, enforcing, and reaffirming the anticompetitive agreements described herein. Discussions and agreements by phone, e-mail, and in person regarding suppressing wage and salary ranges and prohibition of active solicitation of other Defendants' employees continues to the present day.

67. Plaintiff and Class Members did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of Defendants' anticompeitive conduct alleged herein until, at the earliest, late 2010 when the DOJ filed a complaint against visual effects and animation companies, Lucasfilm and Pixar.

68. Defendants affirmatively and fraudulently concealed their illegal conspiracy and agreements. Defendants engaged in a successful conspiracy to fix wage and salary ranges and prohibit active solicitation of other Defendants employees, which by its nature was inherently self-concealing. Defendants had secret discussions about the conspiracy and agreed not to discuss it in public or in the presence of Class Members. Defendants' participation in this secret conspiracy did not give rise to facts that would put Plaintiff or the Class on actual or inquiry notice that there was a conspiracy to fix wage and salary ranges and prohibit active solicitation.

69. Defendants' conspiracy was affirmatively concealed to avoid any detection. Defendants avoided any discussions regarding the non-solicitation and wage-fixing

agreements in written documents that might be distributed publically, to Class Members, or to individuals outside of the conspiracy. Only Defendants' top executives and specific human resources and recruiting personnel were aware of the illegal agreements. Defendants secretly discussed salary and wage information with each other by phone, email, and/or during in-person meetings.

70. Defendants have attempted to justify their conduct with incomplete, misleading, and false explanations that are simply designed to disguise the conspiracy. Their conduct and decisions regarding hiring and compensation were made pursuant to the conspiracy and are violative of antitrust laws. Defendants, for example, claim that the Croner Survey, as an independent third party survey, falls within the DOJ's safe harbor. But Defendants used the Croner Survey meetings as an opportunity to discuss and fix salary ranges for their employees in violation of the federal antitrust laws.

71. As a result of Defendants' fraudulent concealment of their conspiracy, the running of any statute of limitations has been tolled with respect to any claims that Plaintiff or the Class Members have arising from the anticompetitive conduct alleged in this Complaint.

IX. CAUSES OF ACTION

FIRST CAUSE OF ACTION
Violation of Section One of the Sherman Act
(15 U.S.C. § 1)

72. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

73. Defendants, by and through their officers, directors, employees, agents or representatives, entered into and engaged in an unlawful contract, combination, and conspiracy in restraint of trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

74. Defendants agreed to restrict competition for Class members' services through non-solicitation agreements and agreements to fix the compensation and salary

ranges of class members with the intent and effect of suppressing Class Members' compensation and restraining competition in the market for class members' services.

75. As a result of Defendants' unlawful conduct, Plaintiff and Class Members were injured in that their compensation was lowered and they were deprived of free and fair competition in the market for their services.

76. Defendants' contracts, combinations, and/or conspiracies are *per se* violations of the Sherman Act.

77. Plaintiff and Class Member seek three times their damages caused by Defendants' violations of Section 1 of the Sherman Act, the costs of bringing suit, reasonable attorneys' fees, and a permanent injunction enjoining Defendants from ever entering into similar agreements in violation of Section 1 of the Sherman Act.

SECOND CAUSE OF ACTION
Violation of the Cartwright Act
(Cal. Bus. & Prof. Code §§ 16702, *et seq.*)

78. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

79. Defendants, by and through their officers, directors, employees, agents or representatives, entered into and engaged in an unlawful contract, combination, and conspiracy in restraint of trade and commerce in violation of California Business and Professions Code § 16720.

80. Defendants agreed to restrict competition for Class members' services through non-solicitation agreements and agreements to fix the compensation and salary ranges of Class Members with the intent and effect of suppressing Class Members' compensation and restraining competition in the market for class members' services.

81. As a result of Defendants' unlawful conduct, Plaintiff and Class Members were injured in that their compensation was lowered and they were deprived of free and fair competition in the market for their services.

82. Plaintiff and Class Members are "persons" within the meaning of the Cartwright Act as defined in California Business and Professions Code § 16720.

83. Defendants' contracts, combinations, and/or conspiracies are *per se* violations of the California Business and Professions Code.

84. Plaintiff and Class Member seek three times their damages caused by Defendants' violations of the Cartwright Act, the costs of bringing suit, reasonable attorneys' fees, and a permanent injunction enjoining Defendants from ever entering into similar agreements in violation of the Cartwright Act.

THIRD CAUSE OF ACTION
Violation of the California Unfair Competition Law
(Cal. Bus. & Prof. Code §§ 17200, *et seq.*)

85. Plaintiff hereby incorporates by reference the allegations contained in the preceding paragraphs of this Complaint.

86. Defendants' efforts to restrict competition and suppress compensation for their employees' services constitutes unfair competition and unlawful, unfair, and fraudulent business practices in violation of California Business and Professions Code §§ 17200 *et seq*.

87. Defendants agreed to restrict competition for Class members' services through non-solicitation agreements and agreements to fix the compensation and salary ranges of Class Members with the intent and effect of suppressing Class Members' compensation and restraining competition in the market for class members' services.

88. Defendants' acts were unfair, unlawful, and/or unconscionable, both in their own right and because they violated the Sherman Act and the Cartwright Act.

89. As a result of Defendants' unlawful conduct, Plaintiff and Class Members were injured in that their compensation was lowered and they were deprived of free and fair competition in the market for their services, which allowed Defendants to unlawfully retain money that otherwise would have been paid to Plaintiff and other Class Members. Plaintiff and other Class Members are therefore persons who have suffered injury in fact and lost money or property as a result of the unfair competition under California Business and Professions Code § 17204.

90. Pursuant to Business and Professions Code § 17203, Defendants should be required to disgorge their illegal gains to prevent the use or employment of Defendants' unfair practices, and to make full restitution to Plaintiff and other Class members.

X. PRAYER FOR RELIEF

91. WHEREFORE, Plaintiff Van Phan, on behalf of himself and a class of all others similarly situated, requests that the Court enter an order or judgment against Defendants including the following:

a. Certification of the Class described herein pursuant to Rule 23 of the Federal Rules of Civil Procedure;

b. Appointment of Van Phan as Class Representative and his counsel of record as Class Counsel;

c. Compensatory damages in an amount to be proven at trial and trebled thereafter;

d. Pre-judgment and post-judgment interest as provided for by law or allowed in equity;

e. The costs of bringing this suit, including reasonable attorneys' fees and expenses;

f. An incentive award to compensate Plaintiff Van Phan for his efforts in pursuit of this litigation

g. Disgorgement and/or restitution pursuant to California Business and Professions Code § 17203;

h. A permanent injunction prohibiting Defendants from hereafter agreeing not to solicit other companies' employees, to notify each other of offers extended to potential hires, or not to make counteroffers, or agreeing with other companies about wage and salary ranges or any other terms of employment; and

i. Any other relief as this Court deems just, equitable and proper.

Dated: November 20, 2013

/s/ Steven N. Williams
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Steven N. Williams (Cal. SBN 175489)
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JURY DEMAND

Plaintiff, on behalf of himself and all other similarly situated, hereby demands a trial by jury in this case as to all issues so triable.

Dated: November 20, 2013

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