

0300
GEFJÄÖÖÄHEÁFKHÁÚT
SÖÖÄUWÞVÝ
ÚWÚÖÜQÜÄÜWÜVÁÖŠÖÜS
ÖEÖSÖÖ
ÖEÜÖÄVÄFJËH FJJË ÁÜÖE

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

PAYSCALE, INC, a Washington corporation

NO.

Plaintiff,

**COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES**

vs.

SYNDIO SOLUTIONS, INC., a Delaware corporation; KATHLYN BARDARO, an individual; MICHELLE RAUSCHENBACH, an individual; AUTUMN DAVIS, an individual; KIRK BERRY, an individual; and DANIEL KOHLER, and individual,

Defendants.

Plaintiff PayScale, by and through its counsel of record, Dorsey & Whitney LLP, for its Complaint against the named Defendants hereby alleges and avers as follows:

I. PARTIES

1.1 Plaintiff PayScale is a Washington corporation with its principal place of business in Seattle, Washington.

1.2 Defendant Syndio is a Delaware corporation with its principal place of business in Seattle, Washington.

1.3 On information and belief, Defendant Kathlyn Bardaro (“Bardaro”) is a resident of King County, Washington.

1.4 On information and belief, Defendant Michelle Rauschenbach (“Rauschenbach”)

1 is a resident of King County, Washington.

2 1.5 On information and belief, Defendant Autumn Davis (“Davis”) is a resident of
3 Washington County, Oregon.

4 1.6 On information and belief, Defendant Kirk Berry (“Berry”) is a resident of King
5 County, Washington.

6 1.7 On information and belief, Defendant Daniel Kohler (“Kohler”) is a resident of
7 Ramsey County, Minnesota. Defendants Bardaro, Rauschenbach, Davis, Berry, and Kohler are
8 collectively referred to as the “Individual Defendants.”

9 **II. JURISDICTION AND VENUE**

10 2.1 Venue is proper in this Court pursuant to RCW 4.12.020 *et seq.* This Court has
11 jurisdiction pursuant to RCW 2.08.010 *et seq.*

12 **III. FACTS**

13 3.1 PayScale is a compensation software and data company that helps employers
14 manage employee compensation and employees understand their worth in the job market by
15 providing compensation management and pay equity analysis products and services.

16 3.2 Syndio is a human resources analytics company that, like PayScale, offers pay
17 equity analysis products and services.

18 3.3 To develop its products and services, PayScale uses unique algorithms,
19 methodology, and models. Much of this information is highly sensitive and maintained
20 confidentially. In addition, PayScale’s proprietary and confidential information includes, but is
21 not limited to, customer data, business metrics, product roadmaps, financials, internal policies,
22 product and service pricing, and other business strategy generally.

23 3.4 PayScale’s products and services include a pay equity analysis tool that directly
24 competes with Syndio’s pay equity tool. Media coverage regarding Syndio since January 1, 2019
25 has described PayScale as one of Syndio’s few competitors in the area.

26 3.5 Defendant Bardaro began employment with PayScale in 2015. On August 31,
27 2015, Bardaro signed a Confidentiality, Non-Interference, and Invention Assignment Agreement
28

1 (“Bardaro Agreement.”)

2 3.6 Defendant Rauschenbach began employment with PayScale in 2016. On
3 November 22, 2016, Rauschenbach signed a Confidentiality, Non-Interference, and Invention
4 Assignment Agreement (“Rauschenbach Agreement.”)

5 3.7 Defendant Berry began employment with PayScale in 2016. On May 24, 2016,
6 Berry signed a Confidentiality, Non-Interference, and Invention Assignment Agreement (“Berry
7 Agreement.”)

8 3.8 Defendant Kohler began employment with PayScale in 2017. On March 23, 2017,
9 Kohler signed a Confidentiality, Non-Interference, and Invention Assignment Agreement
10 (“Kohler Agreement.”)

11 3.9 Defendant Davis began employment with PayScale in 2018. On March 6, 2018,
12 Davis signed a Confidentiality, Non-Interference, and Invention Assignment Agreement (“Davis
13 Agreement.”)

14 3.10 The Bardaro Agreement, Rauschenbach Agreement, Berry Agreement, Kohler
15 Agreement, and Davis Agreement (collectively, the “Agreements”) provide in pertinent part:

16 Non-Competition. **During the Non-Compete Period [12 months following**
17 **termination], I shall not**, directly or indirectly, individually or on behalf of any
18 person, company, enterprise, or entity, or as a sole proprietor, partner, stockholder,
19 director, officer, principal, agent, or executive, or in any other capacity or
20 relationship, **engage in any Competitive Activities or own any securities (debt**
or equity) in any person, company, enterprise, or entity that is engaged in
Competitive Activities, within the United States or any other jurisdiction in which
the Company Group is actively engaged in business.”

21 ...

22 Company Group Information. I acknowledge that, during the course of my
23 employment, **I will have access to information about PayScale Holdings, Inc.**
24 **and its direct and indirect subsidiaries and affiliates, including the Company**
25 **(collectively, the “Company Group”),** and that my employment with the
26 Company will bring me into close contact with confidential and proprietary
27 information of any member of the Company Group. In recognition of the foregoing,
28 **I agree, at all times during the term of my employment with the Company and**
thereafter, to hold in confidence, and not to use, except for the benefit of any
member of the Company Group, or to disclose to any person, firm, corporation, or

1 other entity without written authorization of the Company, any Confidential
2 Information that I obtain or create. I further agree not to make copies of such
3 Confidential Information except as authorized by the Company.

4 ...

5 Non-Interference. During the Non-Interference Period [18 months following
6 termination], **I shall not, directly or indirectly for my own account or for the
7 account of any other individual or entity, engage in Interfering Activities.**

8 ...

9 ‘Interfering Activities’ shall mean (A) **encouraging, soliciting, or inducing**, or in
10 any manner attempting to encourage, solicit, or induce, **any Person employed by,
11 or providing consulting services to, any member of the Company Group** to
12 terminate such Person’s employment or services (or in the case of a consultant,
13 materially reducing such services) with any member of the Company Group; (B)
14 hiring any individual who was employed by any member of the Company Group
15 within the six (6) month period prior to the date of such hiring; or (C) **encouraging,
16 soliciting, or inducing**, or in any manner attempting to encourage, solicit, or
17 induce, **any Business Relation [any current or prospective client, customer,
18 licensee, or other business relation of any member of the Company Group] to
19 cease doing business with or reduce the amount of business conducted with
20 any member of the Company Group**, or in any way interfering with the
21 relationship between any such Business Relation and any member of the Company
22 Group.’”

23 (emphasis added).

24 3.11 As PayScale employees, the Individual Defendants played a critical role in
25 building and maintaining PayScale’s relationships with its prospective and existing clients and
26 marketing, selling, and developing PayScale’s products and services, including, but not limited
27 to, PayScale’s data products and the methodology and models used to develop such data products,
28 as well as PayScale’s pay equity services, software, and features.

3.12 On information and belief, Syndio and former PayScale employees employed by
Syndio, including the Individual Defendants, encouraged and/or induced PayScale employees to
leave PayScale to work for Syndio in violation of the current and former PayScale employees’
employment agreements with PayScale.

3.13 In May 2019, Bardaro resigned from PayScale and started working for Defendant
Syndio shortly thereafter in violation of the Bardaro Agreement.

1 Syndio, and to solicit their former colleagues at PayScale, in violation of PayScale's contractual
2 and business relationships, and with the intent to cripple and destroy an integral part of a
3 competitive business organization.

4 4.4 As a consequence of such unlawful conduct by Defendants, PayScale has suffered
5 and will continue to suffer irreparable harm and damages. Defendants have caused, continue to
6 cause, and threaten to cause further substantial damage to PayScale, including through the
7 potential loss of client relationships, goodwill, confidential information, as well as revenues.
8 Unless restrained by this Court, their unlawful conduct threatens to cause PayScale further
9 irreparable harm, including the undermining and jeopardizing of valued client relationships, many
10 of which have been cultivated by PayScale over many years.

11 **Second Cause of Action: Breach of Contract (Against the Individual Defendants)**

12 4.5 PayScale realleges Paragraphs 1.1 through 4.4 of the Complaint as if fully set forth
13 herein.

14 4.6 As set forth above, the Individual Defendants signed the Bardaro, Rauschenbach,
15 Davis, Kohler, and Berry Agreements.

16 4.7 On information and belief, the Individual Defendants have solicited directly or
17 indirectly PayScale employees and clients in violation of the Agreements.

18 4.8 On information and belief, the Individual Defendants have solicited directly or
19 indirectly PayScale customers in violation of the Agreements.

20 4.9 On information and belief, the Individual Defendants have divulged proprietary
21 and confidential information to third parties and to Defendant Syndio in violation of the
22 Agreements.

23 4.10 Through the conduct described herein and otherwise, the Individual Defendants
24 breached their obligations under the Agreements, including their obligations of confidentiality,
25 non-solicitation, and loyalty. As a result, the Individual Defendants have caused, continue to
26 cause, and threaten to cause further substantial damage to PayScale, including through the
27 potential loss of client relationships, goodwill, confidential information, as well as revenues.
28

1 Unless restrained by this Court, the Individual Defendants' unlawful conduct threatens to cause
2 PayScale further irreparable harm, including the undermining and jeopardizing of valued client
3 relationships, many of which have been cultivated by PayScale over many years.

4 4.11 PayScale is without an adequate remedy at law.

5 **Third Cause of Action: Injunction (Against all Defendants)**

6 4.12 PayScale realleges Paragraphs 1.1 through 4.11 of the Complaint.

7 4.13 Defendants' ongoing invasion of PayScale's clear legal and equitable rights has
8 already and will continue to result in actual and substantial irreparable injury to PayScale.

9 4.14 As a result of the foregoing, PayScale is entitled to injunctive relief against
10 Defendants with respect to the causes of action set forth herein including but not limited to an
11 injunction prohibiting any further violation of the Individual Defendants' contractual and
12 common law duties to PayScale.

13 **V. PRAYER FOR RELIEF**

14 WHEREFORE, PayScale respectfully requests that this Court enter judgment in its favor
15 and against Defendants, awarding the following relief:

16 (a) a permanent injunction prohibiting the Individual Defendants from working for or
17 providing services to Syndio for the duration of their respective restrictive covenants;

18 (b) a permanent injunction prohibiting Defendant Syndio from employing or accepting
19 services from the Individual Defendants for the duration of the Individual Defendants' respective
20 restrictive covenants;

21 (c) a permanent injunction prohibiting Defendant Syndio from inducing any PayScale
22 employee or former employee to violate his or her contractual or common law obligations to
23 PayScale;

24 (d) a permanent injunction prohibiting the Individual Defendants from encouraging,
25 soliciting, or inducing any PayScale current and prospective clients, customers, and licensee to
26 cease doing business with or reduce the amount of business conducted with PayScale for the
27 duration of the Individual Defendants' respective restrictive covenants;

1 (e) a permanent injunction prohibiting the Individual Defendants from encouraging,
2 soliciting, or inducing PayScale employees to terminate their employment with PayScale for the
3 duration of the Individual Defendants' respective restrictive covenants;

4 (f) a permanent injunction requiring Defendants to immediately return to PayScale all
5 client information or other confidential information, including but not limited to records relating
6 to its clients, whether original, duplicated, computerized, handwritten, or in any other form
7 whatsoever, beyond the information the Individual Defendants are entitled to retain, and that they
8 be enjoined and restrained from using or disclosing any such information;

9 (g) damages, in an amount to be proven at trial;

10 (h) PayScale's attorney's fees and costs of this action;

11 (i) such other relief as this Court deems just and proper.

12 DATED this 30th day of December, 2019.

DORSEY & WHITNEY LLP

13
14 *s/Aaron D. Goldstein*

15 Michael W. Droke, WSBA No. 25972
16 Aaron D. Goldstein, WSBA No. 34425
17 Marina M. Lyons, WSBA No. 49127
18 701 Fifth Avenue, Suite 6100
19 Seattle, WA 98104
20 Telephone: (206) 903-8800
21 Facsimile: (206) 903-8820

22 *Attorneys for Plaintiff PayScale, Inc.*
23
24
25
26
27
28