

1 CHRIS BAKER, State Bar No. 181557
 2 cbaker@bakerlp.com
 3 MICHAEL CURTIS, State Bar No. 252392
 4 mcurtis@.bakerlp.com
 5 BAKER CURTIS & SCHWARTZ, P.C.
 6 1 California Street, Suite 1250
 7 San Francisco, CA 94111
 8 Telephone: (415) 433-1064
 9 Facsimile: (415) 366-2525

10 Attorneys for Plaintiff
 11 CAMERON ROSETTA

12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

CAMERON ROSETTA (on behalf of
 himself and all others similar situated),
 Plaintiff,

vs.

PAYCOM SOFTWARE, INC. and
 PAYCOM PAYROLL, LLC,
 Defendants.

Case No. 2:19-cv-08994-DSF (ASx)

FIRST AMENDED COMPLAINT

CLASS ACTION

CAUSES OF ACTION

1. OVERTIME
2. WAITING TIME PENALTIES
3. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
- 4-8. DECLARATORY JUDGMENT/INJUNCTIVE RELIEF
9. UNFAIR BUSINESS PRACTICES
10. PAGA

DEMAND FOR A JURY TRIAL

1 Plaintiff Cameron Rosetta (“Plaintiff”) complains as follows:

2 **INTRODUCTION**

3 1. Plaintiff brings this action against Defendants Paycom Software, Inc.
4 and Paycom Payroll, LLC (collectively “Paycom”) for damages, restitution,
5 disgorgement, penalties, declaratory judgment, an injunction, and other appropriate
6 relief. As detailed below, Paycom treats its California-based “sales professionals”
7 as exempt from California’s overtime laws. They are not. In addition, Paycom’s
8 other employment practices violate numerous provisions of California statutory,
9 common, and constitutional law. Among other things, Paycom requires all of its
10 California-based employees to sign and comply with agreements and policies that
11 violate their right to privacy and that contain illegal forum selection, release,
12 indemnity, non-disclosure, non-disparagement, non-compete, and non-solicitation
13 requirements.

14 2. Through this Complaint, Plaintiff asserts class and individual claims.
15 As a matter of right, Plaintiff will amend this Complaint to allege additional claims
16 under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698 *et*
17 *seq.*, upon the expiration of the appropriate notice periods.

18 **PARTIES**

19 3. From December 2018 through April 2019, Plaintiff Cameron Rosetta
20 worked as a Sales Professional for Paycom in Los Angeles, California. Paycom
21 was Plaintiff’s second job out of college. Plaintiff’s work, job duties, and terms
22 and conditions of employment (as described below) were similar to all other Sales
23 Professionals.

24 4. Paycom Software, Inc. is a publicly-traded human resources company
25 headquartered in Oklahoma City, Oklahoma. It provides recruiting, payroll, human
26 resources, and talent management services to other companies. Among other
27 things, Paycom provides a “human capital management” solution for “Managing
28 Employees from Recruitment to Retirement.” As of December 31, 2018, Paycom

1 Software, Inc. had at least 3,050 employees across the United States. One of these
2 employees was Plaintiff. Paycom Software described Plaintiff as its employee
3 when requiring him to sign and comply with Paycom Software's standardized Code
4 of Ethics & Business Conduct and Insider Trading Policy. On information and
5 belief, all putative class members were and are required to sign these standardized
6 policies as employees of Paycom Software, Inc.

7 5. Paycom Payroll, LLC is a direct or indirect subsidiary of Paycom
8 Software. Paycom Payroll is described as Plaintiff's employer in Plaintiff's wage
9 statements. As a condition of employment, Plaintiff was required to sign and
10 comply with (among other things): Paycom Payroll's standardized: (1) Employee
11 Video, Photo, and Recording Release and Waiver; (2) Non-Solicitation Agreement,
12 and (3) Employee Confidentiality, Non-Disparagement, Non-Disclosure,
13 Proprietary Information and Indemnification Agreement. On information and
14 belief, all putative class members were required to sign these standardized
15 agreements as employees of Paycom Payroll.

16 6. On information and belief, Paycom Payroll and Paycom Software
17 share officers, directors, facilities (including the same headquarters), property,
18 employees, and control of labor relations. Paycom Software and Paycom Payroll
19 constitute either a single employer, integrated enterprise, or joint employers of
20 Plaintiff and the putative class members.

21 7. At all times mentioned herein, Paycom Software and Paycom Payroll
22 were the agents or representatives of each other, were acting with the knowledge
23 and consent of each other, and within the purpose and scope of their agency or
24 representation in doing or failing to do the things alleged in this Complaint.

25 **JURISDICTION & VENUE**

26 8. This Court has diversity jurisdiction of this civil action pursuant to 28
27 U.S.C. § 1332. Plaintiff is a California resident. Paycom's principal place of
28 business is Oklahoma and Paycom is incorporated in Delaware.

FACTS

The Sales Professionals

1
2
3 9. Paycom focuses on selling its products and services to clients with
4 between 50 to 50,000 employees. It seeks to increase its client base within existing
5 and additional markets through centralized and aggressive sales efforts. Paycom
6 has multiple sales offices that are typically staffed with one sales team, with each
7 team comprised of a sales manager and approximately six to eight “Sales
8 Professionals.” These Sales Professionals work in inside sales, field sales, and as
9 client relations representatives.

10 10. Paycom recruits its captive sales force primarily from colleges and
11 universities. (In other words, this is the Sales Professionals’ first or second job out
12 of college). Paycom’s management of its sales force is, by necessity, uniform,
13 regimented and centralized.

14 11. Paycom currently has one or more sales offices in, at a minimum, the
15 following California cities/metropolitan areas: (1) San Francisco; (2) Silicon
16 Valley; (3) Sacramento; (4) Pasadena; (5) Los Angeles; (6) Orange County, and (7)
17 San Diego. Sales Professionals also regularly work from their homes (“home
18 offices”).

19 12. By design, Paycom experiences high turnover in its sales force. For
20 example, the Pasadena office where Plaintiff worked, experienced more than 50%
21 turnover in its office in the four months during which Plaintiff was employed. On
22 information and belief, this turnover rate is consistent with Paycom’s other
23 California locations.

24 13. Accordingly, and on information and belief, there are more than 200
25 putative class members in the Classes.

The Training Program

26
27 14. Paycom requires all Sales Professionals to attend an intensive eight-
28 week training program. This training program includes, but is not limited to,

1 instruction in accounting, business metrics, application features, and tax matters
2 relevant to Paycom’s actual or potential customers. Time spent on the training
3 program during this eight-week period is at least four hours each day, four days a
4 week. When not engaged in the training program during this eight-week period,
5 Sales Professionals spend the remainder of their time engaged in cold calling and
6 office work. They rarely, if at all, leave their sales or home offices for the purpose
7 of engaging in outside sales.

8 15. During the eight-week training program, Sales Professionals work
9 daily and weekly overtime. They typically start the day between 7:00 and 8:00
10 a.m., and end the day after 6:00 p.m.

11 16. Sales Professionals are not paid overtime during this eight-week
12 training period.

13 ***Job Duties***

14 17. Following the eight-week training program, and as an ordinary part of
15 their job, Sales Professionals worked (and work) daily and weekly overtime.
16 Paycom expects its Sales Professionals to arrive at the sales office between 7:00
17 and 8:00 a.m., leave the sales office after 6:00, and continue working into the night
18 at their home offices.

19 18. All Sales Professionals in California report up to the same sales
20 executive. All Sales Professionals engage in similar job duties that include
21 attending in-office meetings, participating in continuous training (or “In Progress
22 Training”), cold calling prospects and clients, researching prospects and clients,
23 data entry concerning prospects and clients, paperwork, client retention, meeting
24 preparation, and gaining experience and understanding of Paycom’s products and
25 services. Indeed, Paycom’s standard “competencies” for Sales Professionals
26 focus almost exclusively on prospecting for and cold calling potential or existing
27 customers.
28

1 surrender to Paycom their constitutional right to privacy, their right to compete,
2 their right to whistle blow, their right to speak, their right to bring future claims,
3 their right to indemnity, and numerous other unwaivable rights. Paycom does this
4 through a number of adhesion contracts, policies and practices that employees must
5 agree and comply with as a condition of, and in consideration for, employment.
6 These agreement, policies, and practices are illegal. More specifically:

7 *The Likeness Waiver*

8 25. Paycom has and maintains a policy of requiring employees to sign, as
9 a condition of, and in consideration for, employment, an “Employee, Video, Photo
10 and Recording Release Waiver” (“the Likeness Waiver”).

11 26. This Likeness Waiver is, by its terms, a condition of employment with
12 Paycom and must be signed “in consideration for” employment with Paycom.

13 27. Through this Likeness Waiver, Paycom’s employees must:

14 a. “consent to the recording, use, and reuse by Paycom and/or any
15 of its respective licensees, assigns, parents, subsidiaries, or affiliated entities, and
16 each of the respective employees, agents, officers, and directors (collectively, the
17 “Releasees”) of [the employee’s] voice (including, without limitation, [the
18 employee’s] speaking and singing voices and any musical compositions created by
19 [the employee] and recorded by Paycom), actions, likeness, name, appearance, and
20 biographical material (collectively “Likeness”). . . .”

21 b. The employee must further agree that the Releasees may use,
22 alter, or modify the employee’s Likeness in any and all media, now known or
23 hereafter devised, worldwide and in perpetuity.

24 c. The employee must agree that Paycom shall have “full exclusive
25 ownership of any video/audio, images, or recordings, or excerpts thereof, taken of
26 [the employee] by Paycom (“Material”).”

1 d. The employee must agree that this “Material” may be “used in
2 any manner or media without notifying the employee,” “including non-Company
3 uses” “as well as for trade or commercial purposes.”

4 e. Employees must also agree to a future release of all claims
5 related to the use or misuse of their likeness. The Likeness Waiver states: “I release
6 Releasees from any and all liability arising out of their use of my Likeness and/or
7 Material. I agree not to make any claim against Releasees as a result of the
8 recording or use of my Likeness and/or the Material (including, without limitation,
9 any claim that such use invades any right to privacy and/or publicity and any claims
10 based on defamation or libel or false light). . . . I release Paycom and its employees
11 and agents . . . from any claims, damages, or liability which I may ever have in
12 connection with the taking or use of the images, video/audio, printed material or
13 Material used with the images.”

14 28. Thus, in order to work for Paycom, employees must give the company
15 their voices, faces, actions, names, appearances, and biographical materials.
16 Employees must give up control of their likeness, world-wide and in perpetuity.
17 Employees’ likenesses may be altered or modified in unflattering ways. Their
18 faces, actions, voice, and biographical material may be sold to small and large
19 corporations and other entities for “trade or commercial purposes” (such as to
20 improve facial recognition software, target advertisements, or to be included in data
21 sets sold to companies for improved audio surveillance or machine learning). Their
22 faces or voices may end up on the internet or turned into memes. Employees may
23 be unwillingly converted into public figures even though they wish to remain
24 private persons.

25 29. As a result of the Likeness Waiver, employees, forever more, may be
26 publicly affiliated with Paycom (or whomever else purchases their likeness from
27 Paycom) in whatever way Paycom or the Releasees wish. This is so even if
28 employees want nothing to do with Paycom or the Releasees (because, for example,

1 they were wrongfully terminated or the Releasees are bad actors. Moreover, and as
2 detailed below, employees are prohibited from even complaining about the misuse
3 or abuse of their likeness because of Paycom’s confidentiality and non-
4 disparagement requirements.

5 30. Plaintiff does not want Paycom to use, reuse, or sell his Likeness.

6 31. On information and belief, and consistent with the terms of Likeness
7 Waiver, Paycom unjustly profits from its employees’ likenesses by selling their
8 likenesses for non-Company, trade and commercial purposes.

9 32. The Likeness Waiver further states it is governed by the laws of the
10 State of Oklahoma.

11 ***The Confidentiality, Non-Disparagement, and Indemnity Requirements***

12 33. Paycom also has and maintains a policy and practice of requiring
13 employees to sign and/or comply with confidentiality requirements (including
14 agreements and policies) that are prohibited by California law. Paycom’s
15 confidentiality requirements are mind-boggling, and include the following:

16 The Insider Trading Policy

17 34. Paycom requires employees to sign and comply with an “Insider
18 Trading Policy.” This policy prohibits the use or disclosure of **any** “nonpublic
19 information” that an employee acquires in the workplace or by virtue of their
20 position with the company. The policy further provides that **all** “nonpublic
21 information relating to the Company is the property of the Company and the
22 unauthorized disclosure of such information is forbidden.” “Nonpublic
23 information” is defined as “information that has not been previously disclosed to
24 the general public and is not otherwise available to the general public.” The Insider
25 Trading policy contains no carve out for disclosing “nonpublic information” to
26 government agencies (or others) about potential or actual violations of the law.

27
28

The Paycom NDA

1
2 37. Paycom also requires employees to sign and comply with an
3 “Employee Confidentiality, Non-Disparagement, Non-Disclosure, Proprietary
4 Information and Indemnification Agreement” (“the Paycom NDA”).

5 38. The Paycom NDA (as well as the Paycom Handbook) defines
6 “Confidential Information” to mean everything related to Paycom, even if it is
7 clearly not confidential. It also prohibits employees from disclosing so-called
8 “confidential information” to anyone, disclosing the very existence of confidential
9 information, or disclosing their relationship with Paycom. For example:

10 a. The NDA states that “Confidential Information” means “any
11 information and/or intellectual property, whether patented, trademarked,
12 copyrighted, or otherwise . . . and expressly includes, without limitation: (1)
13 customer names; (2) prospective customer contact information; (3) Paycom
14 employee compensation, information, commission policies, bonus policies, and
15 benefit policies; (4) Paycom employees’ personally identifiable information;¹ (5)
16 Paycom employees’ performance information “where such information is used as a
17 manner of gossip;” (6) Paycom’s business processes; and/or (7) any and all other
18 material nonpublic information with respect to any aspect of Paycom’s business.”
19 The Paycom NDA further states that information in the public domain is still
20 confidential unless the exact “combination” of the at-issue information is also
21 publicly available.

22 b. The Paycom NDA provides that a Paycom Employee shall not
23 “disclose to any third party or use for an unauthorized purpose any Confidential
24 Information. Employee may use any Confidential Information only to the extent
25 required to fulfill his/her role as an employee of Paycom and for no other uses or

26
27 ¹ Paycom’s Handbook defines “personally identifiable information” as any data that
28 could identify a specific individual, either alone or in combination with other
personal or identifying information that is linked – or linkable – to a specific
individual.” Employee names, of course, are “personally identifiable information.”

1 purposes.” The NDA further prohibits the “reproduction” of so-called
2 “Confidential Information.”

3 c. The Paycom NDA also takes a page from the movie “Fight
4 Club” and prohibits employees from disclosing that “Confidential Information”
5 even exists. Rather, the Paycom NDA states that: “Employee shall not reveal that
6 Confidential Information has been disclosed to Employee pursuant to this
7 Agreement or that Employee is using or has any Confidential Information, without
8 the prior written consent of Paycom.”

9 d. The Paycom NDA further prohibits employees from saying they
10 used to work there. Rather, the NDA states in pertinent part:

11 After Employee’s employment with Paycom ceases and
12 while selling or attempting to sell payroll and/or payroll-
13 related services to third parties, Employee shall not
14 disclose to such third parties that Employee formerly
15 worked at Paycom. This section 20 is specifically
16 intended to include a prohibition on Employee disclosing
17 to third parties that he or she formerly worked for Paycom
18 for purposes of holding himself or herself out as having
19 expertise with respect to Paycom or Paycom’s products or
20 services. After Employee’s employment with Paycom
21 ceases, Employee shall not promote or market himself or
22 herself on the internet as being formerly affiliated with
23 Paycom.

24 39. In addition to its many confidentiality requirements, the Paycom NDA
25 also prohibits employees from ever “disparaging” Paycom, or anyone affiliated
26 with Paycom, in any way. The NDA states:

27 Employee shall not make any statements (whether
28 written, electronic, or verbal) to the general public or
cause or encourage others to make any statements to the
general public (whether written, electronic, or verbal) that
defame or disparage the personal or business reputation,
practices, or conduct of Paycom, its employees, directors,
and officers. Further, employees shall not engage in
conduct that is designed to or that would have the effect

1 of impugning or disparaging the products and services
2 Paycom provides to its customers. Employee
3 acknowledges and agrees that this prohibition extends to
4 statements (whether written, electronic, or verbal) made
5 to anyone, including but not limited to, the news media,
6 the internet, social media platforms, investors, potential
7 investors, industry associations, competitors, vendors,
8 employees (past and present) and/or customers. . . .
9 Employee shall not engage in any communications to the
10 general public or any conduct that is designed to or that
11 would have the effect of disparaging Paycom’s business,
12 Paycom’s services or Paycom’s officers, directors, or
13 employees.

14 40. The Paycom NDA does contain an ambiguous and ineffective “Notice
15 of Immunity” under the federal Defend Trade Secret Act. However, this notice, by
16 its express terms, applies only to the Paycom NDA. The Insider Trading Policy,
17 Code of Conduct, and Employee Handbook contain no such notice.

18 41. Following his employment with Paycom, and when looking for other
19 work, Plaintiff felt (and continues to feel) constrained in what he can disclose about
20 Paycom, his work at Paycom, and Paycom’s employees, because of Paycom’s
21 confidentiality requirements.

22 The Indemnity Provision in the Paycom NDA

23 42. The Paycom NDA also contains an “indemnity provision” that
24 contradicts Labor Code §§ 2802 and 2804. Instead of indemnifying its employees,
25 as required by law, Paycom requires employees “to fully indemnify, hold harmless,
26 and defend Paycom and its directors, officers, employees, agents, stockholders, and
27 affiliates (collectively “Indemnified Parties”) for and against all claims, demands,
28 actions, suits, damages, liabilities, losses, settlements, judgments, costs, and
expenses, including reasonable attorneys fees and costs, whether involving a third
party claim, which arises out of or relates to” essentially, the employees’
employment.” _This is so regardless of whether or not the claim was “caused by the

1 negligence of Paycom or any other Indemnified Party and whether the relevant
2 claim has merit.”

3 43. The Paycom NDA states it is governed by Oklahoma law and contains
4 an Oklahoma forum selection clause.

5 ***

6 44. Paycom threatens employees with termination and/or legal action if
7 they fail to comply with the Paycom NDA, Insider Trading Policy, Code of
8 Conduct, or Employee Handbook.

9 ***The Non-Solicitation Agreement***

10 45. Paycom also has and maintains a policy of requiring employees to
11 sign, as a condition of employment and continued employment, a “Non-Solicitation
12 Agreement.”

13 46. The Non-Solicitation Agreement prohibits employees from directly or
14 indirectly soliciting Paycom’s customers, prospective customers, or referral sources
15 in any way for twelve months following the termination of the employees’
16 employment.

17 47. The Non-Solicitation Agreement also prohibits employees from
18 directly or indirectly soliciting Paycom’s employees in any way for twelve months
19 following the termination of the employees’ employment. It also prohibits
20 employees from providing any information to any one that pertains to Paycom’s
21 employees. The Non-Solicitation Agreement states:

22 During the term of Employee’s Employment and for an
23 additional period of twelve (12) months following the
24 termination of Employee’s employment with Paycom,
25 whether such termination is by Paycom or by Employee,
26 for any reason, Employee shall not provide any
27 information pertaining to Paycom’s employees to any
28 subsequent employer or any person, and/or Employee
shall not assist any subsequent employer or any person in
any manner with any solicitation, inducement or attempt

1 to induce any employee of Paycom to leave his/her
2 employment with Paycom.

3 48. Plaintiff feels (and continues to feel) constrained in what he can say
4 about his former Paycom employees, to his new employer and otherwise, because
5 of Paycom’s non-solicitation agreement.

6 49 Like the Likeness Waiver and Paycom NDA, the Non-Solicitation
7 Agreement states that it is governed by the laws of the State of Oklahoma and
8 contains an Oklahoma forum selection clause.

9 ***Paycom’s Knowledge***

10 50. Paycom is well-aware that its employment practices violate California
11 law. First, Paycom is presumed to know the law. In addition, Paycom is in the
12 business of providing human resources products and services to California
13 employers, including a “time and attendance application” and a “government and
14 compliance application” that Paycom states will “reduce exposure to violations,
15 audits, and penalties with respect to the employment laws impacting their
16 business.” Indeed, knowledge of California law is essential to Paycom’s business
17 model. As it explained in one SEC filing: “Any failure to educate and assist our
18 clients with respect to new or revised legislation that impacts them could have an
19 adverse effect on our reputation, and any failure to modify our applications or
20 develop new applications in a timely fashion in response to regulatory changes
21 could have an adverse effect on our business and results of operations.” Consistent
22 with its business need to know the law, Paycom publishes an extensive public
23 “blog” in which it discusses in detail the compliance requirements of employers in
24 California and elsewhere.

25 51. Paycom’s refusal to comply with California law with respect to its own
26 employees is willful, knowing and inexcusable.

27
28

1 **CLASS ALLEGATIONS**

2 51. Plaintiff brings this action on behalf of the following Classes.

3 **Rule 23(b)(3) Class and Subclass**

4 52. **Sales Professional Class.** All current and former California-based
5 Paycom employees who hold or have held a Sales Professional position (or its
6 equivalent) for the four year period prior to the filing of this Complaint through the
7 conclusion of this case.

8 53. **Sales Professional Subclass.** All former California-based Paycom
9 employees who held a Sales Professional position (or its equivalent) for the three
10 year period prior to the filing of this Complaint through the conclusion of this case.

11 **Rule 23(b)(1) and (2) Classes**

12 54. **Likeness Waiver Class.** All current and former California-based
13 Sales Professionals who signed the Likeness Waiver (or its substantial equivalent)
14 through the conclusion of this case.

15 55. **The Confidentiality Requirements and Indemnity Class (“NDA**
16 **Class”).** All current and former California-based Sales Professionals who signed or
17 were subject to Paycom’s confidentiality and indemnity requirements (or their
18 substantial equivalents) through the conclusion of this case.

19 56. **The Non-Solicit Class.** All current California-based Sales
20 Professionals who signed the Non-Solicitation Agreement (or its substantial
21 equivalent) through the conclusion of this case and all former California-based
22 Sales Professionals employed by Paycom during the year prior to the filing of this
23 Complaint through the conclusion of this case.

24 57. **The Forum Selection/Choice of Law Class.** All current and former
25 California-based Sales Professionals, through the conclusion of this case, who
26 signed a Paycom employment document with a non-California forum selection or
27 choice of law provision.

28

1 i. Is “consent” to the use of an employee’s likeness voluntary
2 when it is a condition of employment?

3 j. Can Paycom lawfully require employees to give up their
4 likeness in consideration for employment?

5 k. Can Paycom lawfully require its employees to release future
6 claims arising from the use or sale of their likeness?

7 l. Do Paycom’s confidentiality requirements violate the California
8 Labor, Business & Professions, and Government Codes?

9 m. Does the indemnity provision in the Paycom NDA violate
10 California law?

11 n. Does Paycom’s Non-Solicitation Agreement violate California
12 law?

13 o. Does Paycom require its employees to sign writings that violate
14 Labor Code § 432.5 because they contain terms and conditions that Paycom knows
15 are prohibited by law?

16 62. With respect to the Rule 23(b)(3) Class, the common questions of law
17 or fact predominate over any questions affecting individual putative class members.
18 A class action is superior to other methods for fairly and efficiently adjudicating the
19 claims. Class treatment will permit a large number of similarly situated persons to
20 prosecute their claims in a single forum, without unnecessary duplication, and
21 without fear of retaliation. The damage incurred by each class member is relatively
22 small, and the burdens of litigation would make it difficult or impossible for
23 individual members to redress the wrong done to them. The cost to the court
24 system of individualized litigation would be substantial. Individualized litigation
25 would also present the potential for inconsistent or contradictory judgments.

26 63. With respect to the Rule 23(b)(1) and (2) Classes, Paycom has acted or
27 refused to act on grounds that apply generally to the Classes, such that injunctive
28 and declaratory relief is appropriate respecting the Classes as whole. Moreover,

1 inconsistent or varying adjudications with respect to individual class members
2 would establish incompatible standards of conduct for Paycom. Alternatively,
3 adjudications with respect to individual class members would, as a practical matter,
4 substantially impair or impede the ability of absent individual class members to
5 protect their interests.

6 64. Plaintiff's claims are typical of the claims of the Classes he seeks to
7 represent.

8 65. Plaintiff will fairly and adequately represent and protect the interests
9 of the Classes. Plaintiff is a former Sales Professional. He does not have interests
10 which are adverse to the interests of absent class members.

11 66. Class counsel is experienced and qualified and capable. It has litigated
12 numerous class action and representative cases.

13 **CAUSES OF ACTION**

14 **FIRST CAUSE OF ACTION**

15 **OVERTIME**

16 **(On Behalf of Plaintiff and the Sales Professional Class)**

17 67. Under California law, an employer must pay an employee overtime
18 based upon their regular rate of pay for time worked in excess of 8 hours in a day or
19 40 hours in a week. *See, e.g.*, California Labor Code sections 510, 1194.

20 68. As detailed above, Paycom knew or should have known that Plaintiff
21 and the Sales Professional Class worked more than eight hours a day and more than
22 forty hours a week.

23 69. As detailed above, Paycom failed to pay Plaintiff and the Class
24 overtime for time spent working more than 8 hours in a day and/or 40 hours in a
25 week.

26 70. Plaintiff and the Sales Professional Class were harmed as a result.
27 They did not receive all the wages to which they were and are entitled.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND CAUSE OF ACTION

(WAITING TIME PENALTIES)

(On Behalf of Plaintiff and the Sales Professional Subclass)

71. Under California law, an employer must pay an employee all wages due upon termination or resignation. The willful failure to do so results in waiting time penalties equal to 30 days of an employee’s wage. *See, e.g.*, Labor Code section 203.

72. As detailed above, Paycom did not pay Plaintiff and the Subclass all wages due and owing upon their separation from Paycom’s employ. Paycom did not pay overtime wages.

73. As detailed above, this conduct by Paycom was willful. It knew or should have known of the overtime incurred by Plaintiff and the Subclass.

74. As a result, Paycom is liable to Plaintiff and the Subclass for waiting time penalties.

THIRD CAUSE OF ACTION

(FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS)

(On Behalf of Plaintiff and the Sales Professionals Class)

75. Under California law, an employer must provide employees with an accurate wage statement. Among other things, the wage statement must include the gross wages earned, the total hours worked, and the wage rate worked for each hour. An employee suffers injury when this law is violated if the employee cannot (among other things) easily determine from the wage statement the gross or net wages earned or the hours worked. The penalties for violating this law are set by statute. *See, e.g.*, California Labor Code § 226.

76. As detailed above, Paycom knowingly failed to provide Plaintiff and the Sales Professional Class with accurate wage statements.

77. Plaintiff and the Sales Professional Class suffered injury as a result of Paycom’s conduct. They were not able, from a review of the wage statement

1 (assuming it was provided) to determine the gross and net wages earned, as well as
2 the hours worked, and the applicable hourly rates.

3 **FOURTH CAUSE OF ACTION**

4 **(Declaratory and Injunctive Relief as to the Likeness Waiver)**

5 **(On Behalf of Plaintiff and the Likeness Waiver Class)**

6 78. California’s constitutional right to privacy was established for a public
7 reason. It “prevents business interests from collecting and stockpiling information
8 about us and from misusing information gathered for one purpose in order to serve
9 other purposes or to embarrass us.” The constitutional right to privacy
10 encompasses one’s right to their voice, appearance, name, biographical material,
11 emotions, expressions, and personalities, i.e., their “likeness.”

12 79. Labor Code § 450 was established for a public reason. It states that no
13 employer may compel or coerce any employee or applicant to patronize their
14 employer in the purchase of a thing of value. Under this statute, the “purchase of a
15 thing of value” includes the “purchase” of the job itself. In addition, Labor Code §
16 450 prohibits employers from requiring the payment of “consideration of any type”
17 in exchange for employment, including the payment of the employees’ right to their
18 own likeness.

19 80. Labor Code § 432.5 was established for a public reason. It states
20 (among other things) that no employer shall require any employee to agree, in
21 writing, to any term or condition which is known by the employer to be prohibited
22 by law.

23 81. Civil Code § 1668 states that “all contracts which have as their object,
24 directly or indirectly, to exempt anyone from responsibility for his own fraud, or
25 willful injury to the person of another, or a violation of law, whether willful or
26 negligent, are against the policy of the law.” Civil Code § 3513 states that “a law
27 established for a public reason cannot be contravened by private agreement.” Civil
28 Code § 1667 defines an “unlawful contract” as one that is “contrary to an express

1 provision of the law,” “contrary to the policy of express law, though not expressly
2 prohibited,” or “otherwise contrary to good morals.” Government Code §§ 17200 *et*
3 *seq.* makes it an unlawful and unfair business practice to require employees to sign
4 a contract that violates the above laws.

5 82. In light of the facts and laws set forth above, a case or controversy
6 exists within the meaning of 28 U.S.C. § 2201 as to whether Paycom’s requirement
7 that employees sign the Likeness Waiver, as well as the Likeness Waiver itself, are
8 unlawful and unenforceable.

9 83. Plaintiff and the Class seek a judicial declaration of their rights and
10 obligations under the Likeness Waiver. Specifically, they seek a judicial
11 declaration that Paycom’s requirement that employees agree to the Likeness
12 Waiver, and that the Likeness Waiver itself, are unlawful and unenforceable.
13 Among other things, they seek a judicial declaration that:

14 a. The Likeness Waiver is unlawful and unenforceable because
15 employees have a constitutional right to privacy, and this constitutional right is a
16 public right that cannot be waived by private agreement under Civil Code § 3513.

17 b. The Likeness Waiver is unlawful and unenforceable because the
18 employees’ “consent” to the waiver as a condition of, and in consideration for,
19 employment is not voluntary.

20 c. Paycom violates its employees’ constitutional right to privacy
21 by using their likenesses for non-Company, trade, and commercial purposes.

22 d. The Likeness Waiver violates Labor Code § 450 because an
23 employer cannot require its employees to give up their likeness in consideration for
24 employment.

25 e. The Likeness Waiver is unlawful and unenforceable because it
26 contains a future release of all claims (including for intentional torts) that purports
27 to exempt Paycom and all the “Releasees” from responsibility for their own fraud,
28

1 willful injury to the person of another, and/or a violation of the law, all in violation
2 of Civil Code §§ 1667-68.

3 f. The Likeness Waiver violates Labor Code § 432.5 because
4 Paycom requires its employees to sign it as a condition of employment, and it is
5 known by Paycom to be prohibited by law.

6 84. Ancillary to this judicial declaration, Plaintiff and the Class seek an
7 injunction: (1) prohibiting Paycom from requiring class members to sign the
8 Likeness Waiver in consideration for, or as a condition of, their employment; (2)
9 prohibiting Paycom from enforcing or seeking to enforce the Likeness Waiver; (3)
10 prohibiting Paycom from using or selling its employees' likenesses; (4) requiring
11 Paycom to disgorge any profits or revenue earned through the sale or use of its
12 employees' likenesses for "non-Company," "trade," or "commercial purposes," and
13 provide restitution; and (5) requiring Paycom to inform class members that the
14 Likeness Waiver, that Paycom will not threaten to enforce, seek to enforce, or
15 enforce the Likeness Waiver, and (6) that Paycom will not use or sell their
16 likenesses.

17 **FIFTH CAUSE OF ACTION**

18 **(Declaratory and Injunctive Relief as to the Confidentiality Requirements)**

19 **(On Behalf of Plaintiff and the NDA Class)**

20 85. Business & Professions Code § 16600 states that any agreement in
21 restraint of trade is void. The Cartwright Act provides that any combination in
22 restraint of trade is "unlawful, against public policy and void." *See* Business &
23 Professions Code § 16726.

24 86. Government Code § 19264.5 makes it an unlawful employment
25 practice to require an employee to sign a non-disparagement or other document that
26 purports to deny the employee the right to disclose information about unlawful acts
27 in the workplace, including but not limited to, information pertaining to sexual
28 harassment or any other unlawful or potentially unlawful conduct.

1 87. Labor Code §§ 232 and 1197.5 make it unlawful for an employer to
2 prohibit employees from disclosing or discussing information about their own
3 wages or the wages of others. Labor Code § 232 makes it unlawful for an employer
4 to prohibit employees from disclosing information about their working conditions.
5 Labor Code § 1102.5 makes it unlawful for an employer to adopt or enforce any
6 policy, rule or regulation prohibiting employees from disclosing information about
7 reasonably-suspected violations of the law to government agencies. Labor Code §
8 98.6 makes it unlawful to threaten employees with discharge for engaging in lawful
9 conduct off work premises during non-work hours. Labor Code § 432.5 states that
10 no employer shall require any employee to agree, in writing, to any term or
11 condition known by the employer to be prohibited by law.

12 88. These laws were established for a public reason.

13 89. Civil Code § 3513 states that “a law established for a public reason
14 cannot be contravened by private agreement.” Civil Code § 1667 defines an
15 “unlawful contract” as one that is “contrary to an express provision of the law,”
16 “contrary to the policy of express law, though not expressly prohibited,” or
17 “otherwise contrary to good morals.”

18 90. Government Code §§ 17200 *et seq.* makes it an unlawful business
19 practice to require employees to comply with confidentiality requirements that
20 violate the above laws.

21 91. In light of the facts and laws set forth above, a case or controversy
22 exists within the meaning of 28 U.S.C. § 2201 as to whether Paycom’s
23 confidentiality requirements, as set forth in its Insider Trading Policy, Code of
24 Conduct, Employee Handbook, Paycom NDA, and otherwise, are unlawful and
25 unenforceable.

26 92. Plaintiff and the Class seek a judicial declaration of their rights and
27 obligations with respect to Paycom’s confidentiality requirements. Specifically,
28 they seek a judicial declaration that Paycom’s confidentiality requirements violate:

1 Business & Professions Code §§ 16600 and 17200 *et seq.*, the Cartwright Act,
2 Government Code § 12964.5, Civil Code § 3513, Civil Code § 1667, and Labor
3 Code §§ 98.6, 232, 232.5, 432.5, 1102.5, and 1197.5. Among other things:

4 a. The confidentiality requirements unlawfully restrain trade
5 because they prohibit Plaintiff and the Class from using “non-public information”
6 for purposes of competition, prohibit former employees from saying they worked at
7 Paycom, and prohibit former employees from “disparaging” Paycom or its business
8 or services in the course of competing with it.

9 b. The confidentiality requirements violate Government Code §
10 12964.5 because they are required as condition of employment, and they prohibit
11 employees from disclosing actual or potentially illegal conduct to others.

12 c. The confidentiality requirements violate Labor Code § 98.6,
13 other Labor Code provisions, and California’s constitutional right to liberty of
14 speech because they threaten Plaintiff and the Class with termination and otherwise
15 prohibit them from, for example, speaking to the media or posting information
16 about Paycom on the internet (including social media sites such as Glassdoor or
17 Facebook) or “disparaging” Paycom. They also prohibit employees from even
18 saying (to anyone) that they have knowledge of Paycom’s “confidential
19 information.”

20 d. The confidentiality requirements violate Labor Code §§ 232,
21 232.5, and 1197.5 because they prohibit employees from disclosing information
22 about their wages, the wages of others, and their working conditions, including, but
23 not limited to, information about Paycom employee compensation, information,
24 commission policies, bonus policies, and benefit policies, Paycom employees’
25 “personally identifiable information” and Paycom employees’ performance
26 information.

27 e. The confidentiality requirements violate Labor Code § 1102.5
28 because they prohibit employees from disclosing information about reasonably-

1 suspected violations of the law to government agencies if the information is
2 “confidential” and/or (depending on the policy) a government agency other than the
3 SEC or law enforcement (and then only with respect to federal offenses and
4 security law violations).

5 f. The confidentiality requirements violate Labor Code § 432.5
6 because they require employees to agree, in writing, to confidentiality terms or
7 conditions known by Paycom to be prohibited by law.

8 93. Ancillary to this judicial declaration, Plaintiff and the Class seek an
9 injunction: (1) prohibiting Paycom from requiring class members to sign or comply
10 with its current confidentiality requirements; and (2) prohibiting Paycom from
11 threatening to enforce or enforcing its current confidentiality requirements.
12 Plaintiff and the Class also seek an affirmative injunction: (1) requiring Paycom to
13 modify its confidentiality requirements to comply with the above laws, and (2)
14 requiring Paycom to inform class members that its confidentiality requirements are
15 illegal, and that Paycom will not threaten to enforce or enforce its illegal
16 confidentiality requirements.

17 **SIXTH CAUSE OF ACTION**

18 **(Declaratory and Injunctive Relief as to the Indemnity Provision in the**
19 **Paycom NDA)**

20 **(On Behalf of Plaintiff and the NDA Class)**

21 94. Labor Code § 2802 requires an employer to indemnify employees for
22 all necessary expenditures or losses incurred by employees in the direct
23 consequence of the discharge of their job duties, even when they are unlawful.
24 Labor Code § 2804 states that any contract or agreement made by an employee to
25 waive the benefits of Labor Code § 2802 is null and void.

26 95. Labor Code § 432.5 prohibits an employer from requiring an employee
27 to agree, in writing, to any term or condition known by the employer to be
28 prohibited by law.

1 96. Government Code §§ 17200 *et seq.* makes a violation of the above
2 laws an unlawful business practice.

3 97. These laws were established for a public reason.

4 98. Civil Code § 1668 states that “all contracts which have as their object,
5 directly or indirectly, to exempt anyone from responsibility for his own fraud, or
6 willful injury to the person of another, or a violation of law, whether willful or
7 negligent, are against the policy of the law.” Civil Code § 3513 states that “a law
8 established for a public reason cannot be contravened by private agreement.” Civil
9 Code § 1667 defines an “unlawful contract” as one that is “contrary to an express
10 provision of the law,” “contrary to the policy of express law, though not expressly
11 prohibited,” or “otherwise contrary to good morals.”

12 99. In light of the facts and laws set forth above, a case or controversy
13 exists within the meaning of 28 U.S.C. § 2201 as to whether Paycom’s requirement
14 that Plaintiff and the Class sign the Paycom NDA, which includes the indemnity
15 provision referenced above, violates the law. A case or controversy also exists as to
16 whether the indemnity provision contained in the Paycom NDA is unlawful and
17 unenforceable.

18 100. Plaintiff and the Class seek a judicial declaration of their rights and
19 obligations with respect to the indemnity provision in the Paycom NDA.
20 Specifically, they seek a judicial declaration that Paycom’s requirement that
21 employees sign the Paycom NDA with the indemnity provision violates Labor
22 Code §§ 2802 and 432.5 and Business & Professions Code §§ 17200 *et seq.* They
23 also seek a declaration that the indemnity provision in the Paycom NDA is
24 unlawful and violates, among other things, Labor Code § 2802, 2804, Civil Code
25 §§ 1667-1668, 3513, and Business & Professions Code §§ 17200 *et seq.* For
26 example:

27 a. The indemnity provision is unlawful because it requires
28 employees to indemnify Paycom for conduct arising during the course of their

1 employment, even though Paycom has an obligation to indemnify its employees.
2 *See, e.g.*, Labor Code § 2802.

3 b. The indemnity provision violates Labor Code § 2804 because it
4 requires employees to waive the benefits of Article 2 of the Labor Code, including
5 the right to indemnity under Labor Code § 2802.

6 c. The indemnity provision is unlawful because it requires
7 employees to “hold harmless” Paycom for conduct for which Paycom is liable.
8 This constitutes an unlawful future release of claims prohibited by Civil Code §
9 3513.

10 d. Paycom knows the indemnity provision is prohibited by law but
11 nevertheless requires employees to sign the indemnity provision as a condition of
12 employment. This is a violation of Labor Code § 432.5.

13 101. Ancillary to this judicial declaration, Plaintiff and the Class seek an
14 injunction: (1) prohibiting Paycom from requiring class members to sign or comply
15 with the Paycom NDA as it relates to the indemnity provision; and (2) prohibiting
16 Paycom from threatening to enforce or enforcing the indemnity provision in the
17 Paycom NDA. Plaintiff and the Class also seek an affirmative injunction: (1)
18 requiring Paycom to modify its Paycom NDA to exclude the indemnity provision;
19 and (2) requiring Paycom to inform class members that the indemnity provision in
20 the Paycom NDA is illegal, and that it will not threaten to enforce or enforce the
21 indemnity provision.

22 **SEVENTH CAUSE OF ACTION**

23 **(Declaratory and Injunctive Relief as to the Non-Solicitation Agreement)**

24 **(On Behalf of Plaintiff and the Non-Solicit Class)**

25 102. Business & Professions Code § 16600 states that any agreement in
26 restraint of trade is void. The Cartwright Act provides that any combination in
27 restraint of trade is “unlawful, against public policy and void.” See Business &
28 Professions Code § 16726.

1 103. Labor Code §§ 232 and 1197.5 make it unlawful for an employer to
2 prohibit employees from disclosing or discussing information about their own
3 wages or the wages of others. Labor Code § 232.5 makes it unlawful for an
4 employer to prohibit employees from disclosing information about their working
5 conditions. Labor Code § 432.5 states that no employer shall require any employee
6 to agree, in writing, to any term or condition known by the employer to be
7 prohibited by law.

8 104. These laws were established for a public reason.

9 105. Civil Code § 3513 states that “a law established for a public reason
10 cannot be contravened by private agreement.” Civil Code § 1667 defines an
11 “unlawful contract” as one that is “contrary to an express provision of the law,”
12 “contrary to the policy of express law, though not expressly prohibited,” or
13 “otherwise contrary to good morals.”

14 106. Government Code § 17200 *et seq.* makes it an unlawful business
15 practice to require employees to agree and comply with a non-solicitation
16 agreement that violates the above laws.

17 107. In light of the facts and laws set forth above, a case or controversy
18 exists within the meaning of 28 U.S.C. § 2201 as to whether Paycom’s requirement
19 that employees sign its non-solicitation agreement, and the non-solicitation
20 agreement itself, are unlawful and unenforceable.

21 108. Plaintiff and the Class seek a judicial declaration of their rights and
22 obligations with respect to Paycom’s non-solicitation agreement. Specifically, they
23 seek a judicial declaration that Paycom’s non-solicitation agreement violates:
24 Business & Professions Code §§ 16600 and 17200 *et seq.*, the Cartwright Act, Civil
25 Code §§ 1667, 3513, and Labor Code §§ 98.6, 232, 232.5, 432.5, and 1197.5.
26 Among other things:

1 a. The non-solicitation agreement constitute an unlawful restraint
2 on trade because it prohibits the solicitation of Paycom’s customers, potential
3 customers, referral sources, and employees.

4 b. The non-solicitation agreement violates Labor Code §§ 98.6,
5 232, 232.5, and 1197.5 because it prohibits former employees from providing any
6 “information pertaining to Paycom’s employees to any subsequent employer or any
7 person,” including information about those employees’ wages, working conditions,
8 or performance.

9 c. Paycom’s requirement that employees sign the non-solicitation
10 agreement as a condition of employment violates Labor Code § 432.5 because
11 Paycom knows the non-solicitation agreement is prohibited by law.

12 109. Ancillary to this judicial declaration, Plaintiff and the Class seek an
13 injunction: (1) prohibiting Paycom from requiring class members to sign or comply
14 with its non-solicitation agreement; and (2) prohibiting Paycom from threatening to
15 enforce or enforcing its non-solicitation agreement. Plaintiff and the Class also
16 seek an affirmative injunction requiring Paycom to inform class members that its
17 non-solicitation agreement is unlawful and that Paycom will not threaten to enforce
18 or enforce its non-solicitation agreement.

19 **EIGHTH CAUSE OF ACTION**

20 **(Declaratory and Injunctive Relief**

21 **as to the Forum Selection and Choice of Law Provisions)**

22 **(On Behalf of Plaintiff and the Forum Selection/Choice of Law Class)**

23 110. Labor Code § 925 prohibits an employer from requiring an employee
24 who primarily resides and works in California to agree to a provision that either: (1)
25 requires the employee to adjudicate outside of California a claim arising in
26 California; or (2) deprives the employee of the substantive protection of California
27 law with respect to a controversy arising in California.

1 111. Labor Code § 432.5 makes it unlawful for an employer to require an
2 employee to agree, in writing, to a term or condition known by the employer to be
3 prohibited by law.

4 112. Plaintiff, on behalf of himself and the Class, assert the choice-of-law
5 and forum selection provisions in the documents referenced above are void and
6 illegal, not just under Labor Code § 925, but also under other California laws,
7 including California's constitutional right to privacy, Business & Professions Code
8 §§ 16600, 17200 *et seq.*, the Cartwright Act, and Labor Code §§ 98.6, 203, 226,
9 232, 232.5, 432.5, 450, 510, 1102.5, 1194, 1197.5, 2802, and 2804. These laws
10 were established for a public reason and establish unwaivable rights.

11 113. In light of the facts and laws set forth above, a case or controversy
12 exists within the meaning of 28 U.S.C. § 2201 as to whether Paycom's requirement
13 that Plaintiff and the Class agree to Oklahoma-based forum selection and choice of
14 law provisions is unlawful and unenforceable.

15 114. Plaintiff and the Class seek a judicial declaration of their rights and
16 obligations with respect to Paycom's forum selection and choice of law provisions.
17 Specifically, they seek a judicial declaration that Paycom violates the law
18 (including Labor Code §§ 432.5 and 925) by requiring employees to agree to the
19 forum selection and choice of law provisions in their employment documents.
20 They also seek a declaration that the forum selection and choice of law provisions
21 violate the laws referenced above.

22 115. Ancillary to this judicial declaration, Plaintiff and the Class seek an
23 injunction: (1) prohibiting Paycom from requiring class members to sign
24 employment documents that contain out-of-state forum selection or choice of law
25 provisions; and (2) prohibiting Paycom from threatening to enforce or enforcing
26 these forum selection and choice of law provisions. Plaintiff and the Class also
27 seek an affirmative injunction requiring Paycom to inform class members that its
28

1 forum selection and choice of law provisions are unlawful, and that it will not
2 threaten to enforce or enforce these provisions.

3 **NINTH CAUSE OF ACTION**

4 **UNFAIR BUSINESS PRACTICES**

5 **(On Behalf of Plaintiff and the Sales Professional Class)**

6 116. California law prohibits any unlawful, unfair, or fraudulent business
7 practice. *See* California Business and Professions Code section 17200.

8 117. Through its actions (as described above), Paycom has violated
9 numerous California laws. Plaintiff and the Sales Professional Class have been
10 harmed by Paycom’s conduct. They have suffered economic injury because they
11 have not been paid all wages earned.

12 118. Plaintiff and the Sales Professional Class thus seek restitution and
13 injunctive relief with respect to Paycom’s violation of the overtime laws. Plaintiff
14 further seeks an appropriate private and public injunction, and other appropriate
15 relief, to remedy Paycom’s other illegal and unfair business practices.

16 **TENTH CAUSE OF ACTION**

17 **PAGA**

18 **(On Behalf of Plaintiff and the State of California and all aggrieved employees)**

19 119. Labor Code sections 2698 *et seq.* provides that an aggrieved employee
20 may bring an action under the Private Attorneys General Act (“PAGA”) on behalf
21 of the State, himself, and other aggrieved employees.

22 120. As detailed above, Plaintiff is an aggrieved employee.

23 121. Plaintiff has satisfied the administrative exhaustion requirements of
24 PAGA. On October 18, 2019, Plaintiff provided notice of the facts and theories
25 upon which these PAGA claims are based through a PAGA notice to the Labor
26 Workforce and Development Agency (“LWDA”) and Defendants. This PAGA
27 notice also attached the original complaint in this case and incorporated it by
28

1 reference. The notice was provided via an on-line filing to the LWDA and via
2 certified mail to Defendants. Plaintiff paid the required filing fee to the LWDA.

3 122. The LWDA did not respond to this PAGA notice.

4 123. As detailed above, and as set forth in Plaintiff's PAGA notice:

5 a. Paycom fails to pay its California-based Sales Professionals
6 overtime pay. This violates Labor Code §§ 510, 558, 1194 and all applicable wage
7 orders.

8 b. Paycom fails to provide its California-based Sales Professionals
9 all earned wages at the time of separation or termination. This violates Labor Code
10 §§ 201, 202, and 203.

11 c. Paycom fails to provide its California-based Sales Professionals
12 with accurate wage statements. This violates Labor Code §§ 226 and 226.3.

13 d. Paycom requires employees to sign a Likeness Waiver that
14 violates numerous provisions of California law. Paycom also requires employees to
15 purchase their employment with the right to their likeness and their right to bring
16 future claims. Paycom knows or should know that its Likeness Waiver is
17 prohibited by law. Through this conduct, Paycom violates Labor Code §§ 432.5
18 and 450.

19 e. Paycom requires employees to sign and comply with – upon
20 threat of discharge and otherwise – oppressive and illegal confidentiality
21 requirements. Among other things, these confidentiality requirements prohibit
22 employees from disclosing information about potential or actual illegal conduct,
23 disclosing information about reasonably-suspected violations of the law to
24 government agencies, disclosing information about Paycom's working conditions,
25 disclosing information about their own wages or the wages of others, disparaging
26 Paycom, using so-called "non-public information" to compete with Paycom, or
27 exercising their free speech rights under the federal and California constitutions.
28 Paycom knows (or should know) its confidentiality requirements are prohibited by

1 law. Through this conduct, Paycom violates Labor Code §§ 96(k), 98.6, 232,
2 232.5, 432.5, 1102.5, and 1197.

3 f. Paycom requires employees to sign and comply with an
4 indemnity provision that requires employees to indemnify Paycom for conduct
5 arising during the course of their employment and hold Paycom harmless from
6 future claims. Paycom knows this provision is illegal. Through this conduct,
7 Paycom violates Labor Code §§ 432.5, 2802, and 2804.

8 g. Paycom requires employees to sign and comply with a non-
9 solicitation agreement that prohibits employees from soliciting customers,
10 prospective customers, referral sources, or employees. It also prohibits employees
11 from (among other things) providing information about any Paycom employee to
12 any person. Paycom knows the non-solicitation agreement is prohibited by law.
13 Through this conduct, Paycom violates Labor Code §§ 96(k), 98.6, 232, 232.5,
14 432.5, and 1197.5.

15 h. Paycom requires employees to sign and comply with
16 employment documents that contain illegal forum selection and choice-of-law
17 provisions. Paycom knows (or should know) these provisions violate the law.
18 Through this conduct, Paycom violates Labor Code §§ 432.5 and 925.

19 124. Paycom's illegal conduct with respect to the Likeness Waiver,
20 confidentiality requirements, non-solicitation agreement, indemnity provision, and
21 forum selection/choice-of-law provisions is not limited to Sales Professionals. This
22 illegal conduct is applicable to all of Paycom's California-based employees
23 required to sign or comply with these illegal agreements, policies, and
24 requirements.

25 125. Plaintiff, on behalf of himself, the State of California, and all other
26 aggrieved employees, seeks all civil penalties recoverable pursuant to PAGA as a
27 result of the above-referenced violations of the Labor Code against each Defendant.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

126. Plaintiff hereby demands a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, the Classes, the State of California, and all aggrieved employees, prays for judgment against Paycom as follows:

- 1. An Order that this action may proceed and be maintained on a class-wide basis;
- 2. Appropriate injunctive relief;
- 3. Attorneys fees and costs;
- 4. Disgorgement and restitution, according to proof;
- 5. Damages, according to proof;
- 6. Statutory and civil penalties, according to proof;
- 7. Back wages, according to proof;
- 8. Interest;
- 9. All other relief the Court deems equitable and proper.

DATED: December 31, 2019 BAKER CURTIS & SCHWARTZ, P.C.

By: _____/S/ Chris Baker_____
Chris Baker
Attorneys for Plaintiff
CAMERON ROSETTA