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individual, on behalf of himself and all others
similarly situated and aggrieved
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES
10

11 ADAM WACHTER, an individual, on
behalf of himself and all others similarly
12 situated and aggrieved,

13 Plaintiffs,

14 v.

15 MTX GROUP, INC., a corporation; and
DOES 1 through 20, inclusive,

16 Defendants.
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CASE NO. 22STCV28782

Assigned for all purposes to:
Hon. Elihu M. Berle, Dept. 6

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Filed concurrently with Declarations of Adam
Wachter and Steven M. Kroll; and [Proposed]
Order]*

Date: January 30, 2024
Time: 9:00 a.m.
Dept.: 6

Action filed: September 2, 2022
Trial date: None

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 30, 2024, at 9:00 a.m. in Department 6 of the
3 Los Angeles County Superior Court, located at 312 N. Spring Street, Los California 90012,
4 plaintiff Adam Wachter ("Plaintiff"), on behalf of himself and all others similarly situated and
5 aggrieved, will and hereby does move this Court for an order preliminarily approving the class
6 action settlement in this action as follows:

7 1. Preliminarily approving the class action and PAGA settlement in the gross amount
8 of \$90,000;

9 2. Preliminarily and conditionally certifying the proposed class for purposes of
10 settlement;

11 3. Preliminarily appointing Plaintiff as representative of the proposed class for
12 purposes of settlement;

13 4. Preliminarily appointing attorney Steven M. Kroll of Bent Caryl & Kroll, LLP as
14 counsel for the proposed class for purposes of settlement;

15 5. Preliminarily approving the application for payment to class counsel of reasonable
16 attorneys' fees of thirty-five percent (35%) of the settlement fund at \$31,500 and reasonable costs
17 not to exceed \$7,500;

18 6. Preliminarily approving the payment of a service payment to Plaintiff to
19 compensate him for the time, expense, and risk he incurred as a named plaintiff and class
20 representative in this action in the amount of \$2,500;

21 7. Preliminarily approving settlement administration services to be provided by
22 ILYM Group, Inc. not to exceed \$5,000;

23 8. Approving as to form and content the proposed class notice, which is attached as
24 Exhibit A to the Class Action and PAGA Settlement Agreement ("Settlement Agreement"),
25 which are all included as Exhibit 1 to the attached memorandum of points and authorities filed
26 concurrently herewith;

27 9. Directing that the class notice be mailed by first class mail to the settlement class
28 members; and

1 10. Scheduling a final hearing on the question of whether the proposed class
2 settlement should be finally approved as fair, reasonable, and adequate as to the members of the
3 proposed settlement class.

4 Plaintiff's motion is based on this notice and the attached memorandum of points and
5 authorities, the Declarations of Adam Wachter and Steven M. Kroll and exhibits thereto, the
6 complete files and records of this case, and any other evidence or oral argument which may be
7 considered by the Court at the time of the hearing.

8
9 Dated: January 22, 2023

BENT CARYL & KROLL, LLP

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11 By: Steven M. Kroll

12 Steven M. Kroll
13 Attorneys for Plaintiff
14 ADAM WACHTER
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a wage and hour class and representative action filed by plaintiff Adam Wachter
4 (“Plaintiff”) against defendant MTX Group, Inc. (“Defendant”) involving claims for failure to
5 indemnify for necessary expenditures, violation of Labor Code section 925(a), violation of the
6 Unfair Competition Law, and violation of the Labor Code Private Attorneys General Act
7 (“PAGA”). The action is brought on behalf of all employees who have worked for Defendant
8 within California since June 15, 2018.

9 The parties have conducted informal discovery, participated in a full-day private
10 mediation, and engaged in subsequent settlement discussions to resolve this action. Following
11 their settlement efforts, the parties eventually reached an agreement on all material terms of a
12 class and PAGA action settlement on behalf of approximately 53 employees who have worked
13 for Defendant within California from June 15, 2018 through June 15, 2022.

14 Plaintiff now seeks preliminary approval of that proposed class action settlement with
15 Defendant and conditional certification of a class for purposes of settlement. Subject to final
16 approval of this Court, the parties have agreed to a class and PAGA settlement for \$90,000. As
17 detailed below, the proposed settlement is fair, reasonable, adequate, and in the best interests of
18 the settlement class, in light of all the facts and circumstances revealed through discovery and the
19 inherent risks and delays of litigation. Thus, Plaintiff respectfully requests that the Court grant
20 preliminary approval of the proposed settlement.

21 **II. FACTUAL AND PROCEDURAL BACKGROUND**

22 **A. The Parties**

23 Defendant is a New York corporation with its principal place of business in Redding,
24 California. See Declaration of Steven M. Kroll (“Kroll Decl.”) ¶ 5. Defendant is a global
25 technology consulting firm powered by the Maverick Quantum (mavQ) Artificial Intelligence
26 platform that enables organizations to modernize through digital transformation and strategy. See
27 Declaration of Adam Wachter (“Wachter Decl.”) ¶ 5.
28

1 Plaintiff is an individual residing in Los Angeles County, California. Kroll Decl. ¶ 6. He
2 worked as an Account Executive for Defendant in California from on or about September 13,
3 2021 to February 17, 2022. *Id.* ¶ 6; Wachter Decl. ¶ 5.

4 **B. The Class Action Claims**

5 On September 2, 2022, Plaintiff filed this action. Kroll Decl. ¶ 7. The complaint asserts
6 four causes of action: (1) failure to indemnify for necessary expenditures; (2) violation of Labor
7 Code section 925(a); (3) violation of the Unfair Competition Law; and (4) violation of PAGA.
8 *Id.* Plaintiff seeks to represent a class consisting of all employees employed by Defendant in
9 California since June 15, 2018. *Id.*

10 Regarding the failure to indemnify for necessary expenditures claim, Plaintiff's theory of
11 recovery is that Defendant did not maintain an expense reimbursement policy in compliance with
12 California law. Plaintiff and other similarly situated and aggrieved employees were required to
13 perform their job duties and responsibilities from a home office and other remote locations. They
14 regularly communicated with managers, supervisors, coworkers, clients, potential clients, and
15 other third parties via their personal wireless phones and company computers, which required
16 internet access and service. As such, Plaintiff and other similarly situated and aggrieved
17 employees incurred in the direct consequence of the discharge of their duties various business
18 expenses and/or losses for which they were not reimbursed, including but not limited to, personal
19 wireless phones, home internet services, and other home office utilities such as electricity, gas,
20 and water. Kroll Decl. ¶ 7.

21 Regarding the violation of Labor Code section 925(a) claim, Plaintiff's theory of recovery
22 is that upon hire, Plaintiff and Defendant entered into a written employment agreement, which set
23 forth the terms and conditions of his employment with Defendant. Other similarly situated and
24 aggrieved employees entered into the same or similar written employment agreement with
25 Defendant. Defendant required Plaintiff and other similarly situated and aggrieved employees,
26 who primarily resided and worked in California, as a condition of employment, to agree to a
27 provision in their employment agreements requiring them to adjudicate in New York any claim
28 arising in California. Kroll Decl. ¶ 8.

1 Furthermore, Defendant required Plaintiff and other similarly situated and aggrieved
2 employees, who primarily resided and worked in California, as a condition of employment, to
3 agree to a provision in their employment agreements, requiring New York law to apply to the
4 terms and condition of their employment. Both provisions thereby deprived employees of their
5 substantive protection of California law with respect to a controversy arising in California.
6 Defendant also required Plaintiff and other similarly situated and aggrieved employees, as a
7 condition of employment, to agree to unlawful “Non-Competition” and release of “Liability”
8 provisions in violation of Business and Professions Code section 16600 and Government Code
9 section 12964.5, subdivision (a) in their employment agreements. Kroll Decl. ¶ 8.

10 Plaintiff’s unfair business practices and PAGA claims are generally derivative of
11 Plaintiff’s failure to indemnify for necessary expenditures, and violation of Labor Code section
12 925(a) claims. Kroll Decl. ¶ 10.

13 **C. The Course of the Litigation**

14 **1. *The Parties Engaged in Informal Discovery Before Mediation***

15 Before Plaintiff filed this action, the parties engaged in informal discovery to prepare for
16 mediation. Defendant informally produced Plaintiff’s personnel and payroll records, and class
17 data, including the approximate size of the class, the number of workweeks, and the number of
18 payroll periods for all California employees during the statutory period. Kroll Decl. ¶ 11.

19 Plaintiff and counsel reviewed and analyzed the documents and data produced by
20 Defendant. *Id.* ¶ 12. Plaintiff’s counsel informally investigated Defendant and its business
21 operations. *Id.* Plaintiff’s counsel also informally interviewed some putative class members
22 regarding Defendant’s subject expense reimbursement practices. *Id.*

23 **2. *The Parties Engage in a Mediation and Further Settlement Efforts***

24 Following this informal discovery and investigation, on June 16, 2022, the parties
25 attended a full-day mediation with Anthony Pantoni, Esq. of Signature Resolution. Kroll Decl. ¶
26 13. The mediation was successful, but the parties still had various non-monetary terms to
27 negotiate. *Id.* After mediation, the parties and their attorneys continued to negotiate the non-
28 monetary terms. *Id.*

1 **3. *The Filing of Plaintiff's Class and Representative Action Complaint***

2 On September 2, 2022, Plaintiff filed the subject complaint against Defendant. Kroll Decl.
3 ¶ 14. After filing this action, the parties and their attorneys continued to negotiate the non-
4 monetary terms. *Id.* The parties eventually prepared and fully executed a Class Action and PAGA
5 Settlement Agreement and Class Notice on July 20, 2023, which is based on this Court's Model
6 Class Action and PAGA Settlement Agreement. *Id.*; Exhibit ("Exh.") 1 (Settlement Agreement).

7 **D. Summary of Settlement Terms**

8 The essential terms of the settlement are as follows:

9 **1. *Settlement Classes***

10 For settlement purposes only, the Class Members include all persons employed by
11 Defendant in California who worked during the period from June 15, 2018 to June 15, 2022. Exh.
12 1 (Settlement Agreement ¶ 1.5, 1.12). The Aggrieved Employees include all persons employed by
13 Defendant in California who worked at least one day from March 29, 2021, to June 15, 2022.
14 Exh. 1 (Settlement Agreement ¶ 1.30, 1.31).

15 **2. *Limited Release of Claims***

16 The release of settlement class members' claims is properly limited in scope to the causes
17 of action that were or could have been asserted in the action, based on the allegations in the
18 Complaint. Participating class members who are not aggrieved employees release "all claims that
19 were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the
20 Operative Complaint." Exh. 1 (Settlement Agreement ¶ 6.2.) Likewise, Non-participating Class
21 members who are aggrieved employees release: "all claims for PAGA penalties that were alleged,
22 or reasonably could have been alleged, based on the PAGA period facts stated in the Operative
23 Complaint." *Id.* ¶ 6.3.

24 The scope of the release as to the putative class members is consistent with case law
25 concerning the appropriate scope of releases in class actions. (See, e.g., *Williams v. Boeing Co.*
26 (9th Cir. 2008) 517 F.3d 1120, 1134 [class action release is only "enforceable as to subsequent
27 claims relying upon a legal theory different from that relied upon in the class action complaint,
28 but depending upon the same set of facts"]) (internal quotations omitted); *Gallucci v. Boiron, Inc.*,

2012 WL 5359485 * 11 (S.D. Cal. 2012) [“A majority of circuits, including the Ninth Circuit, uphold the release of claims that are based on the same factual predicate as the claims asserted in the complaint.”]; *Alba Conte & Herbert Newberg, Newberg on Class Actions*, § 12.15 (4th ed. 2002) at 312 [“The scope of a judgment must be limited to the claims that were asserted or that may arise out of the transactions or events pleaded in the complaint”].) Accordingly, the scope of the release as to settlement class members’ claims is appropriate.

3. *Monetary Terms of Settlement*

Defendant has agreed to pay a gross settlement amount of \$90,000.00 to settle this entire action, except as provided in the escalator clause. Exh. 1 (Settlement Agreement ¶ 1.22, 9.) The following amounts will be deducted from the gross settlement amount, resulting in the remaining net settlement amount available to settlement class members:

a. The costs reasonably charged by the settlement administrator, not to exceed \$5,000, for its services in administering the settlement (*Id.* ¶ 1.3, 3.2.);

b. Civil penalties in the amount of \$7,500 under PAGA, of which \$5,625 or seventy-five percent (75%) will be paid to the California Labor & Workforce Development Agency (“LWDA”), and \$1,875 or twenty-five percent (25%) shall be paid to the PAGA class members (*Id.* ¶ 1.24, 1.27, 1.34);

c. A class representative service payment of \$2,500 to Plaintiff (*Id.* ¶ 1.14, 3.2.1);

d. Plaintiff’s attorneys’ fee award not to exceed thirty-five percent (35%) of the gross settlement amount, or up to \$31,500, plus reimbursement of costs and expenses not to exceed \$7,500 (*Id.* ¶ 3.2.2).

The balance of approximately \$36,000 will be the net settlement amount to be distributed to settlement class members who do not opt out. Settlement class members are not required to submit a proof of claim form as a condition of receiving a settlement payment. Instead, settlement class members will automatically receive a pro rata share of the net settlement amount unless they choose to opt out. *Id.* ¶ 1.28, 3.2.4.

1 For those class members who choose not to exercise their right to opt out, each
2 participating class member's individual settlement payment shall be calculated by the settlement
3 administrator by dividing his or her total work weeks worked during the class period by the total
4 work weeks in the class period, in order to determine the participating class member's
5 "percentage share" of the total work weeks. *Id.* ¶ 3.2.4-3.2.5. Each participating class member
6 will receive a settlement payment equal to his or her percentage share of the total work weeks
7 multiplied by the net settlement amount. *See id.* If any class members opt out, the settlement
8 administrator will proportionately increase the share of each participating class member to ensure
9 that the entire net settlement amount is distributed to the class members. *Id.*

10 **4. Cy Pres Distribution**

11 Participating class members have at least 120 days to cash their checks. *Id.* ¶ 4.4.1.
12 Checks that are not cashed within 180 days will be tendered in conformity with California Code
13 of Civil Procedure section 384, as follows: The State Bar of California's Justice Gap Fund. *Id.* ¶
14 4.4.3.

15 **5. The Opt-Out and Objection Procedures**

16 The opt-out procedure is simple and efficient. Any class member who wishes to exclude
17 themselves (opt-out of) the class settlement must send the administrator, by fax, email, or mail, a
18 signed written request for exclusion not later than 60 days after the administrator mails the class
19 notice (plus an additional 14 days for class members whose class notice is remailed). *Id.* ¶ 8.5.

20 The objection procedure is similarly simple and efficient. Participating class members
21 may send written objections to the administrator, by fax, email, or mail. In the alternative,
22 participating class members may appear in Court (or hire an attorney to appear in Court) to
23 present verbal objections at the final approval hearing. A participating class member who elects to
24 send a written objection to the administrator must do so not later than 60 days after the
25 administrator's mailing of the class notice (plus an additional 14 days for class members whose
26 class notice was re-mailed). *Id.* ¶ 8.7.

1 **6. Class Notice and Final Judgment**

2 The class notice, attached as Exhibit A to the Settlement Agreement, will be mailed by the
3 administrator to all class members identified in the class data, via first-class United States Postal
4 Service ("USPS") mail, the Class Notice with Spanish translation, if applicable. *Id.* ¶ 8.4.
5 Following final approval by the Court of the settlement provided for in the Settlement Agreement,
6 class counsel will submit a proposed final approval order and judgment.

7 **7. Anticipated Schedule**

8 The following schedule sets forth a proposed sequence for the relevant dates and
9 deadlines, assuming this Court grants preliminary approval of the parties' proposed settlement:

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11 Within fifteen (15) days following preliminary 12 approval	Defendant will provide the settlement administrator with a list of each class member's name, last-known mailing address, social security number, and number of class period workweeks and PAGA pay periods. (<i>Id.</i> ¶ 1.8, 4.2.)
17 Within fourteen (14) days of following 18 settlement administrator's receipt of class data	The settlement administrator will mail the class notice approved by the Court to all class members. (<i>Id.</i> ¶ 8.4.2.)
20 Sixty (60) days after the settlement 21 administrator's mailing of the notice (plus an 22 additional 14 days for class members whose 23 class notice is remailed)	Deadline for class members to opt out or object to the settlement. (<i>Id.</i> ¶ 8.5, 8.7.)
24 To be determined	Final Approval Hearing

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1 **III. PRELIMINARY AND CONDITIONAL APPROVAL OF THE CLASS**
2 **SETTLEMENT IS APPROPRIATE**

3 The law favors the settlement of lawsuits, particularly in class actions and other complex
4 cases where substantial resources can be conserved by avoiding the time, expense and rigors of
5 protracted litigation. (*Neary v. Regents of Univ. of Cal.* (1992) 3 Cal.4th 273, 277-281; *Lealao v.*
6 *Beneficial Cal. Inc.* (2000) 82 Cal.App.4th 19, 53.) The purpose of the preliminary evaluation of
7 a proposed class action settlement is to determine only whether the settlement is within the range
8 of possible approval, and thus whether notice to the class of the terms and conditions, and the
9 scheduling of a formal fairness hearing, are warranted. (*Wershba v. Apple Computer, Inc.* (2001)
10 91 Cal.App.4th 224, 234-235.)

11 To make the fairness determination, the Court should consider several factors, including
12 “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
13 litigation, the risk of maintaining class action status through trial, the amount offered in
14 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
15 experience and views of counsel.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

16 At the same time, in determining the fairness of a proposed settlement, the trial court
17 should give due regard to what is otherwise a private, consensual agreement between the parties.
18 (*See In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 505; *Dunk*, 48
19 Cal.App.4th at 1800-1801.) There is an initial presumption of fairness when, as is the case here,
20 (1) the proposed class settlement is negotiated and reached through arms-length bargaining; (2)
21 investigation and discovery are sufficient to allow counsel and the court to act intelligently; and
22 (3) class counsel is experienced in similar litigation. (*See Chavez v. Netflix, Inc.* (2008) 162
23 Cal.App.4th 43, 52-53; *Dunk*, 48 Cal.App.4th at 1801.)

24 **A. The Proposed Settlement is the Product of Non-Collusive, Arms-Length,**
25 **Informed Negotiations**

26 As described above, the settlement reached in this case was the result of arms-length
27 settlement negotiations facilitated by a neutral mediator. The mediation was successful, but the
28 parties still had non-monetary terms to negotiate. Kroll Decl. ¶ 13. After the mediation and

1 filing of this action, the parties and their attorneys continued to negotiate the non-monetary terms.
2 *Id.* ¶ 14. The parties eventually executed a Class Action and PAGA Settlement Agreement and
3 Class Notice on July 20, 2023. *Id.* Based on their review of the evidence and evaluation of the
4 risks of litigation, Plaintiff's counsel believes that the class settlement is an adequate, fair and
5 reasonable compromise of this action. *Id.* ¶ 15.

6 **B. The Investigation and Discovery Were Sufficient to Allow Counsel and the**
7 **Court to Act Intelligently**

8 As discussed above, Plaintiff's counsel undertook informal discovery and investigation to
9 evaluate the merits of the claims at issue in this action and their amenability to class treatment.
10 Prior to reaching a settlement, the parties engaged in informal discovery to prepare for mediation.
11 Defendant informally produced Plaintiff's personnel and payroll records, and class data, including
12 the approximate size of the class, the number of workweeks, and the number of payroll periods
13 for all California employees during the statutory period. Kroll Decl. ¶ 11. Plaintiff and counsel
14 reviewed and analyzed the documents and data produced by Defendant. *Id.* ¶ 12. Plaintiff's also
15 counsel informally investigated Defendant and its business operations, and interviewed some
16 putative class members regarding Defendant's subject expense reimbursement practices. *Id.* By
17 the time the class settlement was reached, Plaintiff's counsel had sufficient information upon
18 which to make an informed decision about the appropriate value upon which to settle this case.

19 **C. Class Counsel is Experienced in Similar Litigation**

20 Plaintiff is represented by Steven M. Kroll ("Kroll") of Bent Caryl & Kroll, LLP. Kroll
21 has been practicing law for nearly 22 years. His legal practice is primarily concentrated on labor
22 and employment law. Kroll has substantial experience in litigating employment related matters,
23 including wage and hour claims on an individual, class, and representative bases. Kroll Decl. ¶
24 16-20. Since his firm's inception, Kroll have been lead and second chair counsel in the
25 prosecution and defense of over twenty-five putative class and representative actions. *Id.* ¶ 21.
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1 **D. The Terms of the Proposed Settlement Are Fair and Reasonable in Light of**
2 **the Estimated Value of the Plaintiff's Claims**

3 Based upon their review of the evidence and investigation and legal research regarding the
4 merits and damages for each claim, Plaintiff's counsel estimated that, if totally successful on all
5 claims, the potential recovery that could be obtained on behalf of the class is between
6 approximately \$166,075 and \$267,050, excluding interest, attorneys' fees, and costs. Kroll Decl.
7 ¶ 22.

8 Regarding the failure to indemnify for necessary expenditures claim, Plaintiff's theory of
9 recovery is that Defendant did not maintain an expense reimbursement policy in compliance with
10 California law. Plaintiff and other similarly situated and aggrieved employees were required to
11 perform their job duties and responsibilities from a home office and other remote locations, and
12 incurred various business expenses or losses for which they were not reimbursed. Kroll Decl. ¶
13 23. Based on approximately 651 months (2,800 workweeks / 4.3 weeks per month) during the
14 class period at an average range of \$125 to \$150 per month for these increased personal expenses
15 for work purposes, the estimated amount of unreimbursed monthly work expenses is between
16 \$81,375 and \$97,650. *Id.* at ¶ 23.

17 Regarding the violation of PAGA claim, Plaintiff's theory of recovery is based on alleged
18 violations of Labor Code section 2802 for failure to indemnify for necessary expenditures and
19 section 925(a) for requiring New York venue and choice of law provisions in employment
20 agreements. Kroll Decl. ¶ 24. Based on approximately 847 pay periods during the PAGA period
21 at an average of 1 to 2 violations per pay period at \$100 per penalty, the estimated amount of
22 penalties are between \$84,700 and \$169,400. *Id.* at ¶ 24.

23 Plaintiff's unfair business practices claim is generally derivative of Plaintiff's failure to
24 indemnify for necessary expenditures claim. Kroll Decl. ¶ 25.

25 Given their assessment and analysis of the likelihood of class certification, the risk of
26 decertification, Defendant's articulated defenses, potential class members refuting Labor Code
27 violations, and the uncertainty on stacking and reducing PAGA penalty amounts, Plaintiff's
28 counsel determined that the \$90,000 settlement amount ultimately agreed upon by the parties –

1 which amounts to about 41.6% of the midpoint of the potential recovery range (\$216,562.50) – is
2 fair and reasonable. Kroll Decl. ¶ 26.

3 **E. The Proposed Enhancement Award to Plaintiff is Reasonable and Routinely**
4 **Awarded by Courts**

5 Plaintiff, as class representative, seeks an enhancement award of \$2,500. Defendant does
6 not oppose this request and Plaintiff’s counsel is of the opinion that the enhancement award is
7 reasonable, proper, and supported by the particular circumstances of this case and the applicable
8 case law. Kroll Decl. ¶ 27.

9 “[T]he rationale for making enhancement or incentive awards to named plaintiffs is that
10 he or she should be compensated for the expense or risk he has incurred in conferring a benefit on
11 other members of the class.” (*Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785,
12 806.) Thus, “it is established that named plaintiffs are eligible for reasonable incentive payments
13 to compensate them for the expense or risk they have incurred in conferring a benefit on other
14 members of the class.” (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th
15 399, 412.) “Criteria courts may consider in determining whether to make an incentive award
16 include: 1) the risk to the class representative in commencing suit, both financial and otherwise;
17 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of
18 time and effort spent by the class representative; 4) the duration of the litigation and; 5) the
19 personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.”
20 (*In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1394-1395.)

21 Here, Plaintiff was instrumental in assisting his counsel in prosecuting this case and it is
22 estimated that he volunteered in excess of 25 hours working on this matter. Kroll Decl. ¶ 28;
23 Wachter Decl., ¶ 10. His efforts included multiple in-person meetings and phone calls with
24 counsel, assisting with preparing the complaint, assisting with preparing the PAGA notice to the
25 LWDA and Defendant, gathering evidence to support his claims and providing them to counsel,
26 conferring with other class members, attending a full-day mediation, making himself available by
27 phone throughout the parties’ continued settlement efforts, and reviewing and consulting with
28 counsel about the terms of the settlement agreement. Kroll Decl. ¶ 28; Wachter Decl., ¶ 11.

1 Moreover, Plaintiff assumed real financial risks by placing his name on this lawsuit. Kroll
2 Decl. ¶ 29; Wachter Decl., ¶ 12. He volunteered to serve as named plaintiff at a time when he
3 was unemployed and seeking new employment. *Id.* He had to list Defendant as a former
4 employer on his job applications and, as such, had to accept the likelihood that prospective
5 employers would learn that he had sued his former employer when contacting Defendant for a
6 reference or conducting a background check, which could make finding new employment
7 difficult. *Id.*

8 Finally, the risks taken and efforts exerted by Plaintiff resulted in a real benefit for this
9 class. Kroll Decl. ¶ 30; Wachter Decl., ¶ 13. Prior to the lawsuit, Defendant had no expense
10 reimbursement policy and various terms in its employment agreement in violation of California
11 law. *Id.* As a result of this lawsuit, Defendant has reportedly since implemented an expense
12 reimbursement police and a revised employment agreement with terms in compliance with
13 California law. *Id.* Because of Plaintiff's willingness to serve as a class representative, class
14 members who do not opt-out will share in the gross settlement amount of \$90,000 (or the net
15 settlement of an estimated amount of \$36,000) that they would not have otherwise received. *Id.*

16 **F. The Requested Attorneys' Fees and Costs Are Reasonable and Customarily**
17 **Approved by Courts**

18 Plaintiff and the class are entitled to recover the reasonable attorneys' fees and costs
19 incurred in prosecuting this action. (Lab. Code, §§ 218.5, 226(e), 2699(g); Civ. Proc. Code, §
20 1021.5(a); *Early v. Superior Court* (2000) 75 Cal.App.4th 1420, 1428-1430.) An award of
21 attorneys' fees can be calculated as a percentage of a common fund. (*Wershba v. Apple*
22 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 254-255; *see Lealao v. Beneficial Cal. Inc.* (2000) 82
23 Cal.App.4th 19, 26-30 [noting that traditional method of calculating common fund fee award is to
24 award a percentage of the total fund and discussing cases.] Courts utilize the lodestar method to
25 determine attorneys' fees and cross-check it against the percentage-of-recovery method. (*In re*
26 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.) At final approval, Plaintiff's
27 counsel will provide their billing records and a cost ledger in connection with their motion for
28 attorneys' fees and costs. Kroll Decl. ¶ 31. - 12 -

1
2 **IV. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE**

3 “Litigation by class action has long been recognized as a superior method of resolving
4 wage and hour claims in California.” (*Martinez v. Joe’s Crab Shack Holdings* (2014) 231
5 Cal.App.4th 362, 367.) Since the California Supreme Court’s decision in *Brinker Restaurant*
6 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004, the California appellate courts have recognized
7 “a renewed direction that class-wide relief remains the preferred method of resolving wage and
8 hour claims, even those in which the facts appear to present difficult issues of proof.” (*Id.* at
9 384.)

10 Class certification is appropriate when there exists “an ascertainable and sufficiently
11 numerous class, a well-defined community of interest, and substantial benefits from certification
12 that render proceeding as a class superior to alternatives.” (*Brinker*, 53 Cal.4th at 1021.) As our
13 Supreme Court has noted, “[c]laims alleging a uniform policy consistently applied to a group of
14 employees in violation of the wage and hour laws are of the sort routinely, and properly, found
15 suitable for class treatment.” (*Id.* at 1033.) Moreover, as subsequent case law has clarified, “the
16 employer’s liability arises by adopting” a facially unlawful policy; whether the unlawful policy
17 was consistently applied is, at most, relevant only to damages and cannot defeat certification.
18 (*See Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 236-237.)

19 **A. The Proposed Settlement Class Is Ascertainable and Sufficiently Numerous**

20 “Class members are ‘ascertainable’ where they may be readily identified without
21 unreasonable expense or time by reference to official records.” (*Lee v. Dynamex, Inc.* (2008) 166
22 Cal.App.4th 1325, 1334.) The class at issue here is readily ascertainable from Defendant’s own
23 records. The class is also sufficiently numerous, as there are approximately 53 putative class
24 members. (Exh. 1 (Settlement Agreement ¶ 4.1.) Joinder of 53 individuals would be
25 impracticable. (*See, e.g., Collins v. Rocha* (1972) 7 Cal.3d 232 (35 class members sufficient);
26 *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926 (42 class members sufficient).)

1 **B. The Community of Interest Requirements for Class Treatment Are Met**

2 “[T]he community of interest requirement embodies three factors: (1) predominant
3 common questions of law or fact; (2) class representatives with claims or defenses typical of the
4 class; and (3) class representatives who can adequately represent the class.” (*Brinker*, 53 Cal.4th
5 at 1021.) First, the predominance factor is met because each claim challenges a common policy
6 that Plaintiff contends violates California’s wage and hour laws regarding reimbursement of
7 expenses, and New York choice of law and venue provisions in employment agreements. (*See id.*
8 at 1033 [“The theory of liability – that Brinker has a uniform policy, and that policy, measured
9 against wage order requirements, allegedly violated the law – is by its nature a common question
10 eminently suited for class treatment”].)

11 Second, the Plaintiff’s claims are typical of those of the class. The typicality requirement’s
12 purpose “is to assure that the interest of the named representative aligns with the interests of the
13 class.” (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) “The test of typicality is
14 whether other members have the same or similar injury, whether the action is based on conduct
15 which is not unique to the named plaintiffs, and whether other class members have been injured
16 by the same course of conduct.” (*Id.*) Plaintiff was subject to the same policies that are
17 challenged in this lawsuit. Accordingly, typicality is met. (*See, e.g., Medrazo v. Honda of North*
18 *Hollywood* (2008) 166 Cal.App.4th 89, 99 [finding plaintiff satisfied typicality requirement
19 because “[s]he alleges she was subjected to the same alleged wrong, by the same defendant, as
20 the other members of the putative class”].)

21 Third, Plaintiff is an adequate class representative. Wachter Decl., ¶ 7-13. “The adequacy
22 of representation component of the community of interest requirement for class certification
23 comes into play when the party opposing certification brings forth evidence indicating
24 widespread antagonism to the class suit.” (*Martinez v. Joe’s Crab Shack Holdings* (2014) 231
25 Cal.App.4th 362, 374.) “A party’s claim of representative status will only be defeated by a
26 conflict that ‘goes to the very subject matter of the litigation.’” (*Id.* quoting *Richmond v. Dart*
27 *Industries, Inc.* (1981) 29 Cal.3d 462, 470.) There is no indication of any conflicts between
28 Plaintiff or his counsel and the class.

1 **C. Class-Wide Settlement Is Superior to Other Available Methods of Resolution**

2 “Where classwide litigation of common issues will reduce litigation costs and promote
3 greater efficiency, a class action may be superior to other methods of litigation.” (*Valentino v.*
4 *Carter-Wallace, Inc.* (9th Cir. 1996) 97 F.3d 1227, 1234-1235.) Here, the alternative method of
5 resolution would be 53 individual lawsuits challenging the same alleged wage and hour policies
6 and practices of Defendant, each seeking a small amount of damages. Such duplicative litigation
7 would be extremely inefficient and costly for the courts. It would also “prove uneconomic for
8 potential plaintiffs,” as “litigation costs would dwarf potential recovery” in each individual case.
9 (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1023.) Given these concerns, a class
10 action is the superior method of resolving these wage and hour claims.

11 **V. THE PROPOSED CLASS NOTICE AND CLAIMS PROCEDURE IS**
12 **APPROPRIATE**

13 A Court’s order preliminarily approving a class settlement must include the notice to be
14 given to the class. (Cal. R. Ct., Rule 3.769(e).) “The notice must contain an explanation of the
15 proposed settlement, and procedures for class members to following in filing written objections to
16 it and arranging to appear at the fairness hearing and state any objections to the proposed
17 settlement.” (Cal. R. Ct., Rule 3.769(f).)

18 The purpose of a class notice in the context of a settlement is to give class members
19 sufficient information to decide whether they should accept the benefits offered, opt out and
20 pursue their own remedies, or object to the settlement. As a general rule, class notice must strike
21 a balance between thoroughness and the need to avoid unduly complicating the content of the
22 notice and confusing class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
23 224, 252.)

24 The class notice, attached as Exhibit A to the Settlement Agreement, meets all of the
25 requirements set forth in the California Rules of Court and *Wershba*, including (1) a definition of
26 the settlement class; (2) a description of the case, substantive issues, the parties’ respective
27 contentions, and material proceedings to date; (3) a neutral description of the proposed settlement
28 and its terms; (4) the amount of attorneys’ fees and costs sought; (5) a statement regarding the

1 right to either file a claim or opt out of the settlement class and that judgment will bind all
2 members who do not request exclusion; (6) a description of the and opt-out procedure; (7) a
3 statement regarding the right to challenge the number of workweeks worked by the class member
4 during the class period; (8) a statement regarding the right to object to class settlement, and a
5 description of the procedure for making objections; (9) an explanation of the consequences of
6 remaining a settlement class member; (10) the date, time and place of the final fairness hearing;
7 and (11) the identity of Plaintiff's counsel. Exh. 1 (Exh. A to Settlement Agreement).

8 Furthermore, the proposed method of disseminating the notice is also appropriate.
9 Preliminary approval of the class settlement will enable notice to go out to members of the
10 settlement class in a manner best calculated to ensure that class members are alerted to the terms
11 of the settlement and their options for participating in, opting-out of, or objecting to, the class
12 settlement. Specifically, the proposed notice plan is as follows: Within 15 days of preliminary
13 approval, Defendant will provide the settlement administrator with a list of each class member's
14 name, last-known mailing address, social security number, and number of class period
15 workweeks and PAGA pay periods. Exh. 1 (Settlement Agreement ¶ 1.8, 4.2.) Within 14 days of
16 the settlement administrator's receipt of class data, the settlement administrator will mail the class
17 notice approved by the Court to all class members. *Id.* ¶ 8.4.2. For notices returned as
18 undeliverable, the settlement administrator will conduct address searches and then re-mail notices
19 to any new addresses identified. *Id.* ¶ 8.4.3.

20 Finally, the Settlement Agreement provides for settlement administration costs not to
21 exceed \$5,000. Exh. 1 (Settlement Agreement ¶ 1.3, 3.2.) This amount is appropriate in light of
22 the number of class members, the size of the settlement, the payments to be made, and the extent
23 of the work to be performed in administering the settlement for the class. Kroll Decl. ¶ 32.

24 **VI. CONCLUSION**

25 For all the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
26 approve the class settlement, provisionally certify the settlement class, and enter the Order
27 submitted concurrently herewith.

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Dated: January 22, 2024

BENT CARYL & KROLL, LLP

By: Steven M. Kroll
Steven M. Kroll
Attorneys for Plaintiff
ADAM WACHTER

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Adam Wachter (“Plaintiff”) and defendant MTX Group, Inc. (“MTX”). The Agreement refers to Plaintiff and MTX collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against MTX captioned *Adam Wachter v. MTX Group, Inc., et al.* initiated on 09/02/2022 and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means a person employed by MTX in California who worked for MTX during the PAGA Period.
- 1.5. “Class” means all persons employed by MTX in California who worked for MTX during the Class Period.
- 1.6. “Class Counsel” means Bent Caryl & Kroll, LLP.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in MTX’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator

with Class Members.

- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English (with a Spanish translation, if applicable) in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from 06/15/2018 to 06/15/2022.
- 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Los Angeles.
- 1.16. “MTX” means named Defendant MTX Group, Inc.
- 1.17. “Defense Counsel” means Fisher & Phillips, LLP.
- 1.18. “Effective Date” means the date by when both of the following have occurred:
(a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.22. “Gross Settlement Amount” means \$90,000.00 which is the total amount MTX agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata

share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

- 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for MTX for at least one day during the PAGA Period.
- 1.31. “PAGA Period” means the period from 03/29/2021 to 06/15/2022.
- 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.33. “PAGA Notice” means Plaintiff’s 03/29/2022 letter to MTX and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$1,875.00) and the 75% to LWDA (\$5,625.00) in settlement of PAGA claims.

- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiff" means Adam Wachter, the named plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.41. "Released Parties" means: MTX and each of its former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, and assigns.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. "Workweek" means any week during which a Class Member worked for MTX for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On 09/02/2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against MTX for violations of the Labor Code. The Complaint is the operative complaint in the Action (the "Operative Complaint").

MTX denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.

- 2.2. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to MTX and the LWDA by sending the PAGA Notice.
- 2.3. On 06/16/2022, the Parties participated in an all-day mediation presided over by Anthony Pantoni, Esq. which led to this Agreement to settle the Action.
- 2.4. Prior to mediation and negotiating the Settlement, Plaintiff obtained, through informal discovery, various documents and class data. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.5. The Court has not granted class certification.
- 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, MTX promises to pay \$90,000.00 and no more as the Gross Settlement Amount. MTX has no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 6.1 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to MTX.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
 - 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$2,500.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is

entitled to receive as a Participating Class Member). MTX will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35%, which is currently estimated to be \$31,500.00 and a Class Counsel Litigation Expenses Payment of not more than \$7,500.00. MTX will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds MTX harmless, and indemnifies MTX, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$5,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$5,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 0% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The 100 % of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for unreimbursed expenses, interest, and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class

Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

- 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.
- 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$7,500.00 to be paid from the Gross Settlement Amount, with 75% (\$5,625.00) allocated to the LWDA PAGA Payment and 25% (\$1,875.00) allocated to the Individual PAGA Payments.
- 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,875.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
- 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, MTX estimates there are 53 Class Members who collectively worked a total of 2,800 Workweeks, and 48 of Aggrieved Employees who worked a total 874 of PAGA Pay Periods.
- 4.2. Class Data. Not later than 15 days after the Court grants Preliminary Approval of the Settlement, MTX will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. MTX has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which MTX must send the Class Data

to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

- 4.3. Funding of Gross Settlement Amount. MTX shall fully fund the Gross Settlement Amount, by transmitting the funds to the Administrator no later than 14 days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within 14 days after MTX funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
 - 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
 - 4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil

Procedure Section 384, subd. (b). or to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient") The State Bar of California's Justice Gap Fund. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate MTX to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

6. **RELEASES OF CLAIMS.** Effective on the date when MTX fully funds the entire Gross Settlement Amount, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

6.1 Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, and Plaintiff's PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, wrongful termination or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

6.2 Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

6.3 Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint.

7. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

7.1 MTX's Declaration in Support of Preliminary Approval. Within 21 days of the full execution of this Agreement, MTX will prepare and deliver to Class Counsel a signed Declaration from MTX and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and MTX shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members and the proposed Cy Pres; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, the Administrator and the proposed Cy Pres; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all

necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than [30] days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of providing reports to state and federal tax authorities.

8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

8.4 Notice to Class Members.

8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation, if applicable, substantially in the form attached to this Agreement as Exhibit 1. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

If the Administrator, MTX or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after

receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the

Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their

validity. Not later than [5] days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

- 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.
- 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.
- 8.8.5 Administrator's Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.
- 8.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE** Based on its records, MTX estimates that, as of the date of this Settlement Agreement, (1) there are 53 Class Members and 2,800 Total Workweeks during the Class period and (2) there were 48 Aggrieved Employees who worked 874 Pay Periods during the PAGA Period. MTX represents that there are no more than 2,800 Workweeks worked during the Class Period by Class Members. In the event the number of Workweeks worked by Class Members during the Class Period increases by more than 10%, or 280 Workweeks, then the Defendant shall have the option to either cut off the workweeks at 3,080 or have the Gross Settlement Amount increased proportionally by the Workweeks in excess of 3,080 Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by dividing the originally agreed-upon Gross Settlement Amount (\$90,000.00) by 2,800, which amounts to a Workweek Value of \$32.14. Thus, for example, should there be 3,200 Workweeks in the Class Period, then the Gross Settlement Amount shall be increased by \$3,856.80. $((3,200 \text{ Workweeks} - 3,080 \text{ Workweeks}) \times \$32.14 \text{ per Workweek})$ should Defendant choose not to cut off the workweeks at 3,080 workweeks.
10. **MTX'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 20% of the total of all Class Members, MTX may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if MTX withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, MTX will remain responsible for paying all Settlement Administration Expenses incurred to that point. MTX must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.
11. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than [seven] days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
- 11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than [five] court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. **ADDITIONAL PROVISIONS.**

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by MTX that any of the allegations in the Operative Complaint have merit or that MTX has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that MTX's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, MTX reserves the right to contest certification of any class for any reasons, and MTX reserves all available defenses to the claims in the Action, and Plaintiff reserves

the right to move for class certification on any grounds available and to contest MTX's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, MTX and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, MTX and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and MTX, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points

and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

- 13.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, MTX nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by MTX in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from MTX unless, prior to the Court's discharge of the Administrator's obligation, MTX makes a written request to Class Counsel for the return,

rather than the destructions, of Class Data.

13.15 **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

13.16 **Calendar Days.** Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

13.17 **Notice.** All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: Steven M. Kroll, Esq.
Bent Caryl & Kroll, LLP
6300 Wilshire Boulevard, Suite 1415
Los Angeles, CA 90048

To MTX: Todd B. Scherwin, Esq.
Fisher & Phillips LLP
444 S. Flower Street, Suite 1500
Los Angeles, CA 90071

13.18 **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19 **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement between Plaintiff, on the one hand, and Defendant, on the other hand, as of the date(s) set forth below:

READ CAREFULLY BEFORE SIGNING

IT IS SO AGREED:

ADAM WACHTER

Dated: July 20, 2023



Adam Wachter

MTX GROUP, INC.

Dated: July 19, 2023



By: Das Nobel
Its: CEO

READ CAREFULLY BEFORE SIGNING

AGREED AS TO FORM ONLY:

Dated: 01/22/2024

BENT CARYL & KROLL, LLP



Steven M. Kroll
Attorneys for Plaintiff
ADAM WACHTER

Dated: 01/22/24

FISHER & PHILLIPS LLP



Todd B. Scherwin
Landon R. Schwob
Attorneys for Defendant
MTX GROUP, INC.

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR FINAL COURT APPROVAL**

Adam Wachter v. MTX Group, Inc., et al. (Case No. 22STCV28782)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against MTX Group, Inc. (“MTX”) for alleged wage and hour violations. The Action was filed by a former MTX employee Adam Wachter (“Plaintiff”) and seeks payment of (1) unreimbursed expenses and other relief for a class of employees (“Class Members”) who worked for MTX during the Class Period (06/15/2018 to 06/15/2022); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all employees who worked for MTX during the PAGA Period (03/29/2021 to 06/15/2022) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring MTX to fund Individual Class Payments, and (2) a PAGA Settlement requiring MTX to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on MTX’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. If no amount is stated for your Individual PAGA Payment, then according to MTX’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.

The above estimates are based on MTX’s records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires MTX to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against MTX.

If you worked for MTX during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against MTX.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against MTX, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

MTX will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against MTX that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. MTX must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.

You Can Participate in the _____ Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to MTX's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former MTX employee. The Action accuses MTX of violating California labor laws by failing to pay reimbursable expenses. Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action: Bent Caryl & Kroll, LLP ("Class Counsel.")

MTX strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether MTX or Plaintiff is correct on the merits. In the meantime, Plaintiff and MTX hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and MTX have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, MTX does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) MTX has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. MTX Will Pay \$90,000 as the Gross Settlement Amount (Gross Settlement). MTX has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, MTX will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$31,500.00 (35% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$7,500.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$2,500.00 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$5,000.00 to the Administrator for services administering the Settlement.
 - D. Up to \$7,500.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

Taxes Owed on Payments to Class Members. Plaintiff and MTX are asking the Court to approve an allocation of 0% of each Individual Class Payment to taxable wages ("Wage Portion") and 100% (e.g., unreimbursed expenses, interest, etc.) ("Non-Wage Portion"). The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the

Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and MTX have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name, or will irrevocably lost to you because they will be paid to a non-profit organization or foundation ("Cy Pres"). If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

4. **Requests for Exclusion from the Class Settlement (Opt-Outs).** You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against MTX.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against MTX based on the PAGA Period facts alleged in the Action.

5. **The Proposed Settlement Will be Void if the Court Denies Final Approval.** It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and MTX have agreed that, in either case, the Settlement will be void: MTX will not pay any money and Class Members will not release any claims against MTX.
6. **Administrator.** The Court has appointed a neutral company, ILYM Group, Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
7. **Participating Class Members' Release.** After the Judgment is final and MTX has fully

funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against MTX or related entities for unreimbursed expenses, interest, attorneys' fees, and costs based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint. Except as set forth in Section 6.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

8. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and MTX has paid the Gross Settlement, all Aggrieved Employees will be barred from asserting PAGA claims against MTX, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against MTX or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA

Payments by (a) dividing \$1,875.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.

3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in MTX's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept MTX's calculation of Workweeks and/or Pay Periods based on MTX's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and MTX's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Adam Wachter v. MTX Group, Inc., et al.* (Case No. 22STCV28782) and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be**

invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and MTX are asking the Court to approve. At least _____ days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website

_____ (url) or the Court's website _____ (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Adam Wachter v. MTX Group, Inc., et al.* (Case No. 22STCV28782) and include your name, current address, telephone number, and approximate dates of employment for MTX and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ (time) in Department 6 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything MTX and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to ILYM Group, Inc.'s website at _____ (url). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 22STCV28782. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel: Steven M. Kroll, Esq.
Bent Caryl & Kroll, LLP
6300 Wilshire Boulevard, Suite 1415
Los Angeles, CA 90048
Telephone: (323) 315-0510
Facsimile: (323) 774-6021

Settlement Administrator: ILYM Group, Inc.
14751 Plaza Drive, Suite J
Tustin, CA 92780
Telephone: (888) 250-6810
Facsimile: (888) 845-6185

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund ____ for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 2

~~MODEL~~ CLASS ACTION AND PAGA SETTLEMENT AGREEMENT
AND CLASS NOTICE[†]

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This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Adam Wachter (“Plaintiff”) and defendant XYZMTX Group, Inc. (“MTX”). The Agreement refers to Plaintiff and XYZMTX collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against XYZMTX captioned Adam Wachter v. MTX Group, Inc., et al. initiated on 09/02/2022 and pending in Superior Court of the State of California, County of Los Angeles.
- 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means ~~{e.g., a person employed by XYZMTX in California and classified as a~~ who worked for XYZMTX during the PAGA Period.
- 1.5. “Class” means ~~{define class e.g., all persons employed by XYZMTX in California and classified as~~ who worked for XYZMTX during the Class Period.
- 1.6. “Class Counsel” means Bent Caryl & Kroll, LLP.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in XYZ’s MTX’s possession including the Class Member’s name, last-known mailing address, Social Security number, ~~and~~ number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including

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a Non- Participating Class Member who qualifies as an Aggrieved Employee).

1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English ~~[(with a Spanish translation, if applicable)]~~ in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. “Class Period” means the period from _____ ~~to~~ [#]06/15/2018 to 06/15/2022.

1.13. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. “Court” means the Superior Court of California, County of Los Angeles.

1.16. “~~XYZ~~MTX” means named Defendant _____ MTX Group, Inc.

1.17. “Defense Counsel” means _____ Fisher & Phillips, LLP.

1.18. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

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1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

1.22. “Gross Settlement Amount” means \$~~90,000.00~~ which is the total amount ~~XYZMTX~~ agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.

1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval.

1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for ~~XYZMTX~~ for at least one day during the PAGA Period.

1.31. “PAGA Period” means the period from 03/29/2021 to 06/15/2022.

1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

1.33. “PAGA Notice” means Plaintiff’s 03/29/2022 letter to ~~XYZMTX~~ and the LWDA ~~and Plaintiff’s~~ letter to XYZ and the

| ~~LWDA~~ providing notice pursuant to Labor Code section 2699.3, subd.(a).

1.34. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees ~~(\$1,875.00)~~ and the 75% to LWDA ~~(\$5,625.00)~~ in settlement of PAGA claims.

- 1.35. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36. "Plaintiff" means Adam Wachter, the named plaintiff in the Action.
- 1.37. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement.
- 1.38. "Preliminary Approval Order" means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39. "Released Class Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.40. "Released PAGA Claims" means the claims being released as described in Paragraph 6.2 below.
- 1.41. "Released Parties" means: XYZMTX and each of its former and present directors, officers, shareholders, owners, ~~[members]~~, attorneys, insurers, predecessors, successors, and assigns ~~[subsidiaries]~~ ~~[affiliates]~~.
- 1.42. "Request for Exclusion" means a Class Member's submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43. "Response Deadline" means ~~[e.g., 60]~~ days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.44. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. "Workweek" means any week during which a Class Member worked for XYZMTX for at least one day, during the Class Period:^{iv}

2. RECITALS.

- 2.1. On 09/02/2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against XYZMTX for _____. ~~[violations of the Labor Code. The Complaint is the operative complaint in the Action (the "Operative Complaint.")]~~ ~~[On _____, Plaintiff filed a [e.g., First Amended Complaint] alleging causes of action against XYZ for _____. The [e.g., First Amended] Complaint is the operative complaint in the Action (the "Operative").]~~

~~Complaint.”]~~ XYZMTX denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in ~~in~~ the Operative Complaint and denies any and all liability for the causes of action alleged.

2.2. Pursuant to Labor Code section 2699.3, subd. ~~(a)~~, Plaintiff gave timely written notice to XYZMTX and the LWDA by sending the PAGA Notice.

2.3. On ~~_____ (type in additional dates) _____~~, ~~{06/16/2022,~~ the Parties participated in an all-day mediation presided over by ~~_____Anthony Pantoni, Esq.~~ which led to this Agreement to settle the Action ~~(describe alternative means of negotiation).~~
~~_____ (describe alternative means of negotiation) _____~~.

2.4. Prior to ~~mediation and~~ negotiating the Settlement, Plaintiff obtained, through ~~formal informal~~ discovery, ~~(various documents, testimony and information obtained) class data.~~ Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.5. The Court ~~has has~~ not granted class certification.

~~_____ (insert details as needed) _____~~

2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, XYZMTX promises to pay \$~~_____90,000.00~~ and no more as the Gross Settlement Amount ~~[and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments.] XYZ MTX~~ has no obligation to pay the Gross Settlement Amount ~~(or any payroll taxes)~~ prior to the deadline stated in Paragraph 6.1 of this Agreement.^v The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to XYZMTX.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$~~_____2,500.00~~ (in addition to any Individual Class Payment ~~[and any Individual PAGA Payment]~~ the Class Representative is

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entitled to receive as a Participating Class Member). ~~XYZ~~MTX will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than ~~{16 court}~~ days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than ~~35%~~, which is currently estimated to be \$~~31,500.00~~ and a Class Counsel Litigation Expenses Payment of not more than \$~~7,500.00~~. ~~XYZ~~MTX will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than ~~{16 court}~~ days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds ~~XYZ~~MTX harmless, and indemnifies ~~XYZ~~MTX, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$~~5,000.00~~ except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$~~5,000.00~~, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. ~~%~~ ~~0%~~ of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The ~~%~~ ~~100 %~~ of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for ~~{e.g.,unreimbursed~~

expenses, interest, and penalties (the “Non-Wage Portion²³”). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$ 7,500.00 to be paid from the Gross Settlement Amount, with 75% (\$ 5,625.00) allocated to the LWDA PAGA Payment and 25% (\$ 1,875.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties \$ 1,875.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, XYZMTX estimates there are 53 Class Members who collectively worked a total of 2,800 Workweeks, and 48 of Aggrieved Employees who worked a total 874 of PAGA Pay Periods.

4.2. Class Data. Not later than [e.g., 15] days after the Court grants Preliminary Approval of the Settlement, XYZMTX will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members’ privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. XYZMTX has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which XYZMTX must send the Class Data

to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

- 4.3. Funding of Gross Settlement Amount. ~~XYZMTX~~ shall fully fund the Gross Settlement Amount, ~~and also fund the amounts necessary to fully pay XYZ's share of payroll taxes~~ by transmitting the funds to the Administrator no later than ~~14~~ days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within ~~14~~ days after ~~XYZMTX~~ funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.
- 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within ~~7~~ days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks ~~to~~ to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby

leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b) ~~or to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient")~~ The State Bar of California's Justice Gap Fund. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate XYZMTX to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

6. **RELEASES OF CLAIMS.** Effective on the date when XYZMTX fully funds the entire Gross Settlement Amount ~~and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments~~, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

~~6.1~~ Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences ~~that occurred during the Class Period~~, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, and Plaintiff's PAGA Notice, ~~for ascertained during the Action and released under 6.2, below~~, ("Plaintiff's Release."). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, wrongful termination or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

~~6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:~~

~~A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.~~

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6.26.1 Release by Participating Class Members Who Are Not Aggrieved Employees:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint ~~and ascertained in the course of the Action~~ ~~including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.”~~. Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

6.36.2 Release by Non-Participating Class Members Who Are Aggrieved Employees:

All Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint ~~and the PAGA Notice~~ ~~and ascertained in the course of the Action~~ ~~including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.”~~.

7. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

7.1 XYZ’s MTX’s Declaration in Support of Preliminary Approval. Within ~~21~~ days of the full execution of this Agreement, ~~XYZ MTX~~ will prepare and deliver to Class Counsel a signed Declaration from ~~XYZ MTX~~ and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres Recipient. In their Declarations, Defense Counsel and ~~XYZ MTX~~ shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.2 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members ~~and/or~~ the proposed Cy Pres~~;~~; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and

disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, ~~and/or~~ the Administrator ~~and/or~~ the proposed Cy Pres; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator and/or the Cy Pres Recipient. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than [30] days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

7.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected ~~ILYM Group, Inc.~~ ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ~~ILYM Group, Inc.~~ ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of ~~calculating payroll tax withholdings and providing reports to~~ state and federal tax authorities.

8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

8.4 Notice to Class Members.

8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than ~~{14}~~ days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice ~~{with Spanish translation, if applicable}~~, substantially in the form attached to this Agreement as Exhibit ~~_____~~.1. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.3 Not later than ~~{3}~~ business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.4 The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional ~~{14}~~ days beyond the ~~{60}~~ days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

If the Administrator, ~~XYZMTX~~ or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than ~~{14}~~ days after

receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5 Requests for Exclusion (Opt-Outs).

8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than ~~60~~ days after the Administrator mails the Class Notice (plus an additional ~~14~~ days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

8.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workweeks. Each Class Member shall have ~~60~~ days after the Administrator mails the Class Notice (plus an additional ~~14~~ days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the

Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than ~~{60}~~ days after the Administrator's mailing of the Class Notice (plus an additional ~~{14}~~ days for Class Members whose Class Notice was re-mailed).

8.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their

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validity. Not later than [5] days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5 Administrator’s Declaration. Not later than ~~{14}~~ days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

8.8.6 Final Report by Settlement Administrator. Within ~~{10}~~ days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least ~~{15}~~ days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. **CLASS SIZE ESTIMATES and ESCALATOR CLAUSE** Based on its records, XYZMTX estimates that, as of the date of this Settlement Agreement, (1) there are 53

Class Members and 2,800

Total Workweeks during the Class period and (2) there were 48 Aggrieved Employees who worked 874

Pay Periods during the PAGA Period.^{viii} MTX represents that there are no more than 2,800

Workweeks worked during the Class Period by Class Members. In the event the number of

Workweeks worked by Class Members during the Class Period increases by more than 10%, or 280

Workweeks, then the Defendant shall have the option to either cut off the workweeks at 3,080 or

have the Gross Settlement Amount increased proportionally by the Workweeks in excess of 3,080

Workweeks multiplied by the Workweek Value. The Workweek Value shall be calculated by

dividing the originally agreed-upon Gross Settlement Amount (\$90,000.00) by 2,800, which

amounts to a Workweek Value of \$32.14. Thus, for example, should there be 3,200 Workweeks in

the Class Period, then the Gross Settlement Amount shall be increased by \$3,856.80. ((3,200

Workweeks – 3,080 Workweeks) x \$32.14 per Workweek) should Defendant choose not to cut off

the workweeks at 3,080 workweeks.

10. **XYZ'SMTX'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds %-20% of the total of all Class Members, XYZMTX may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if XYZMTX withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, XYZMTX will remain responsible for paying all Settlement Administration Expenses incurred to that point. XYZMTX must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

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11. **MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (I), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later than [seven] days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than [five] court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as

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necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

~~11.3~~ Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing

11.3 settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

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11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. **AMENDED JUDGMENT**. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. **ADDITIONAL PROVISIONS.**

13.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by ~~XYZMTX~~ that any of the allegations in the Operative Complaint have merit or that ~~XYZMTX~~ has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that ~~XYZ'sMTX's~~ defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, ~~XYZMTX~~ reserves the right to contest certification of any class for any reasons, and ~~XYZMTX~~ reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest ~~XYZ'sMTX's~~ defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no

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bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

- 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, ~~XYZMTX~~ and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, ~~XYZMTX~~ and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and ~~XYZMTX~~, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement

the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

- 13.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, ~~XYZMTX~~ nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by ~~XYZMTX~~ in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from ~~XYZMTX~~ unless, prior to the Court's discharge of the Administrator's obligation, ~~XYZMTX~~ makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.

13.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

13.16 Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

13.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: Steven M. Kroll, Esq.
Bent Caryl & Kroll, LLP
6300 Wilshire Boulevard, Suite 1415
Los Angeles, CA 90048

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To ~~XYZ~~MTX: Todd B. Scherwin, Esq.
Fisher & Phillips LLP
444 S. Flower Street, Suite 1500
Los Angeles, CA 90071

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13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

~~For Plaintiff~~ ~~For XYZ~~

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Counsel For Plaintiff Counsel For
XYZ

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed this Settlement Agreement between Plaintiff, on the one hand, and Defendant, on the other hand, as of the date(s) set forth below:

READ CAREFULLY BEFORE SIGNING

IT IS SO AGREED:

ADAM WACHTER

Dated: July __, 2023

Adam Wachter

MTX GROUP, INC.

Dated: July __, 2023

By:

Its:

READ CAREFULLY BEFORE SIGNING

AGREED AS TO FORM ONLY:

BENT CARYL & KROLL, LLP

Dated: _____

Steven M. Kroll
Attorneys for Plaintiff
ADAM WACHTER

FISHER & PHILLIPS LLP

Dated: _____

Todd B. Scherwin
Landon R. Schwob
Attorneys for Defendant
MTX GROUP, INC.

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT
AND HEARING DATE FOR FINAL COURT APPROVAL**

(case name and number)

Adam Wachter v. MTX Group, Inc., et al. (Case No. 22STCV28782)

*The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.*

You may be eligible to receive money from an employee class action lawsuit ("Action") against MTX Group, Inc. ("MTX") for alleged wage and hour violations. The Action was filed by a former MTX employee

Adam Wachter ("Plaintiff") and seeks payment of (1) back wages, unreimbursed expenses and other relief for a class of employees ("Class Members") who worked for MTX during the Class Period (06/15/2018 to 06/15/2022); and (2) penalties under the California Private Attorney General Act ("PAGA") for all employees who worked for MTX during the PAGA Period (03/29/2021 to 06/15/2022) ("Aggrieved Employees").

The proposed Settlement has two main parts: (1) a Class Settlement requiring MTX to fund Individual Class Payments, and (2) a PAGA Settlement requiring MTX to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency ("LWDA").

Based on MTX's records, and the Parties' current assumptions, **your Individual Class Payment is estimated to be \$ (less withholding) and your Individual PAGA Payment is estimated to be \$**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to MTX's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Period.)

The above estimates are based on MTX's records showing that **you worked workweeks** during the Class Period and **you worked workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires MTX to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against MTX.

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If you worked for ~~XYZ~~MTX during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against ~~XYZMTX~~.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against ~~XYZMTX~~, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

~~XYZMTX~~ will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against XYZMTX that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.
The Opt-out Deadline is _____	You cannot opt-out of the PAGA portion of the proposed Settlement. XYZMTX must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
Written Objections Must be Submitted by	

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You Can Participate in the Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on _____. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to XYZ's MTX's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.
Written Challenges Must be Submitted by _____	

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1. WHAT IS THE ACTION ABOUT?

Plaintiff is a ~~former~~ XYZ MTX employee. The Action accuses XYZ MTX of violating California labor laws by failing to pay ~~[e.g., overtime wages, minimum wages, wages due upon termination and reimbursable expenses]~~ and failing to provide ~~[e.g., meal periods, rest breaks and accurate itemized wage statements]~~. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA"). Plaintiff is represented by attorneys in the Action: Bent Caryl & Kroll, LLP ("Class Counsel.")

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XYZ

MTX strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether XYZ MTX or Plaintiff is correct on the merits. In the meantime, Plaintiff and XYZ MTX hired ~~an experienced, neutral mediator~~ ~~a retired judge~~

~~(describe alternative means of negotiation)~~

in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and XYZ MTX have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, XYZ MTX does not admit any violations or concede the merit of any claims.

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Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) ~~XYZMTX~~ has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. ~~XYZMTX~~ Will Pay \$~~90,000~~ as the Gross Settlement Amount (Gross Settlement). ~~XYZMTX~~ has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, ~~XYZMTX~~ will fund the Gross Settlement not more than ~~14~~ days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$~~31,500.00~~ (~~35~~% of the Gross Settlement~~4~~) to Class Counsel for attorneys' fees and up to \$~~7,500.00~~ for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$~~2,500.00~~ as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$~~5,000.00~~ to the Administrator for services administering the Settlement.
 - D. Up to \$~~7,500.00~~ for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

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3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross

3. Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

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Taxes Owed on Payments to Class Members. Plaintiff and XYZMTX are asking the Court to approve an allocation of % ~~_____~~ 0% of each Individual Class Payment to taxable wages (“Wage Portion”) and % ~~_____~~ to ~~[100%~~ (e.g., unreimbursed expenses, interest, etc.). (“Non-Wage Portion.”). ~~The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. [Option 1: (XYZ will separately pay employer payroll taxes it owes on the Wage) Portion.)]~~ The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and XYZMTX have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies

~~☐ will be deposited with the California Controller's Unclaimed Property Fund in your name, or will irrevocably lost to you because they will be paid to a non-profit organization or foundation (“Cy Pres”).~~

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If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

4. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against XYZMTX.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against XYZMTX based on the PAGA Period facts alleged in the Action.

5. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and ~~XYZMTX~~ have agreed that, in either case, the Settlement will be void: ~~XYZMTX~~ will not pay any money and Class Members will not release any claims against ~~XYZMTX~~.
6. Administrator. The Court has appointed a neutral company, ILYM Group, Inc., (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
7. Participating Class Members’ Release. After the Judgment is final and ~~XYZMTX~~ has fully funded the Gross Settlement ~~{Option 1: (and separately paid all employer payroll taxes)}~~, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against ~~XYZMTX~~ or related entities for ~~wagesunreimbursed expenses, interest, attorneys’ fees, and costs~~ based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint ~~{and ascertained in the course of the Action} {including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.”}~~. Except as set forth in Section 6.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period^{viii}.

8. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and ~~XYZMTX~~ has paid the Gross Settlement ~~(and separately paid the employer-side payroll taxes)}~~, all Aggrieved Employees will be barred from asserting PAGA claims against ~~XYZMTX~~, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in

| any other PAGA claim against ~~XYZMTX~~ or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Participating and Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint~~[,] [and] the PAGA Notice [and ascertained in the course of the Action][including, e.g., (a) any and all claims involving any alleged failure to pay minimum wage; etc.]-.~~

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$1,875.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in ~~XYZ's~~MTX's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept ~~XYZ's~~MTX's calculation of Workweeks and/or Pay Periods based on ~~XYZ's~~MTX's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and ~~XYZ's~~MTX's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as _____

~~Adam~~
Wachter v. MTX Group, Inc., et al. (Case No. 22STCV28782) and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

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7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and ~~XYZMTX~~ are asking the Court to approve. At least _____ days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) or the Court's website _____ (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what

you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Adam Wachter v. MTX Group, Inc., et al.* (Case No. 22STCV28782) and include your name, current address,

telephone number, and approximate dates of employment for ~~XYZ~~MTX and sign the objection. Section 9 of this Notice has the Administrator's contact information.

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Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at (time) in Department 6 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything ~~XYZ~~MTX and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to ~~(specify entity)~~ ILYM Group, Inc.'s website at _____ (url). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. ~~22STCV28782~~. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

~~Class Counsel: Name of Attorney: Email Address: Name of Firm: Mailing Address:~~
Steven M. Kroll, Esq.
Bent Caryl & Kroll, LLP
6300 Wilshire Boulevard, Suite 1415
Los Angeles, CA 90048
Telephone: (323) 315-0510
Facsimile: (323) 774-6021

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Settlement Administrator: ~~Name of Company:~~ ILYM Group, Inc.

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Email Address:
Mailing Address:

14751 Plaza Drive, Suite J

Tustin, CA 92780

Telephone: (888) 250-6810

Fax Number:

Facsimile: (888) 845-6185

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10. WHAT IF I LOSE MY SETTLEMENT CHECK?

☐ If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

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☐ you should consult the Unclaimed Property Fund _____ for instructions on how to retrieve the funds

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☐ you will have no way to recover the money.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

ⁱ ~~This Model Class Action and PAGA Settlement Agreement has been approved by the Court, the Complex litigation judges, and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour case. It is written for settlements of single plaintiff wage and hour actions asserting class claims and PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple plaintiffs or multiple defendants. For settlements of wage and hour class actions that do not include PAGA claims, please use the Model Class Action Settlement Agreement and Class Notice. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.~~

ⁱⁱ ~~Whether the "date of preliminary approval" yields a fair and adequate payment to Class Members may depend on whether the Class Members, in exchange for their releases of claims, receive consideration for time worked between the date when parties reached a settlement and the date of preliminary approval. The Parties' Kullar analysis must give the Court sufficient information to allow the Court to determine whether the Gross Settlement Amount "represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by~~

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pursuing the litigation.” (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 94–95, internal quotation marks omitted.)

ⁱⁱⁱ See endnote ii above.

^{iv} The Parties may need to tailor this language to pay periods or shifts depending on the facts of the case.

^v The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.

^{vi} Note that this is not the only possible appropriate breakdown depending on the claims at issue in the case (e.g. a settlement that is solely a Labor Code Section 226(a) claim.)

^{vii} Insert negotiated terms, if any, addressing the possibility that XYZ’s estimates of class size, Workweeks or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or mediation or an “escalator” clause memorializing XYZ’s promise to increase the Gross Settlement Amount in an agreed upon proportion to the percentage by which the calculated class size, Workweeks, or Pay Periods exceeds XYZ’s estimates.

^{viii} Releases in Notice should track the releases in the Settlement Agreement.

1 **PROOF OF SERVICE**

2 I, Steven M. Kroll, declare:

3 I am a citizen of the United States and employed in Los Angeles County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is 6300 Wilshire Boulevard, Suite 1415, Los Angeles, California 90048. On January 23, 2024, I
6 served a copy of the within document(s):

7 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY**
8 **APPROVAL; MEMORANDUM OF POINTS AND AUTHORITIES**

9 by placing the document(s) listed above in a sealed envelope with postage thereon
10 fully prepaid, in the United States mail at Los Angeles, California addressed as set
11 forth below.

12 by placing the document(s) listed above in a sealed Overnite Express envelope and
13 affixing a pre-paid air bill, and causing the envelope to be delivered to an Overnite
14 Express agent for delivery.

15 by personally delivering the document(s) listed above to the person(s) at the
16 address(es) set forth below.

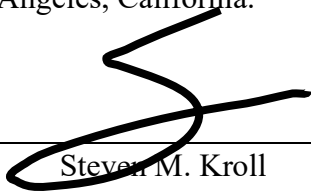
17 **X** by electronically serving the document(s) listed above on counsel of record set
18 forth below by transmission to CASE ANYWHERE.

19 Todd B. Scherwin, Esq.
20 Fisher & Phillips, LLP
21 444 S. Flower Street, Suite 1500
22 Los Angeles, CA 90071
23 Telephone: (213) 330-4450
24 tscherwin@fisherphillips.com
25 *Attorneys for Defendant*
26 *MTX Group, Inc.*

California Labor & Workforce
Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612
PAGA@dir.ca.gov
Via Online PAGA Filing System

27 I am readily familiar with the firm's practice of collection and processing correspondence
28 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
motion of the party served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above
is true and correct. Executed on January 23, 2024, at Los Angeles, California.



Steven M. Kroll