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5 Attorneys for Plaintiff ADAM WACHTER, an  
individual, on behalf of himself and all others  
6 similarly situated and aggrieved

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF LOS ANGELES

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

13 Plaintiffs,

14 v.

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

17 Defendants.  
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CASE NO. **22STCV28782**

**CLASS AND REPRESENTATIVE ACTION  
COMPLAINT**

1. Failure to Indemnify for Necessary Expenditures
2. Violation of Labor Code section 925(a)
3. Violation of the Unfair Competition Law
4. Violation of California Labor Code Private Attorneys General Act ("PAGA")

**DEMAND FOR JURY TRIAL**

1 Plaintiff Adam Wachter ("Plaintiff"), an individual, on behalf of himself and all others  
2 similarly situated and aggrieved, hereby alleges:

3 **GENERAL ALLEGATIONS**

4 1. Plaintiff is and, at all relevant times herein mentioned, was an individual residing  
5 in Los Angeles County, California.

6 2. Defendant MTX Group, Inc. ("Defendant") is and, at all relevant times herein  
7 mentioned was, a New York corporation with its principal place of business in Redding,  
8 California. Defendant is and, at all relevant times herein mentioned, was doing business as MTX.

9 3. Plaintiff is unaware of the names and capacities of defendants sued herein as  
10 DOES 1 through 20, inclusive, and therefore sues these defendants by such fictitious names.  
11 When their true names and capacities are ascertained, Plaintiff will amend this Complaint by  
12 inserting their true names and capacities. Plaintiff is informed and believes, and thereon alleges,  
13 that each of the fictitiously named defendants is responsible in some manner for the occurrences  
14 alleged and that these defendants proximately caused Plaintiff's damages.

15 4. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
16 mentioned, each of the defendants was the alter ego, joint venturer, co-employer, joint employer,  
17 agent, and/or employee of each of the remaining defendants, and in doing the things hereinafter  
18 alleged, were acting within the course and scope of such agency and employment. Defendant is  
19 vicariously liable and strictly liable for the acts and/or omissions of any supervisor or manager,  
20 which were committed within the course and scope of his or her employment.

21 5. Plaintiff is informed and believes and thereon alleges that each of the defendants  
22 and its agents, employees, and/or representatives as may be identified hereinafter and in the  
23 discovery phase of this case, knowingly and purposefully conspired to, and agreed between  
24 themselves, to the acts herein alleged. Each defendant also conspired, aided, encouraged, ratified  
25 and adopted the acts of each other

26 6. Plaintiff is informed and believes and thereon alleges that a defendant may have  
27 committed other wrongful acts or omissions of which Plaintiff is presently unaware. Plaintiff will  
28 seek leave of court to amend this Complaint when Plaintiff discovers these other acts and/or

1 omissions.

2 7. Venue is proper in this jurisdiction because the wrongful acts by Defendants  
3 occurred in Los Angeles County, which is within the jurisdiction and venue of this Court.

4 **FACTUAL BACKGROUND**

5 8. Plaintiff was, at all relevant times herein mentioned, an employee of Defendant.

6 9. Defendant is and, at all relevant times herein mentioned, was a global technology  
7 consulting firm powered by the Maverick Quantum (mavQ) Artificial Intelligence platform that  
8 enables organizations to modernize through digital transformation and strategy.

9 10. Defendant employs and, at all relevant times herein mentioned, employed  
10 employees in California within at least the last four (4) years.

11 11. On or about September 13, 2021, Defendant hired Plaintiff as a sales account  
12 executive.

13 12. Upon hire, Plaintiff and Defendant entered into a written employment agreement,  
14 which set forth the terms and conditions of his employment with Defendant. Plaintiff is informed  
15 and believes and thereon alleges that other similarly situated and aggrieved employees entered  
16 into the same or similar written employment agreement with Defendant, which set forth the terms  
17 and conditions of their employment with Defendant.

18 13. Defendant required Plaintiff and other similarly situated and aggrieved employees,  
19 who primarily resided and worked in California, as a condition of employment, to agree to a  
20 provision in their employment agreements requiring them to adjudicate in New York any claim  
21 arising in California.

22 14. Defendant required Plaintiff and other similarly situated and aggrieved employees,  
23 who primarily resided and worked in California, as a condition of employment, to agree to a  
24 provision in their employment agreements requiring New York law to apply to the terms and  
25 condition of their employment and thereby depriving them of the substantive protection of  
26 California law with respect to a controversy arising in California.

27 15. Defendant required Plaintiff and other similarly situated and aggrieved employees,  
28 who primarily resided and worked in California, as a condition of employment, to agree to

1 unlawful “Non-Competition” and release of “Liability” provisions in violation of Business and  
2 Professions Code section 16600 and Government Code section 12964.5, subdivision (a),  
3 respectively, in their employment agreements.

4 16. Defendant does not and, at all relevant times herein mentioned, did not maintain an  
5 expense reimbursement policy in compliance with California law.

6 17. Plaintiff and other similarly situated and aggrieved employees were required to  
7 perform their job duties and responsibilities from a home office and other remote locations. They  
8 regularly communicated with managers, supervisors, coworkers, clients, potential clients, and  
9 other third parties via their personal wireless phones and company computers, which required  
10 internet access and service.

11 18. Plaintiff and other similarly situated and aggrieved employees incurred in the  
12 direct consequence of the discharge of their duties various business expenses and/or losses for  
13 which they were not reimbursed, including but not limited to, personal wireless phones, home  
14 internet services, and other home office utilities such as electricity, gas, and water.

15 19. On or about February 17, 2022, Defendant terminated Plaintiff’s employment.

16 **CLASS ACTION ALLEGATIONS**

17 20. Plaintiff brings this action on behalf of himself and all others similarly situated  
18 employees as a class action (as well as other aggrieved employees as a representative action under  
19 the California Private Attorneys General Act (“PAGA”)). Plaintiff seeks to represent a class  
20 defined as follows: All current and former employees of Defendant employed in the State of  
21 California from four (4) years prior to the filing of this action, plus any tolling of the statute of  
22 limitations, until this action settles or judgment is entered (“class members”).

23 21. Plaintiff reserves the right to amend or modify the class description with greater  
24 specificity, by division into subclasses, or by limitation to particular issues.

25 22. This action has been brought and may properly be maintained as a class action.

26 **A. Numerosity**

27 23. The class members are so numerous that joinder of all the members of the class is  
28 impracticable. While the precise number of class members has not been determined at this time,

1 Plaintiff is informed and believes that Defendant employed at least 50 employees during the  
2 relevant time period.

3 24. Plaintiff alleges that Defendant's employment records would provide information  
4 as to the names, addresses, telephone numbers, and work location(s) of all class members.

5 **B. Commonality**

6 25. There are questions of law and fact common to the class members that  
7 predominate over any questions affecting only individual class members. These common  
8 questions of law and fact include, without limitation:

9 a. Whether Defendant reimburses all necessary expenditures or losses incurred by its  
10 employees in direct consequence of the discharge of their duties work pursuant to Labor Code  
11 section 2802;

12 b. Whether the choice-of-law and venue provisions in Defendant's employment  
13 agreements violate Labor Code section 925; and

14 c. Whether Defendant's expense reimbursement policies and practices violate  
15 Business and Professions Code sections 17200, *et seq.*

16 **C. Typicality**

17 26. Plaintiff's claims are typical of the class members' claims. Plaintiff and the class  
18 members sustained injuries and damages arising out of and caused by Defendant's common  
19 course of conduct in violation of laws, regulations that have the force and effect of law, and  
20 statutes as alleged herein.

21 **D. Adequacy of Representation**

22 27. Plaintiff will fairly and adequately represent and protect the interests of the class  
23 members. Counsel who represent Plaintiff are competent and experienced in litigating wage and  
24 hour class actions, and will adequately represent the class members.

25 **E. Superiority of Class Action**

26 28. A class action is superior to other available means for the fair and efficient  
27 adjudication of this controversy. Individual joinder of all class members is not practicable, and  
28 questions of law and fact common to the class predominate over any questions affecting only

1 individual members of the proposed class. Each member of the class has been damaged and is  
2 entitled to recovery by reason of Defendant's illegal policies and/or practices.

3 29. Class action treatment will allow those similarly situated persons to litigate their  
4 claims in the manner that is most efficient and economical for the parties and the judicial system.  
5 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this  
6 action that would preclude its maintenance as a class action.

7 **FIRST CAUSE OF ACTION**

8 **(Failure to Indemnify for Necessary Expenditures – Labor Code, § 2802)**

9 **(By Plaintiff against Defendant and DOES 1 to 5)**

10 30. Plaintiff incorporates by reference paragraphs 1 through 29, inclusive, as though  
11 set forth herein in full.

12 31. Under California Labor Code section 2802, subdivision (a), an employer must  
13 indemnify an employee for all necessary expenditures or losses incurred by the employee in  
14 direct consequence of the discharge of her his or her duties, or of his or her obedience to the  
15 directions of the employer.

16 32. Defendant does not and, at all relevant times herein mentioned, did not maintain an  
17 expense reimbursement policy in compliance with California law.

18 33. During their employment, Plaintiff and class members were required to perform  
19 their job duties and responsibilities from a home office and other remote locations. They  
20 regularly communicated with managers, supervisors, coworkers, clients, potential clients, and  
21 other third parties via their personal wireless phones and company computers, which required  
22 internet access and service

23 34. Plaintiff and class members incurred in the direct consequence of the discharge of  
24 their duties various business expenses and/or losses for which they were not reimbursed,  
25 including but not limited to, personal wireless phones, home internet services, and other home  
26 office utilities such as electricity, gas, and water.

27 35. Plaintiff and class members have been damaged in an amount according to proof at  
28 trial, including interest at the legal rate.

1           36.     Plaintiff and class members have incurred and continue to incur legal expenses and  
2 attorneys' fees and costs, and hereby requests their attorneys' fees and costs, pursuant to Labor  
3 Code section 2802, subdivision (c).

4                                   **SECOND CAUSE OF ACTION**

5                                   **(Violation of Labor Code Section 925(a))**

6                                   **(By Plaintiff against Defendant and DOES 6 to 10)**

7           37.     Plaintiff incorporates by reference paragraphs 1 through 29, inclusive, as though  
8 set forth herein in full.

9           38.     Under Labor Code section 925, subdivision (a)(1)-(2), an employer shall not  
10 require an employee who primarily resides and works in California, as a condition of  
11 employment, to agree to a provision that would require the employee to adjudicate outside of  
12 California a claim arising in California, or deprive the employee of the substantive protection of  
13 California law with respect to a controversy arising in California.

14          39.     Upon hire, Plaintiff and Defendant entered into a written employment agreement,  
15 which set forth the terms and conditions of his employment with Defendant. Plaintiff is informed  
16 and believes and thereon alleges that other similarly situated and aggrieved employees entered  
17 into the same or similar written employment agreement with Defendant, which set forth the terms  
18 and conditions of their employment with Defendant.

19          40.     Defendant required Plaintiff and other similarly situated and aggrieved employees,  
20 who primarily resided and worked in California, as a condition of employment, to agree to a  
21 provision in their employment agreements requiring them to adjudicate in New York any claim  
22 arising in California.

23          41.     Defendant required Plaintiff and other similarly situated and aggrieved employees,  
24 who primarily resided and worked in California, as a condition of employment, to agree to a  
25 provision in their employment agreements requiring New York law to apply to the terms and  
26 condition of their employment and thereby depriving them of the substantive protection of  
27 California law with respect to a controversy arising in California.

28          42.     Plaintiff and other similarly situated and aggrieved employees hereby request that

1 these unlawful choice-of-venue and law provisions in their employment agreements be rendered  
2 void and that this action be adjudicated in California and California law shall govern this dispute,  
3 pursuant to Labor Code section 925, subdivision (b).

4 43. Plaintiff and other similarly situated and aggrieved employees also hereby request  
5 injunctive relief that Defendant be ordered to strike or remove these unlawful choice-of-venue  
6 and law provisions from their employment agreements, or to cease and desist from enforcing  
7 these unlawful choice-of-venue and law provisions in their employment agreements, pursuant to  
8 Labor Code section 925, subdivision (c).

9 44. Plaintiff and class members have incurred and continue to incur legal expenses and  
10 attorneys' fees and costs, and hereby requests their attorneys' fees and costs, pursuant to Labor  
11 Code section 925, subdivision (c).

### 12 **THIRD CAUSE OF ACTION**

13 **(Violation of the Unfair Competition Law – Bus. & Prof. Code, § 17200)**

14 **(By Plaintiff against Defendant and DOES 11 to 15)**

15 45. Plaintiff incorporates by reference paragraphs 1 through 29, inclusive, as though  
16 set forth herein in full.

17 46. Defendant's failure to reimburse all necessary business expenditures or losses  
18 incurred by Plaintiff and class members in direct consequence of the discharge of their duties  
19 under the Labor Code, as alleged herein, constitutes unlawful activity prohibited by Business and  
20 Professions Code sections 17200, *et seq.*

21 47. The actions of Defendant in failing to reimburse all necessary business  
22 expenditures or losses incurred by Plaintiff and class members in direct consequence of the  
23 discharge of their duties under the Labor Code, as will be further alleged herein, constitutes false,  
24 unfair, fraudulent and deceptive business practices, within the meaning of Business and  
25 Professions Code sections 17200, *et seq.*

26 48. Plaintiff and class members are entitled to an injunction, specific performance  
27 under Business and Professions Code section 17202, and/or other equitable relief against such  
28 unlawful practices in order to prevent future loss, for which there is no adequate remedy at law.

1 Plaintiff and class members bring this cause individually and as members of the general public.

2 49. Defendant has reaped and continues to reap unfair benefits at the expense of  
3 Plaintiff and class members. Defendant should be enjoined from such activity, caused to  
4 specifically perform its obligations, and made to disgorge these ill-gotten gains and restore to  
5 Plaintiff and class members the wrongfully withheld reimbursements and/or other moneys  
6 pursuant to Business and Professions Code sections 17200, *et seq.* Plaintiff and class members are  
7 informed and believe, and thereon alleges, that Defendant is unjustly enriched through its failure  
8 to comply with the Labor Code, as alleged herein.

9 50. Plaintiff and class members are informed and believe, and thereon allege, that they  
10 are prejudiced by Defendant's unfair business practices.

11 51. Plaintiff and class members are entitled to equitable and injunctive relief,  
12 including full restitution and/or disgorgement of all reimbursements which have been unlawfully  
13 withheld from Plaintiff and class members as a result of the business acts and practices herein and  
14 enjoining of Defendant to cease and desist from engaging in the practices described herein.

15 52. The unlawful conduct alleged herein is continuing and there is no indication that  
16 Defendant will discontinue such activity in the future. Plaintiff and class members allege that if  
17 Defendant is not enjoined from the conduct set forth herein, it will continue to engage in such  
18 conduct.

19 **FOURTH CAUSE OF ACTION**

20 **(Violation of PAGA –Lab. Code §§ 2698-2699.5)**

21 **(By Plaintiff against Defendant and DOES 16 to 20)**

22 53. Plaintiff incorporates by reference paragraphs 1 through 19, inclusive, as though  
23 set forth herein in full.

24 54. Plaintiff is an “aggrieved employee” within the meaning of Labor Code section  
25 2699, subdivision (c), and proper representative to bring a civil action on behalf of himself and  
26 other current and former aggrieved employees of Defendant pursuant to the procedures specified  
27 in Labor Code section 2699.3, because Plaintiff was employed by Defendant and the alleged  
28 violations of the California Labor Code were committed against him.

55. Pursuant to the PAGA, Plaintiff and aggrieved employees seek to recover all civil penalties, including but not limited to penalties under Labor Code section 2699, from Defendant in a representative action for the violations of the Labor Code, including but not limited to, Labor Code sections 432.5 (requiring employees to agree, in writing, to terms or conditions which is known by employer to be prohibited by law, including unlawful non-complete and release of liability provisions), 925 (requiring employees, who primarily reside and work in California, as a condition of employment, to agree to a provision requiring them to adjudicate outside of California a claim arising in California and to a provision depriving them of the substantive protection of California law with respect to a controversy arising in California), 2802 (failing to indemnify employees for necessary incurred expenditures or losses), and 2804 (requiring employees to waive indemnification rights for necessary incurred expenditures or losses).

56. Plaintiff has complied with all of the requirements set forth in Labor Code section 2699.3 to commence a representative action under PAGA.

57. Pursuant to Labor Code section 2699.3, Plaintiff gave written notice via the online PAGA filing system to the California Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendant of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations on March 29, 2022. Within thirty-three (33) and sixty-five (65) days of the postmark date of Plaintiff’s March 29, 2022 notice letter, the LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations.

58. Plaintiff and aggrieved employees have incurred and continue to incur legal expenses and attorneys' fees and costs, and hereby requests their attorneys' fees and costs, pursuant to Labor Code section 2699, subdivision (g)(1).

## PRAYER FOR RELIEF

Plaintiff prays for judgment against all Defendants as follows:

1. For unreimbursed business expenses and/or losses;
2. For a decree that the unlawful choice-of-venue and law provisions in Defendant's employment agreements violate Labor Code section 925, subdivision (a), and are null and void;

3. For restitution and/or disgorgement of all unreimbursed business expenses and/or losses, which have been unlawfully withheld, according to proof at trial, in violation of Business and Professions Code sections 17200, *et seq.*;

4. For an injunction prohibiting Defendant from engaging in unfair business practices in violation of Business and Professions Code sections 17200, *et seq.*;

5. For civil penalties pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698-2699.5;

6. For attorneys' fees pursuant to applicable statute;

7. For all costs of suit herein incurred;

8. For an award of interest, including prejudgment interest, as provided by law and according to proof at trial; and

9. For such other relief, in law or in equity, as this Court deems just and proper.

## DEMAND FOR JURY TRIAL

Plaintiff and class members hereby demand a jury trial in this action against Defendants.

Dated: September 2, 2022

BENT CARYL & KROLL, LLP

By: *Steven M. Kroll*

Sergio Bent  
Steven M. Kroll  
Attorneys for Plaintiff  
ADAM WACHTER