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Attorneys for Plaintiff ADAM WACHTER, an
5 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

17 Defendants.
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CASE NO. 22STCV28782

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

**DECLARATION OF STEVEN M. KROLL
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL**

Date: November 22, 2023
Time: 11:00 a.m.
Dept.: 6

Action filed: September 2, 2022
Trial date: None
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1. I have personal knowledge of the facts contained in this declaration. If called and sworn as a witness, I could and would testify competently to these facts under oath.
2. I am an attorney licensed to practice law in the State of California. I am a partner with Bent Caryl & Kroll, LLP, attorneys for plaintiff Adam Wachter (“Plaintiff”) in this action.
3. I am making this declaration in support of the motion for preliminary approval of class action and PAGA settlement.
4. I am fully familiar with the facts and history of this class action and have been involved in all aspects of this case.

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5. Based on our investigation and discovery, I have ascertained that defendant MTX Group, Inc. (“Defendant”) is a New York corporation with its principal place of business in Redding, California. Defendant is a global technology consulting firm powered by the Maverick Quantum (mavQ) Artificial Intelligence platform that enables organizations to modernize through digital transformation and strategy.

6. Plaintiff is an individual residing in Los Angeles County, California. He worked as a sales account executive for Defendant in California from on or about September 13, 2021 to February 17, 2022.

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

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

12 9. Regarding the violation of Labor Code section 925(a) claim, Plaintiff's theory of
13 recovery is that upon hire, Plaintiff and Defendant entered into a written employment agreement,
14 which set forth the terms and conditions of his employment with Defendant. Other similarly
15 situated and aggrieved employees entered into the same or similar written employment agreement
16 with Defendant. Defendant required Plaintiff and other similarly situated and aggrieved
17 employees, who primarily resided and worked in California, as a condition of employment, to
18 agree to a provision in their employment agreements requiring them to adjudicate in New York
19 any claim arising in California, and requiring New York law to apply to the terms and condition
20 of their employment and thereby depriving them of the substantive protection of California law
21 with respect to a controversy arising in California. Defendant also required Plaintiff and other
22 similarly situated and aggrieved employees, as a condition of employment, to agree to unlawful
23 "Non-Competition" and release of "Liability" provisions in violation of Business and Professions
24 Code section 16600 and Government Code section 12964.5, subdivision (a) in their employment
25 agreements.

26 10. Plaintiff's unfair business practices and PAGA claims are generally derivative of
27 Plaintiff's failure to indemnify for necessary expenditures, and violation of Labor Code section
28 925(a) claims.

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Class Counsel Is Experienced in Similar Litigation

16. I graduated from the University of Michigan, Ann Arbor with a Bachelor of Arts in 1998 and from Loyola Law School, Los Angeles with a Juris Doctor in 2001. While in law school, I served as a staff writer and then editor for the Loyola of Los Angeles Entertainment Law Review. I also served as a judicial extern to the Honorable Samuel L. Bufford of the United States Bankruptcy Court.

17. After graduating from law school, I was admitted to the California State Bar on December 4, 2001 and have been practicing law for nearly 22 years. My legal practice is primarily concentrated on labor and employment law, and litigation, including wage and hour class actions. I have been practicing labor and employment law almost exclusively for nearly 20 years.

18. I have been recognized as a Super Lawyer in Labor and Employment Law by Law & Politics magazine's "Southern California Super Lawyers," in 2012, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023. I was recognized as a Rising Star in Labor and Employment Law by the same publication in its "Southern California Super Lawyers - Rising Stars," edition in 2009, 2010, and 2011.

19. I am a founding partner in the law firm of Bent Caryl & Kroll, LLP. My firm was established in April 2010, and offers a wide range of legal services to its clients in the areas of labor and employment law, business law, and litigation. It represents individuals, nonprofit organizations, public entities, and companies in California and across the United States. In the five years prior to being a partner in my own firm, I was a senior associate and then partner in the Los Angeles office of Ford & Harrison, LLP, a national labor and employment law firm.

20. I formed Bent Caryl & Kroll, LLP along with two of my former litigation partners at Ford & Harrison. My practice is dedicated to litigating employment related matters, including wage and hour claims on an individual, class, and representative bases.

21. Since the firm's inception, I have been lead and second chair counsel in the prosecution and defense of over twenty-five putative class and representative actions.

The Terms of the Proposed Settlement Are Fair and Reasonable
in Light of the Estimated Value of the Plaintiff's Claims

22. Based upon my review of the evidence and legal research regarding the merits and damages for each claim, I estimated that, if totally successful on all claims, the potential recovery that could be obtained on behalf of the class is between approximately \$166,075 and \$267,050, excluding interest, attorneys' fees, and costs.

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

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

25. Plaintiff's unfair business practices claim is generally derivative of Plaintiff's failure to indemnify for necessary expenditures claim.

26. Given my assessment and analysis of the likelihood of class certification, the risk of decertification, Defendant's articulated defenses, potential class members refuting Labor Code violations, and the uncertainty on stacking and reducing PAGA penalty amounts, Plaintiff's counsel determined that the \$90,000 settlement amount ultimately agreed upon by the parties – which amounts to about 41.6% of the midpoint of the potential recovery range (\$216,562.50) – is

1 fair and reasonable.

2 **The Proposed Enhancement Award to Plaintiff Is Reasonable**
3 **and Routinely Awarded by Courts**

4 27. Plaintiff, as class representative, seeks an enhancement award of \$2,500.
5 Defendant does not oppose this request and I am of the opinion that the enhancement award is
6 reasonable, proper, and supported by the particular circumstances of this case and the applicable
7 case law. A declaration from Plaintiff will be submitted in support of final approval.

8 28. Plaintiff has instrumental in assisting me in prosecuting this case and it is
9 estimated that he volunteered in excess of 25 hours working on this matter. His efforts included
10 multiple in-person meetings and phone calls with me, assisting with preparing the complaint,
11 assisting with preparing the PAGA notice to the LWDA and Defendant, gathering evidence to
12 support his claims and providing them to me, conferring with other class members, attending a
13 full-day mediation, making himself available by phone throughout the parties' continued
14 settlement efforts, and reviewing and consulting with me about the terms of the settlement
15 agreement ultimately reached. *Id.*

16 29. Plaintiff also assumed real financial risks by placing his name on this lawsuit. He
17 volunteered to serve as named plaintiff at a time when he was unemployed and seeking new
18 employment. He had to list Defendant as a former employer on his job applications and, as such,
19 had to accept the likelihood that prospective employers would learn that he had sued his former
20 employer when contacting Defendant for a reference or conducting a background check, which
21 could make finding new employment difficult.

22 30. The risks taken and efforts exerted by Plaintiff resulted in a real benefit for
23 members of this class. Prior to the filing of the lawsuit, Defendant had no expense
24 reimbursement policy and various terms in its employment agreement in violation of California
25 law. As a result of Plaintiff filing this lawsuit, Defendant has reportedly since implemented an
26 expense reimbursement police and a revised employment agreement with terms in compliance
27 with California law. Furthermore, because of his willingness to serve as a class representative,
28 class members who do not opt-out will share in the net settlement of an estimated amount of

1 \$36,000 that they would not have otherwise received.

2 **The Requested Attorneys' Fees and Costs Are Reasonable**

3 **and Customarily Approved by Courts**

4 31. Plaintiff and the class are entitled to recover the reasonable attorneys' fees and
5 costs incurred in prosecuting the claims in this action. At the time of final approval, I will
6 provide the Court with my billing records and a cost ledger in connection with a motion for
7 attorneys' fees and costs.

8 **The Settlement Administrator Costs Are Reasonable**

9 **and Customarily Approved by Courts**

10 32. ILYM Group, Inc. has been selected to perform settlement administration services.
11 Its costs are not to exceed \$5,000. This amount is appropriate in light of the number of class
12 members, the size of the settlement, the payments to be made, and the extent of the work to be
13 performed in administering the settlement for the class.

14 **Class Notice and Final Judgment**

15 33. Notice of the final judgment will be given to the class by posting it on the
16 settlement administrator's website. The administrator does not charge for the posting.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct. Executed this 1st day of September 2023, at Los Angeles,
19 California.

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23 Steven M. Kroll
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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
is 6300 Wilshire Boulevard, Suite 1415, Los Angeles, California 90048. On September 1, 2023, I
5 served a copy of the within document(s):

6 **DECLARATION OF STEVEN M. KROLL IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY APPROVAL**

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

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

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

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

14 Todd B. Scherwin, Esq.
15 Fisher & Phillips, LLP
444 S. Flower Street, Suite 1500
16 Los Angeles, CA 90071
Telephone: (213) 330-4450
17 tscherwin@fisherphillips.com
Attorneys for Defendant
18 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

19 I am readily familiar with the firm's practice of collection and processing correspondence
20 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
21 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.

22 I declare under penalty of perjury under the laws of the State of California that the above
23 is true and correct. Executed on September 1, 2023, at Los Angeles, California.

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25 _____
Steven M. Kroll
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