



3. Defendant Laminack, Pirtle & Martines, LLP (“LPM”) is a limited liability partnership organized and existing under the laws of the State of Texas with its principal place of business at 5020 Montrose Blvd., 9<sup>th</sup> Floor, Houston, Texas 77006. Defendant Laminack, Pirtle & Martines, LLP does not maintain a registered agent for service of process. Accordingly, it may be served with process and with a copy of this pleading by serving one of its partners, Richard N. Laminack, at 5020 Montrose Blvd., 9<sup>th</sup> Floor, Houston, TX 77006 or wherever he may be found.

4. Defendant Wellogix, Inc. (“Wellogix”) is a corporation organized and existing under the laws of the State of Delaware and which is and has been doing business in Texas, as that term is defined in TEX. CIV. PRAC. & REM. CODE §17.042. In addition, Defendant Wellogix, Inc.’s principal place of business is in Houston, Harris County, Texas located at 2425 West Loop South, Suite 330, Houston, Texas 77027. Defendant Wellogix, Inc. may be served with process and this pleading by serving its registered agent for service of process, Capitol Corporate Services, Inc., 800 Brazos, Suite 400, Austin, Texas 78701.

5. Defendant Wellogix Technology Licensing, LLC (“WTL”) is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business located at 440 Louisiana, Suite 2100, Houston, Texas 77002. Defendant Wellogix Technology Licensing, LLC may be served with process and this pleading by serving its registered agent for service of process, Harris Junell, 440 Louisiana Street, Suite 2100, Houston, Texas 77002.

### **III.**

#### **JURISDICTION AND VENUE**

6. This Court has personal jurisdiction over all Defendants because each Defendant is (1) a limited liability partnership, limited liability company or other business entity organized

and existing under the laws of the State of Texas or (2) a business entity doing business in Texas as that phrase is defined in TEX. CIV. PRAC. & REM. CODE §17.042. Further, each Defendant's contacts with the State of Texas are continuous, systematic and extensive and enable this Court to exercise general and specific personal jurisdiction over all of them without violating any Defendant's due process rights under the United States Constitution or under the Texas Constitution.

7. This Court also has subject-matter jurisdiction over all Defendants because the amount involved in this case exceeds the minimum jurisdictional limits of this Court.

8. Venue is proper in Harris County, Texas pursuant to Section 15.002 of the Texas Civil Practice & Remedies Code because Harris County, Texas (1) is the county in which all or a substantial part of the events or omissions giving rise to the claims asserted occurred, and (2) is and has been the county in Texas in which each Defendant's principal office has been maintained at all material times.

#### **IV.**

#### **FACTS**

9. Matthews is a law firm based in Houston, Texas that handles patent litigation, patent prosecution work, patent re-examination work, intellectual property work and other types of litigation. Wellogix and WTL are companies that write or license software for use in various business settings. In 2005, Matthews, Wellogix and WTL agreed that Matthews would take over and handle certain patent prosecution and trademark work for Wellogix and WTL previously handled by a law firm in Denver, Colorado. By March 2008, Matthews was prosecuting a number of patent applications for Wellogix and WTL and had secured the following four patents for Wellogix and WTL:

- 7,096,223 - *Process and System for Managing and Reconciling Field Documentation Data Within a Complex Project Workflow System;*
- 7,043,486 - *Process and System for Tracking Versions of Field Documentation Data Collection Configurations in a Complex Project Workflow System;*
- 7,155,439 - *Modular and Customizable Process for Capturing Field Documentation is Data in a Complex Project Workflow Systems; and*
- 7,293,029 - *Modular and Customizable Process and System for Capturing Field Documentation Data in a Complex Project Workflow System.*

10. Wellogix and WTL also hired Matthews to represent them in connection with pending re-examination proceedings before the United States Patent and Trademarks Office initiated by SAP America, Inc. (“SAP”).

11. On or about February 26, 2009, LPM and Wellogix entered into a Power of Attorney and Contingent Fee Agreement pursuant to which Wellogix retained LPM to pursue claims against third parties related to their alleged improper use of the “Wellogix Solutions” software. Such agreement will be referred to herein as the “Wellogix Contract.” The Wellogix Contract contains the following, among other, provisions:

## **I. PURPOSE OF REPRESENTATION**

1.01. The Client<sup>1</sup> hereby retains and employs Attorneys<sup>2</sup> to sue for and recover all damages and compensation to which the Client may be entitled as well as to compromise and settle all claims arising out of the following matters: breach of contract and various tort claims related to the “Wellogix Solutions” software system and the use of that software system by certain business entities, including but not limited to, British Petroleum, SAP and/or Accenture.

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## **II. ATTORNEYS’ FEES**

2. In consideration of the services rendered and to be rendered to Client by Attorney, Client does hereby assign, grant and convey to Attorney the following present undivided interests in all his claims and causes of action for and as a

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<sup>1</sup> The Wellogix Contract refers to Wellogix as “Client.” (See Preamble to Wellogix Contract).

<sup>2</sup> The Wellogix Contract refers to LPM as “Attorneys.” (*Id.*).

reasonable contingent fee for Attorney's services and said contingent attorneys' fee will be figured on the total gross recovery or settlement:

- 40% of any settlement or recovery made after suit is filed;
- 45% of any settlement or recovery made after a notice of appeal has been given or an appeal bond has been filed.

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### VIII. ASSOCIATION OF OTHER ATTORNEYS

8. Attorneys may, at their own expense, use or associate other attorneys in the representation of the aforesaid claims of the Client. Client understands that Laminack, Pirtle & Martines L.L.P., is a limited liability partnership with several attorneys. Any of these attorneys may work on Client's case.

12. Based upon information and belief, LPM and WTL entered into a Power of Attorney and Contingent Fee Agreement substantially similar to the Wellogix Contract pursuant to which WTL retained LPM to pursue claims against third parties related to infringement of certain of WTL's patents. Such agreement will be referred to herein as the "WTL Contract."<sup>3</sup>

13. Desiring to add Matthews to the litigation team with respect to the Wellogix Contract and the WTL Contract, in September 2009, LPM, Matthews, Wellogix and WTL signed the Joint Representation Agreement ("Joint Representation Agreement"). Pertinent provisions of the Joint Representation Agreement include the following:

#### 1. Preamble

A. LAMINACK, PIRTLE & MARTINES, LLP entered into the Power of Attorney and Contingent Fee Contract, signed on February 26, 2009 to represent Wellogix Technology Licensing, LLC (hereinafter referred to as the "WTL Contract"). The representation involves the claims set forth in the WTL Contract including, but not limited to, all claims set forth in potential litigation for claims related to the "Wellogix Solution" software system and the use of that software system by British Petroleum, SAP America, Inc., SAP A.G., Accenture, LLC and others (hereinafter, the "Patent Litigation").

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<sup>3</sup> The Wellogix Contract and the WTL Contract will be referred to herein as "Contracts."

LAMINACK, PIRTLE & MARTINES, LLP entered into the Power of Attorney and Contingent Fee Contract, signed on February 26, 2009 to represent Wellogix, Inc. (hereinafter referred to as the "Wellogix Contract"). The representation involves the claims set forth in the Wellogix Contract, including but not limited to, all claims set forth in the current litigation (C.A. No. 3:08-cv-119) and arbitration (C.A. No. 4:09-cv-1511) related to the "Wellogix Solution" software system and the use of that software system by British Petroleum, SAP America, Inc., SAP A.G., Accenture, LLC and others (hereinafter, the "Trade Secret Litigation").

The Patent Litigation and Trade Secret Litigation shall be hereinafter referred to collectively as "IP Litigation."

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B. LAMINACK, PIRTLE & MARTINES, LLP has determined that it would be in the best interest of the Clients<sup>4</sup> to involve, as additional counsel, MATTHEWS, LAWSON & BOWICK, PLLC to aid in the prosecution of the above claims and defenses in the IP Litigation pursuant to the terms and conditions of this Agreement.

C. The purpose of this Agreement is to memorialize the manner in which the various law firms will coordinate their working relationship in prosecuting the claims and the manner in which they will share the recovery and costs and fees associated with such representation as well as other matters.

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### 3. Fee Sharing

The undersigned shall represent Clients in accordance with the WTL Contract and Wellogix Contract referenced in paragraph 1.A. Any recovery of any type or form pursuant to the WTL Contract and Wellogix Contract referenced in paragraph 1A in connection with the IP Litigation shall be divided amongst counsel as follows:

A. Any and all recovery in connection with the IP Litigation by LAMINACK, PIRTLE & MARTINES, LLP, shall be shared equally (50%/50%) between the two Firms<sup>5</sup> designated and appointed herein, notwithstanding, whether or not each Firm (*sic*) role, activity, volume of work, litigation, representation, or any other work for the Clients related to this matter may be distinct or greater in scope than that of the other Firm.

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<sup>4</sup> The Joint Representation Agreement defines "Clients" as Wellogix and WTL. (*See* ¶1(A)).

<sup>5</sup> "Firms" refers to Matthews and LPM. (*Id.* at ¶2).

14. Ultimately, LPM and Matthews began handling the following “IP Litigation” on behalf of Wellogix and WTL in accordance with the terms of the Contracts and the Joint Representation Agreement:

- Civil Action No. 3:08-CV-119; *Wellogix, Inc. v. Accenture, LLP*; In the United States District Court, Southern District of Texas, Houston Division (hereafter “Accenture Litigation”);
- Civil Action No. 4:10-CV-1224; *SAP America, Inc. v. Wellogix, Inc.*; In the United States District Court, Southern District of Texas, Houston Division (hereafter “SAP Litigation”); and
- Civil Action No. 4:09-CV-1511; *Wellogix, Inc. v. BP America, Inc.*; In the United States District Court, Southern District of Texas, Houston Division (hereafter “BP Litigation”).

15. Matthews worked diligently as co-counsel for Wellogix and WTL in the above-referenced litigation. The Accenture litigation initially involved claims by Wellogix against both BP and Accenture, but the district court subsequently severed Wellogix’s claims against BP into a private arbitration and assigned it a new a civil action number (4:09-cv-1511), referred to above as the BP Litigation. The severance resulted in the Accenture Litigation and BP Litigation proceeding simultaneously but because the two cases were based on many of the same key facts, much of the discovery in them, including document production, discovery responses and depositions, overlapped and was applied equally to both cases by agreement of the parties. Thus, because the BP Litigation was placed on a faster track than the Accenture Litigation, the work that Matthews provided through its attorneys, paralegals and staff to prepare and eventually arbitrate Wellogix’s dispute with BP applied equally to, and directly benefitted, Wellogix’s claims in the Accenture Litigation.

16. The SAP litigation was stayed by the district court pending the results of a Re-examination proceeding initiated by SAP America, Inc.

17. At all times Matthews complied with the Contracts and the Joint Representation Agreement. Nonetheless, on September 2, 2010, Matthews received a written request from Wellogix and WTL to withdraw as their counsel in the Accenture Litigation and SAP Litigation, stating as one of its reasons that Wellogix and WTL were already in the process of hiring additional counsel on a contingent fee basis. Such written request provides in full as follows:

As we discussed this Monday, we are looking to you and your Law Firm to represent the interests of Wellogix and Wellogix Technology Licensing ("Wellogix") in the "Re-Examination" of their patents as presently pending before the Patent Office as a result of SAP instituting such action. Your expertise and experience with Wellogix's Patents is paramount to the best interest of Wellogix and we are confident in your ability to be successful in this proceeding.

We also discussed and agreed that your involvement in the litigation going forward against Accenture and SAP will cease for the various reasons that we discussed. I know you do not agree with the reasoning behind this decision but we have to make this decision on the side of caution. It has nothing to do with your experience or your talents, as we have great respect and admiration of your ability. This was a decision that again was based on concern of a conflict that could and would probably affect the successful conclusion of the afore said litigations. We ask for your thoughtful consideration of this concern and decision. In light of our decision to focus your involvement in this matter to the "re-examination" of the Wellogix patents, we are now withdrawing our previous consent to the distribution agreement entered into by you and Laminack, Pirtle and Martines. This is necessary for a number of reasons, including but not limited to the fact that we are in the process of hiring additional counsel to participate in the litigation proceedings and that counsel will have to be paid on a contingent fee basis along with LPM. As soon as the new counsel is hired we will approve a new contingent fee agreement which will be between the new firm and LPM.

We look forward to the continuation of working with you and your firm; and your efforts have and will continue to be in the best interest of Wellogix.

18. Although Matthews complied with the directive of Wellogix and WTL and withdrew as their counsel in the Accenture Litigation and SAP Litigation, neither Wellogix nor WTL had good cause to discharge Matthews, and Matthews made clear that it did not agree with Wellogix's and WTL's decision.



19. After Matthews withdrew, the BP Litigation settled. However, the Accenture Litigation was tried to a jury before the Honorable Keith P. Ellison and a substantial verdict was rendered in favor of Wellogix on May 20, 2011. Ultimately, Judge Ellison signed an Amended Final Judgment that included the following provisions:

IT IS THEREFORE ORDERED by the Court that Wellogix shall recover from Accenture as follows:

- (1) Wellogix shall recover from Accenture actual damages in the sum of \$26,179,725.00, plus prejudgment interest in the amount of \$4,540,209.84, accrued and calculated as simple interest at a rate of five percent (5%) per year beginning on May 16, 2008 (the day suit was filed), and ending on the day before the final judgment signed (November 3, 2011) for a total award of actual damages and prejudgment interest in the sum of \$30,719,934.84; and
- (2) Wellogix shall recover from Accenture exemplary damages in the sum of \$18,200,000.00; and
- (3) The total award of actual damages, prejudgment interest, and exemplary damages (\$48,919,934.84) shall bear interest at the rate of 0.12% interest per year, compounded annually, from the day judgment signed (November 4, 2011) until the day judgment is satisfied.

20. Because Matthews was discharged as counsel for Wellogix and WTL without cause, Matthews is entitled to enforce the Contracts and Joint Representation Agreement by collecting all fees due it as a result of any recovery or settlement in the Accenture Litigation, the SAP Litigation and in any other matter that is or becomes part of the "IP Litigation." Matthews has made a good-faith effort to resolve the dispute made the basis of Plaintiff's Original Petition by engaging in informal communications with Wellogix, WTL and LPM and by participating in mediation of the parties' dispute.<sup>6</sup> Unfortunately, these efforts have not been successful. Accordingly, Matthews commences this lawsuit and asserts the claims herein.

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<sup>6</sup> These efforts satisfy Matthews' obligations under Section 5 of the Joint Representation Agreement to "work together (with LPM) in good faith to resolve the disagreement."

V.

**CLAIM ONE – BREACH OF CONTRACT**

21. Matthews re-alleges the facts set out in the preceding paragraphs and incorporates those allegations by reference below as if fully set forth herein *verbatim*.

22. The facts as set out in the preceding paragraphs establish that the Joint Representation Agreement is a valid and enforceable contract between and among Matthews, LPM, Wellogix and WTL. LPM, Wellogix and WTL have repudiated, breached and anticipatorily breached the Joint Representation Agreement in the following ways, among others:

- A. By terminating Matthews' representation of Wellogix and WTL as additional counsel in all current and future cases comprising the IP Litigation without cause to do so;
- B. By refusing to recognize Matthews' fee interests in the current and future IP Litigation under the Joint Representation Agreement and purportedly "withdrawing our previous consent to the distribution agreement entered into by you and Laminack, Pirtle and Martines;" and
- C. By unequivocally communicating to Matthews that LPM, Wellogix and WTL will not pay Matthews any fees due Matthews under the Joint Representation Agreement if and when Wellogix or WTL obtain any recoveries or settlements in the IP Litigation.

23. Despite repeated requests by Matthews, LPM, Wellogix and WTL have failed to meet, fulfill and comply with the above-referenced and other contractual obligations and commitments imposed upon them by the Joint Representation Agreement. LPM, Wellogix and WTL's repudiations, breaches and anticipatory breaches of the Joint Representation Agreement have and/or will directly and proximately caused damage to Matthews for which Matthews seeks recovery in this lawsuit.

## VI.

### CLAIM TWO – DECLARATORY RELIEF

24. Matthews re-alleges the facts set out in the preceding paragraphs and incorporates those allegations by reference below as if fully set forth herein *verbatim*.

25. Pursuant to TEX. CIV. PRAC. & REM. CODE §37.001 *et seq.*, Matthews asks that the Court declare the respective rights, status, and other legal relations of the parties to this action with respect to the written instruments and other matters set forth herein. Specifically, Matthews, LPM, Wellogix and WTL are parties interested under written contracts, and the parties' rights, status, and legal relations are thereby affected. A justiciable controversy exists between the parties with respect to the parties' rights, status, and legal relations, and a judgment or decree of the Court in accordance with the relief requested below will remove any uncertainty with respect to the parties' rights, status, and legal relations. In order to resolve the controversies and uncertainties existing between the parties with respect to the parties' rights, status, and legal relations, Matthews is entitled to judicial determinations and declarations, among others, with respect to the parties' rights, duties and obligations arising out of or under the Joint Representation Agreement. More specifically, Matthews is entitled to the following judicial determinations and declarations, among others:

- A. Matthews was hired on a contingent fee basis to represent Wellogix and WTL as additional counsel in the IP Litigation and was discharged without cause before such representation was completed;
- B. Matthews is entitled to enforce the Joint Representation Agreement and collect all fees due Matthews under the Joint Representation Agreement when any such fees are recovered by LPM, Wellogix or WTL;
- C. Matthews is entitled to 22 ½% of any settlement or recovery made or obtained by LPM, Wellogix or WTL in Civil Action No. 3:08-CV-119; *Wellogix, Inc. v. Accenture, LLP*; In the United States District Court, Southern District of Texas, Houston Division; and

- D. Matthews is entitled to 20% of any settlement or recovery made or obtained in every past, present or future case comprising part of the “IP Litigation” as “IP Litigation” is defined in the Contracts if such settlement or recovery is made or obtained before a notice of appeal is filed in such case; and
- E. Matthews is entitled to 22 ½% of any settlement or recovery made or obtained in every past, present or future case comprising part of the “IP Litigation” as “IP Litigation” is defined in the Contracts if such settlement or recovery is made or obtained after a notice of appeal is filed in such case.

## VII.

### CLAIM THREE – QUANTUM MERUIT

26. Matthews re-alleges the facts set out in the preceding paragraphs and incorporates those allegations by reference below as if fully set forth herein *verbatim*.

27. Pleading in the alternative, at LPM, Wellogix and WTL’s request, Matthews provided valuable legal services in connection with the representation of Wellogix and WTL in the IP Litigation.

28. LPM, Wellogix and WTL agreed to pay Matthews for these services, or in the alternative, were on reasonable notice that Matthews expected to be paid for providing such services.

29. LPM, Wellogix and WTL accepted, received, and benefited from Matthews’ performance of these legal services but have not paid for them. Under these circumstances, LPM, Wellogix and WTL have received valuable benefits to Matthews’ substantial detriment.

30. Pleading in the alternative, Matthews is entitled to recover the reasonable value of the services provided to LPM, Wellogix and WTL with respect to the IP Litigation.

## VIII.

### DAMAGES

31. Matthews re-alleges the facts set out in the preceding paragraphs and incorporates those allegations by reference below as if fully set forth herein *verbatim*.

32. As a result of LPM, Wellogix and WTL's repudiation, anticipatory breaches and breaches of the Joint Representation Agreement, Matthews has proximately suffered and/or will proximately suffer actual damages and other damages. Matthews hereby seeks recovery of all damages arising out of, resulting from, that are and were natural, probable and foreseeable consequences of and/or that are or were caused by the above-stated repudiations, anticipatory breaches and breaches of the Joint Representation Agreement, which include, but are not limited to, all legal fees to which Matthews is or will be entitled under the Joint Representation Agreement and pre-judgment and post-judgment interest at the maximum legal rate.

## IX.

### ATTORNEYS' FEES AND COSTS

33. Matthews re-alleges the facts set out in the preceding paragraphs and incorporates those allegations by reference below as if fully set forth herein *verbatim*.

34. Pursuant to Texas Civil Practice and Remedies Code §§ 37.009, 38.001 and 38.002, Matthews is entitled to recover reasonable and necessary attorneys' fees incurred in connection with its breach of contract claims, claims for declaratory relief and alternative claims for quantum meruit. Matthews seeks to recover under contract as set forth in the preceding paragraphs. As a result of LPM, Wellogix and WTL's actions described in the preceding paragraphs, Matthews has been required to retain the services of attorneys to seek to enforce its rights and seeks recovery of any and all reasonable and necessary attorneys' fees, court costs and

expenses incurred in connection with the prosecution of its breach of contract claims, claims for declaratory relief and alternative claims for quantum meruit.

**X.**

**Conditions Precedent**

35. Matthews re-alleges the facts set out in the preceding paragraphs and incorporates those allegations by reference below as if fully set forth herein *verbatim*. All conditions precedent to Matthews' right to recover and to LPM, Wellogix and WTL's liability have been performed, have occurred and/or have been waived by LPM, Wellogix and WTL.

**XI.**

**Prayer**

WHEREFORE, PREMISES CONSIDERED, Plaintiff The Matthews Firm, P.L.L.C., f/k/a Matthews, Lawson & Bowick, P.L.L.C. respectfully prays that, after a full and final trial or hearing on the merits or after any other hearing on the merits, The Matthews Firm, P.L.L.C., f/k/a Matthews, Lawson & Bowick, P.L.L.C. receives final judgment against Respondents Laminack, Pirtle & Martines, LLP, Wellogix, Inc. and Wellogix Technology Licensing, LLC for the relief requested and all actual and other damages set forth above, together with reasonable and necessary attorneys' fees as permitted by statute, all statutory costs, court costs, pre-judgment interest and post-judgment interest at the maximum rate on all actual and other damages as allowed by law, and all such other and further relief to which The Matthews Firm, P.L.L.C., f/k/a Matthews, Lawson & Bowick, P.L.L.C. may show itself justly entitled, at law and in equity.

Respectfully submitted,

**HAGANS BURDINE MONTGOMERY & RUSTAY, P.C.**

By: \_\_\_\_\_

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