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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Kristin Sorianosos, Deputy Clerk

Attorneys for Plaintiff, MATTHEW MOREL, an individual on his own behalf and on behalf of all others similarly-situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

MATTHEW MOREL, an individual on his own
behalf and on behalf of all others similarly-
situated,

Plaintiff,

v.

HNTB Corporation, a Delaware corporation, and
DOES 1-50, inclusive,

Defendant

Case No.: 37-2022-00007029-CU-OE-CTL

**CLASS AND REPRESENTATIVE
ACTION FOR:**

- 1) FAILURE TO REIMBURSE WORK
EXPENSES (Labor Code § 2802);**
- 2) UNFAIR BUSINESS PRACTICES (In
Violation of Bus. & Prof. Code § 17200);**
- 3) VIOLATION OF THE PRIVATE
ATTORNEY GENERALS ACT OF 2004,
Labor Code §2698 et seq.**

{JURY TRIAL DEMANDED}

Plaintiff MATTHEW MOREL as an individual on behalf of himself and on behalf of all others similarly situated (collectively "Plaintiff"), hereby brings this Complaint ("Complaint") against Defendant HNTB Corporation ("Defendant"), and DOES 1-50, inclusive, (collectively, "Defendants"). Plaintiff hereby states and alleges as follows:

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1 **INTRODUCTION**

2 1. Plaintiff brings this class action pursuant to California Code of Civil Procedure § 382
3 against Defendants for, among other things: failure to reimburse work-related expenses incurred in the
4 discharge of job duties and unfair business practices.

5 2. Plaintiff thus brings this action on behalf of himself, and other individuals similarly
6 situated pursuant to Labor Code §§ 2802 for unpaid reimbursements for work-related expenses,
7 applicable penalties, injunctive and other relief and reasonable attorneys' fees and costs.

8 **THE PARTIES**

9 **Plaintiff MATTHEW MOREL**

10 3. Plaintiff MATTHEW MOREL is and was, at all times relevant to this Complaint, an
11 adult individual who lived in Oceanside, California and worked for Defendant remotely from home in
12 the County of San Diego, California. Defendant employed Plaintiff as a Project Controls Manager
13 from on or about January 4, 2021, to on or about July 20, 2021.

14 **Defendant HNTB Corporation**

15 4. At all times relevant to this Complaint, Defendant was a Delaware corporation, duly
16 registered to conduct business and employ persons throughout California, where it employed Plaintiff.

17 5. Defendant is a company providing engineering services. Defendant maintains
18 approximately 8 locations throughout the State of California.

19 6. At all relevant times to this Complaint, Defendant employed Plaintiff and Class/Sub
20 Class Members at their respective HNTB locations and their home offices in the State of California.

21 7. At all times mentioned in this Complaint, Defendant was Plaintiff's "employer," and
22 Plaintiff was its "employee" as defined by California law.

23 8. Plaintiff is unaware of the true names or capacities of Defendants sued herein under the
24 fictitious names DOES 1–50, inclusive, but prays for leave to amend and serve such fictitiously-named
25 Defendants pursuant to California Code of Civil Procedure § 474 once their names and
26 capacities become known.

27 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1–50, inclusive, are
28 the partners, agents, owners, shareholders, managers, principals or employees of Defendant and/or

1 and were acting on behalf of Defendant.

2 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
3 omissions alleged herein was performed by or is attributable to Defendant, each acting as the agent
4 for the other, with legal authority to act on the other's behalf. The acts of any and all Defendant was
5 in accordance with, and represent the policy of, Defendant.

6 11. At all times herein mentioned, Defendant, ratified each and every act or omission
7 complained of herein. At all times herein mentioned, Defendant, aided and abetted the acts and
8 omissions of each and all of the other Defendant in proximately causing the damages herein alleged.

9 12. Plaintiff is informed and believes, and thereon alleges, that Defendant is in some
10 manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and
11 transactions alleged herein.

12 **JURISDICTION AND VENUE**

13 13. The civil penalties sought by Plaintiff exceeds the minimum jurisdiction limits of the
14 San Diego County Superior Court and will be established according to proof at trial.

15 14. This Court has jurisdiction of this action pursuant to the California Constitution, Article
16 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given
17 by statute to other courts. The statutes under which this action of brought do not specify any other basis
18 for jurisdiction.

19 15. This Court has jurisdiction over the violations alleged herein and over Defendant and
20 Does 1 – 50, inclusive, because upon information and belief, each party has sufficient minimum
21 contacts in California or otherwise intentionally avails itself of California law so as to render the
22 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play
23 and substantial justice. Defendant at all times relevant employed Plaintiff while Plaintiff was
24 domiciled in and performing his work duties in the State of California, in the County of San Diego.

25 16. Venue is proper in this Court because, upon information and belief, the named
26 Defendant employed Plaintiff, who was resident of this county and the acts and omissions
27 alleged herein took place in this county.

28 //

1 **GENERAL ALLEGATIONS AND SUMMARY OF CLAIMS**

2 17. Plaintiff allege that he and the Class/Subclass Members are individuals who currently
3 work or formerly worked for Defendant in the State of California as exempt and non-exempt, hourly
4 and salary compensated, full time and part time employees, at any given time during the four years
5 prior to the filing of this complaint (the "Class Period"). Plaintiff and such Class/Subclass Members
6 work/worked in exempt and non-exempt, hourly and salary compensated, Project Controls Manager,
7 and other similar positions for Defendant, a company which provides engineering services. Plaintiff
8 and those who were employed by Defendant in California during the Class Period job duties included
9 but not limited to, managing subordinates, developing solutions for department performance and
10 effectiveness, quality control and improvement, as well as among many other things.

11 18. The duties of Project Controls Manager and other similarly situated positions are
12 virtually identical. Any differences in the job activities between the other individuals in these positions
13 were and are legally insignificant to the issues presented by this action. The same policies, procedures,
14 employee handbooks, manuals, compensation plans, and training modules were uniformly applied to
15 the exempt and nonexempt Plaintiff and Class/Subclass Members, which means individual issues will
16 not predominate, and in fact, all issues are systematically linked, related and common, both in terms
17 of facts and law for Plaintiff and each of the members of the Class/Subclasses during the Class Period.

18 19. *Labor Code* § 2802(a) requires employers to reimburse employees for all expenses they
19 incur in direct consequence of the discharge of their duties or obedience to their employers'
20 instructions.

21 20. During the Class Period, Defendant required Plaintiff MATTHEW MOREL and
22 certain Class/Subclass Members to use their personal cell phones to perform their job duties each
23 workday throughout their employment. Defendant required them to give subordinates work
24 instructions, to send information regarding work meetings, to manage project status, to coordinate
25 responsibilities between staff members, to maintain work-related communications between
26 supervisors, coworkers, and subordinates, among many other things.

27 21. During the Class Period, Defendant required Plaintiff and certain of the Class/Subclass
28 Members to routinely use their personal internet access, their home internet access, and their own

1 personal data plans to carry out their assigned duties, i.e., to supervise subordinates, to access work
2 emails, to communicate with colleagues for work, to access data needed for work, among many other
3 things.

4 22. Despite Defendants requiring Plaintiff and certain Class Members/Subclass Members
5 to incur expenses using their personal cell phones, personal cell phone data plans, personal Internet
6 access, and home Internet access to perform their job duties, Defendant did not reimburse them.
7 Defendant's failure to reimburse Plaintiff and Class Members constitutes a violation of *Labor Code*
8 §2802(a).

9 23. Defendants refuses to reimburse and indemnify Plaintiff and members of the
10 Class/Subclass for all necessary expenditures and losses incurred by them, including but not limited
11 to, items related to home office space; the proportionate share of each of their mortgage or rent for
12 their home office; property taxes; homeowner insurance premiums; utilities such as electricity, gas,
13 and water; and trash collection services.

14 24. Defendant's company-wide policies and practices violate California law as pled herein.
15 Plaintiff seeks declaratory relief, reporting time pay, regular and overtime compensation, premium
16 pay for rest and meal break violations, reimbursement of business expenses, liquidated damages and
17 other damages and penalties as permitted by California Law, interest and attorneys' fees and costs.

18 **CLASS ACTION ALLEGATIONS**

19 25. Plaintiff brings causes of action for violation of California's wage-and-hour laws as a
20 class action on behalf of all members of the Class and Subclasses which are defined and composed as
21 follows:

22 **THE CLASS:**

23 26. All individuals (a) who are currently or formerly employed by Defendant and performed
24 work in California as Project Control Manager and similar job positions, job titles, job codes, job
25 classifications, job duties or job descriptions, and (b) who were subject to Defendant's illegal policies
26 and practices as alleged herein during the Class Period.

27 27. In the alternative, and for the convenience of the Court and the parties, Plaintiff may
28 seek to certify the following Subclasses at the time the motion for class certification is filed:

1 **REIMBURSEMENT OF BUSINESS EXPENSES SUBCLASS:**

2 28. All members of the Class that Defendant did not reimburse expenses necessarily
3 incurred in the discharge of performing their work-related duties during the Class Period.

4 29. Throughout discovery in this litigation, Plaintiff may find it appropriate and/or
5 necessary to amend the definition of the Subclasses. In any event, Plaintiff will formally define and
6 designate a class definition at such time when Plaintiff seeks to certify the Class or Subclasses defined
7 herein.

8 **COMMON CLASS ACTION ALLEGATIONS**

9 30. **Numerosity**: The potential quantity of members of the Class and Subclasses as defined
10 are so numerous that joinder of all members would be unfeasible and impractical. Plaintiff is informed
11 and believe that the total number of current and formerly employed members of the Class exceeds
12 100. The quantity and identity of such membership is readily ascertainable via inspection of
13 Defendant's records.

14 31. **Superiority**: The nature of this action and the nature of the laws available to Plaintiff
15 makes the use of the class action format particularly efficient and the appropriate procedure to afford
16 relief to Plaintiff and the members of the Class and Subclasses for the wrongs alleged herein, for the
17 following reasons:

- 18 a) The State of California, for which there is a named representative, has a public policy which
19 encourages the use of the class action device.
- 20 b) By establishing a technique whereby, the claims of many individuals can be resolved at the
21 same time, the class suit both eliminates the possibility of repetitious litigation and provides
22 small claimants with a method of obtaining redress for claims which would otherwise be
23 too small to warrant individual litigation.
- 24 c) This case involves large corporate Defendant and a large number of individual class
25 members with many relatively small claims and common issues of law and fact.
- 26 d) If each individual member of the Class was required to file an individual lawsuit, the large
27 corporate Defendant would necessarily gain an unconscionable advantage because
28

- 1 Defendant would be able to exploit and overwhelm the limited resources of each individual
2 member of the Class with Defendant's vastly superior financial and legal resources.
- 3 e) Requiring each individual member of the Class to pursue an individual remedy would also
4 discourage the assertion of lawful claims by the members of the Class who would be
5 disinclined to pursue action against Defendant because of an appreciable and justifiable
6 fear of retaliation and permanent damage to their lives, careers and well-being.
- 7 f) Proof of a common policy and practice or factual pattern, of which the members of the
8 Class experienced, is representative of the Class herein and will establish the right of each
9 of the members of the Class to recover on the causes of action alleged herein.
- 10 g) Absent class treatment, the prosecution of separate actions by the individual members
11 of the Class, even if possible, would likely create:
- 12 i. a substantial risk of each individual plaintiff presenting in separate, duplicative
13 proceedings the same or essentially similar arguments and evidence, including
14 expert testimony;
- 15 ii. a multiplicity of trials conducted at enormous expense to both the judicial system
16 and the litigants;
- 17 iii. inconsistent or varying verdicts or adjudications with respect to the individual
18 members of the Class against Defendant;
- 19 iv. potentially incompatible standards of conduct for Defendant; and
- 20 v. potentially incompatible legal determinations with respect to individual members
21 of the Class which would, as a practical matter, be dispositive of the interests of the
22 other members of the Class who are not parties to the adjudications or which would
23 substantially impair or impede the ability of the members of the Class to protect
24 their interests.
- 25 h) The claims of the individual members of the Class are not sufficiently large to warrant
26 vigorous individual prosecution, considering all of the concomitant costs and expenses
27 attendant thereto.
- 28 i) Courts seeking to preserve efficiency and other benefits of class actions routinely fashion

1 methods to manage any individual questions.

- 2 j) Judicial precedent urges trial courts, which have an obligation to consider the use of
3 innovative procedural tools to certify a manageable class, to be procedurally innovative
4 in managing class actions.

5 32. **Well-defined Community of Interest:** Plaintiff also meets the established standards
6 for class certification as follows:

- 7 a) **Typicality:** The claims of Plaintiff is typical of the claims of all members of the Class and
8 Subclasses they seek to represent because all members of the Class sustained injuries and
9 damages arising out of Defendant's common course of conduct in violation of California
10 law, and the injuries and damages of all members of the Class were caused by Defendant's
11 wrongful conduct in violation of California law, as alleged herein.

- 12 b) **Adequacy:** Plaintiff is adequate representatives of the Class and/or Subclasses they seek
13 to represent, will fairly protect the interests of the members of the Class, have no interests
14 antagonistic to the members of the Class, and will vigorously pursue this suit via attorneys
15 who are competent, skilled and experienced in litigating matters of this type.

- 16 c) **Predominant Common Questions of Law or Fact:** There are common questions of law
17 and/or fact as to the members of the Class which predominate over questions affecting only
18 individual members of the Class, including, without limitation:

- 19 i. Whether Defendant failed to reimburse Plaintiff and members of the Class for all
20 expenses incurred in discharge of their duties in violation of Labor
21 Code § 2802;
22 ii. Whether the members of the Class are entitled to compensatory damages, and if so,
23 the means of measuring such damages;
24 iii. Whether the members of the Class are entitled to injunctive relief;
25 iv. Whether the members of the Class are entitled to restitution; and
26 v. Whether Defendant is liable for attorneys' fees and costs to the extent permitted by
27 California law.

- 28 d) **Manageability of Class and Common Proof:** The nature of this action and the nature of

laws available to Plaintiff to make use of the class action format and procedure a particularly efficient and appropriate procedure to afford relief to Plaintiff and members of the Class for the wrongs alleged herein. Specifically, liability will turn on Defendant's own uniform, systematic practices of failing to pay their employees for all wages they earned in violation of California law during the Class Period. Therefore, the wage violations are predominant questions of fact that are easily capable of being determined through manageable devices of common proof, such as statistical random sampling, survey evidence based on scientific principles, representative testimony, documentary evidence and common practices/procedures of Defendant in treating each of the members of the Class as a homogeneous group. Once the predominant issues of wage compliance are determined, then each of the derivative subclass claims and damages suffered by each member of the Class will be capable of being shown by several means of common proof, and limited by individual showings of entitlement to recovery that can be professionally administered and tailored to the facts and circumstances of the case.

33. Class certification of the First through the Second causes of action is appropriate under *Cal. Code Civ. Proc.* § 382 because questions of law and fact common to the Class and Subclasses predominate over any questions affecting only individual members of the Class and Subclasses of this litigation. Defendant's policies and practices unlawfully treated members of the Class and Subclasses in a uniform fashion. The damages suffered by individual members of the Class and Subclasses are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendant's practices.

34. Class certification of the First through Second causes of action is also appropriate pursuant to *Cal. Code Civ. Proc.* § 382 because Defendant has acted or refused to act on grounds generally applicable to the Class, making appropriate declaratory relief with respect to and the Class and Subclasses as a whole.

35. Plaintiff intends to send notice to all members of the Class and Subclasses to the extent required by law and each will be given an opportunity to opt out of the proceedings.

FIRST CAUSE OF ACTION
FAILURE TO REIMBURSE WORK EXPENSES
In Violation of Labor Code § 2802
(Against Defendant and Does 1 – 50, inclusive)

36. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

37. *Labor Code* § 2802(a) requires employers to reimburse employees for all expenses they incur in direct consequence of the discharge of their duties or obedience to their employer' instructions.

38. As alleged, during the Class Period, Defendant required Plaintiff MATTHEW MOREL and certain Class/Subclass Members to use their personal cell phones to perform their job duties each workday throughout their employment. Defendant required them to give subordinates work instructions, to send information regarding work meetings, to manage project status, to coordinate responsibilities between staff members, to maintain work-related communications between supervisors, coworkers, and subordinates, among many other things.

39. During the Class Period, Defendant required Plaintiff and certain of the Class/Subclass Members to routinely use their personal internet access, their home internet access, and their own personal data plans to carry out their assigned duties, i.e., to supervise subordinates, to access work emails, to communicate with colleagues for work, to access data needed for work, among many other things.

40. Despite Defendant's requirement that Plaintiff and Class/Subclass Members incur expenses by using their personal cell phones, personal cell phone data plans, personal Internet access, and home Internet access to perform their job duties, Defendant failed to reimburse Plaintiff and the Class/Subclass Members violated Labor Code § 2802(a).

41. Defendant continues to refuse to reimburse and indemnify Plaintiff and members of the Class/Subclass for all necessary expenditures and losses incurred by them, including but not limited to, items related to home office space; the proportionate share of each of their mortgage or rent for their home office; property taxes; homeowner insurance premiums; utilities such as electricity, gas, and water; and trash collection services.

1 42. "All awards made by a court or by the Division of Labor Standards Enforcement for
2 reimbursement of necessary expenditures under this section shall carry interest at the same rate as
3 judgments in civil actions. Interest shall accrue from the date on which the employee incurred the
4 necessary expenditure or loss." (Cal. Labor Code § 2802(b).)

5 43. California Labor Code section 2802(c) provides: "For purposes of this section, the term
6 "necessary expenditures or losses" shall include all reasonable costs, including, but not limited to,
7 attorney's fees incurred by the employee enforcing the rights granted by this section."

8 44. Defendant owes a duty to Plaintiff and members of the Class/Subclass to indemnify them
9 for all necessary expenditures, losses, and damages suffered and incurred in direct consequence of the
10 discharge of their duties, or of their obedience to the directions of Defendant.

11 45. As a result of Defendant's failure to indemnify and reimburse Plaintiff and the
12 Class/Subclass Members for the expenses they necessarily incurred in the performance and discharge
13 of their work-related duties, Plaintiff and the Class/Subclass Members have sustained economic
14 damages in amount to be proven at trial.

15 46. As a result of Defendant's violation of *Labor Code* § 2802, Plaintiffs seek
16 reimbursement for all business-related expenses they have incurred working for Defendant, in amounts
17 to be determined at trial, with interest thereon as well as attorney's fees and costs of suit pursuant to
18 *Labor Code* § 2802(c).

19 **SECOND CAUSE OF ACTION**

20 **UNFAIR BUSINESS PRACTICES**

21 **In Violation of Bus. & Prof. Code § 17200 et seq.**

22 **(Against Defendant and Does 1 – 50, inclusive)**

23 47. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully
24 set forth herein.

25 48. California Business and Professions Code § 17200, et seq. prohibits unfair competition
26 in the form of any unlawful, unfair or fraudulent business act or practice.

27 49. California Business and Professions Code § 17202 provides: "Notwithstanding § 3369
28 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or

penal law in case of unfair competition.”

50. California Business and Professions Code § 17203 provides in relevant part that the court may “restore to any person in interest any money or property, real or person, which may have been acquired by means of such unfair competition.”

51. California Business and Professions Code § 17203 also provides that any person who meets the standing requirements of § 17204 and complies with *California Code of Civil Procedure* § 382 may pursue representative claims for relief on behalf of others.

52. California Business and Professions Code § 17204 allows any “person who has suffered injury in fact and has lost money or property as a result of such unfair competition” to prosecute a civil action for violation of the Unfair Business Practices Act.

53. Beginning at an exact date unknown, but at least since the date four years prior to the filing of this Complaint, Defendant has committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent practices and acts described in the Complaint, including, but not limited to violations of Labor Codes § 2802.

54. The violations of these laws and regulations, as well as of fundamental California public policies protecting workers, serve as unlawful predicate acts and practices for purposes of Business and Professions Code § 17200 et seq.

55. The acts and practices described above constitute unfair, unlawful and fraudulent business practices, and unfair competition, within the meaning of Business and Professions Code § 17200, et seq. Among other things, Defendant’s acts and practices have forced Plaintiff and the Class/Subclass Members to labor without receiving appropriate wages and/or to incur work related expenses in the discharge of their duties.

56. The acts and practices described above have allowed Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

57. As a result of the acts and practices described herein, Plaintiff and the Class/Subclass Members have been denied compensation in an amount to be proven at trial.

58. As a result of the aforementioned acts and practices, Defendant has received and continues to receive ill-gotten gains belonging to Plaintiff and the Class/Subclass Members.

59. In light of named Defendant's unfair business practices in violation of the law, Plaintiff and the Class/Subclass Members, pursuant to Business and Professions Code § 17203, seek from this Court disgorgement of all profits and monies obtained by Defendants on the benefits withheld, restitution for all monetary benefits payable to Plaintiff and the Class/Subclass Members but unreasonably and unfairly withheld, as well as a permanent injunction, enjoining such Defendants from the conduct alleged herein.

60. Plaintiff's success in this action will enforce important rights affecting the public interest.

61. An award of attorneys' fees is appropriate pursuant to California Civil Code § 1021.5 because 1) this action will confer a significant benefit upon a large class of persons; and 2) there is a financial burden involved in pursuing this action; and 3) it would be against the interest of justice to force Plaintiff to pay attorneys' fees from any amount recovered in this action.

THIRD CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEY GENERALS ACT OF 2004

Labor Code §2698 et seq.

(Against Defendant and Does 1-50, Inclusive)

62. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

63. The PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (the “LWDA”), or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

64. Plaintiff, by his employment with Defendants and Defendant's violations of the Labor Code as alleged herein, is an aggrieved employee withstanding to bring an action under the PAGA.

65. Plaintiff, by virtue of **Exhibit A** has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws including, without limitation,

1 the penalty provisions identified in Labor Code § 2699.5. Since the LWDA took no steps within the
2 time period required to intervene and because Defendant took no corrective action to remedy the
3 allegations set forth above, Plaintiff, as a representative of the people of the State of California, will
4 seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the
5 DLSE. This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

6 “The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the
7 following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3,
8 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206,
9 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5,
10 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1,
11 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
12 subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision
13 (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551,
14 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970,
15 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c)
16 and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision
17 (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294,
18 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391,
1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections
1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25,
1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of
subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section
1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811,
1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800,
2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6,
6310, 6311, and 6399.7.”

19 66. Pursuant to Labor Code section 2699, any provision of the Labor Code that already
20 provides a civil penalty to be assessed and collected by the Labor and Workforce Development
21 Agency, or any of its departments, divisions, commissions, boards, agencies or employees for
22 violation of the code or does not provide a civil penalty may be recovered through a civil action
23 brought by an aggrieved employee on behalf of himself or herself, and other current or former
24 employees pursuant to the procedures set forth in Labor Code, section 2699.3.

25 67. Plaintiff, on his own behalf, and on behalf of the other similarly situated Aggrieved
26 Employees is an “aggrieved employees” because they were employed by the violators (the named
27 Defendant herein and its related Doe affiliates and subsidiaries), during the one-year statutory time
28

period and during such time period, was subjected to one or more violations, including Labor Code sections 2802, and are therefore properly suited to represent the interests of a PAGA person.

68. Plaintiff is informed and believes that Defendant have violated and continue to violate provisions of the Labor Code. Despite mailing of **Exhibit A** at least 65-days prior to the filing of the filing of this Complaint, the LWDA has not notified Plaintiff that it intends to investigate the alleged Labor Code violations identified in **Exhibit A**, such that, by operation of law, Plaintiff is entitled to commence this cause of action as a representative action under the PAGA. *See Lab. Code 2699.3(a)(2)(A)*.

Failure to Reimburse Expenses

69. California Labor Code § 2802 provides that an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

70. As alleged supra, during the Class Period, Defendant required Plaintiff MATTHEW MOREL and certain Class/Subclass Members to use their personal cell phones to perform their job duties each workday throughout their employment. Defendant required them to give subordinates work instructions, to send information regarding work meetings, to manage project status, to coordinate responsibilities between staff members, to maintain work-related communications between supervisors, coworkers, and subordinates, among many other things.

71. During the Class Period, Defendant required Plaintiff and certain of the Class/Subclass Members to routinely use their personal internet access, their home internet access, and their own personal data plans to carry out their assigned duties, i.e., to supervise subordinates, to access work emails, to communicate with colleagues for work, to access data needed for work, among many other things.

72. Defendant continues to refuse to reimburse and indemnify Plaintiff and members of the Class/Subclass for all necessary expenditures and losses incurred by them, including but not limited to, items related to home office space; the proportionate share of each of their mortgage or rent for their home office; property taxes; homeowner insurance premiums; utilities such as electricity, gas, and water; and trash collection services.

73. As a direct result of Defendant's failure to reimburse Plaintiff and the Aggrieved Employees for their personal cell phones, personal cell phone data plans, personal Internet access, and home Internet access to perform their job duties, which they necessarily incurred in the discharge of their work-related duties, Defendant has violated Labor Code Section 2802.

Damages

74. Defendant's actions constitute continuing and ongoing unlawful activity prohibited by the California Labor Code, as alleged and therefore these acts constitute violations of the PAGA.

75. Pursuant to California Labor Code § 2699, Plaintiff requests and is entitled to recover from Defendant civil penalties in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and

76. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any other applicable statute.

77. As alleged supra, notice of these violations was provided pursuant to Labor Code §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days have passed since notice was provided and Plaintiff has not received any notification from the LWDA that it intends to investigate the alleged violations. Therefore, the representative Plaintiff is entitled to prosecute his PAGA claims under Labor Code §2699, et seq.

78. The proper measure of damages and penalties under the PAGA is as to all Aggrieved Employees, whether a part of this action or not. Further this claim needs no certification to proceed with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

79. Accordingly, Plaintiff respectfully requests that the Court award judgment and relief in their favor including an award of civil penalties under California Labor Code §2699 in the amount of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent violation during the relevant period, according to proof.

80. Plaintiff as the personal representatives of the Aggrieved Employees, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred

1 during the liability period, in an amount according to proof, as to those penalties that are otherwise
2 only available to public agencies. Said funds recovered will be distributed in accordance with the
3 PAGA, with at least 75% of said PAGA penalty recovery being reimbursed to the State of California
4 and the LWDA.

5 **PRAYER FOR RELIEF**

6 **PLAINTIFF ON BEHALF OF HIMSELF AND ALL MEMBERS OF THE CLASS,**
7 **PRAY FOR RELIEF AS FOLLOWS:**

8 **ON THE FIRST AND SECOND CAUSES OF ACTION**

- 9 1. For an order certifying the First and Second causes of action and maintaining said causes
10 of action as a class action pursuant to Cal. Code Civ. Proc. § 382 on behalf of the
11 members of the Class and/or Subclasses who were either employed or who performed
12 work here in the State of California within the Class Period and that notice of the
13 pendency of this action be provided to members of the Class;
- 14 2. Designation of Plaintiff as the Class Representatives for the Class and/or Subclasses and
15 Plaintiff's attorneys as Class Counsel for the Class and/or Subclasses;
- 16 3. A declaratory judgment that the practices complained of herein are unlawful under
17 California law;
- 18 4. Appropriate equitable relief to remedy Defendant's violations of California law
19 including, but not necessarily limited to, an order enjoining Defendant from continuing
20 their unlawful practices;
- 21 5. All appropriate California statutory penalties;
- 22 6. Reimbursement of the necessary expenses incurred by the Class in the discharge of their
23 duties;
- 24 7. Pre-judgment and post-judgment interest, as provided by law;
- 25 8. Such other equitable relief as the Court may deem just and proper;
- 26 9. Attorneys' fees and costs of suit, including expert fees and fees pursuant to California
27 Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, and other applicable
28 California laws; and

ON THE THIRD CAUSE OF ACTION

1. Upon the PAGA Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code §2698 et seq., for Defendant' violations of Labor Code §2802;
2. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code §2699 and any other applicable statute; and
3. For such other and further relief the Court may deem just and proper.

DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands trial of all issues by jury.

DATED 2022-02-23

SW EMPLOYMENT LAW GROUP, APC

By: _____



Jacob N. Whitehead, Esq.

Maria Burciaga, Esq.

Attorneys for Plaintiffs and All Others Similarly
Situating

EXHIBIT A



August 2, 2021

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Via USPS First Class Mail

Robert J. Slimp, CEO
HNTB Corporation
191 Peachtree Street NE, Suite 3300
Atlanta, Georgia 30303

Via Certified Mail

Cogency Global, Inc., Registered Agent
HNTB Corporation
1325 J Street, Suite 1550
Sacramento, California 95814

Re: Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that Matthew Morel has retained Whitehead Employment Law to represent him and other similarly-situated current and former employees (collectively, the "Aggrieved Employees") against HNTB Corporation, a Delaware corporation, duly registered with the California Secretary of State to conduct business in California, and Does 1 through 20 (hereinafter, "HNTB") regarding claims of violation of the California Labor Code.

HNTB currently or formerly employed the Aggrieved Employees, who work or have worked as exempt or non-exempt, hourly or salary employees, including but not limited to project controls managers, construction managers, document controls specialists, and other similarly situated positions (the "Covered Positions"). This notice formally serves to inform HNTB of Mr. Morel's intent to file a PAGA complaint against HNTB and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for HNTB's failure to reimburse work-related expenses.

As further detailed below, HNTB violated the provisions of California Labor Code § 2802.

Mr. Morel worked for HNTB from approximately January 4, 2021, until approximately July 20, 2021, as a full-time, salary, exempt project controls manager. Mr. Morel's job duties included reviewing and managing construction project budgets, conducting risk analysis, and supervising contracts and business processes for the document control specialist team.

During the relevant statutory period, the Aggrieved Employees had to utilize their personal cell phones and internet for work-related duties and functions without reimbursement from HNTB. Mr. Morel and the Aggrieved Employees were required to pay for their own

internet and data plans to work remotely from home. The Aggrieved Employees were required to purchase/pay for internet to access HNTB's computer software, access their work email, and contact co-workers and supervisors in connection with the performance of their daily job requirements. Mr. Morel and the Aggrieved Employees who worked remotely routinely utilized their internet and data plans during every shift to complete their expected job duties. Purchasing/paying for a personal internet or data plan was mandatory for employment at HNTB as the Aggrieved Employees were required to work remotely while using systems provided by HNTB that required an internet connection.

In addition, Mr. Morel and the Aggrieved Employees were required to utilize their personal cell phones on a daily basis in the discharge of their work related duties. Mr. Morel and the Aggrieved employees utilized text messages and phone calls as the primary way of communicating with staff that were working remotely. For example, Mr. Morel daily utilized his personal cell phone to assign tasks to co-workers, send logistical information regarding team meetings, and provide project status updates to supervisors. At no time has HNTB ever reimbursed Mr. Morel or the Aggrieved Employees for the expenses they incurred in the utilization of their personal internet and cell phones in the discharge of their work related duties in violation of California Labor Code § 2802.

Mr. Morel is informed and believes that the said violations are ongoing, systematic and uniform. Mr. Morel intends to bring an action against HNTB under the PAGA to recover penalties and for injunctive relief as provided by California law.¹

Failure To Reimburse Work-Related Expenses

Labor Code § 2802(a) provides, *"An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."*

¹ Without limitation, Mr. Morel, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7.

As described above, during the relevant statutory period, the Aggrieved Employees utilize or utilized their personal cell phones to communicate with co-workers and supervisors regarding work related tasks. Mr. Morel utilized his personal cell phone to send project status updates, assign tasks to co-workers, and coordinate team meetings. In addition, Mr. Morel was required to pay for an internet plan that he utilized for over eight hours per day while working remotely from his home. During the six months that Mr. Morel worked from his home office, he was required to pay for personal internet to access HNTB's software and work email, and to complete all work related tasks.

At no time has HNTB reimbursed Mr. Morel and the Aggrieved Employees for the costs they incurred in the utilization of their personal cell phone and internet in the discharge of their work related duties. HNTB violated Labor Code § 2802 and the Aggrieved Employees seek reimbursement of these work-related expenses incurred, as well as their attorney's fees, penalties and interest thereon as permitted by § 2802.

Conclusion

In sum, as has been factually alleged, HNTB violated Labor Code § 2802. Mr. Morel on his own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, and interest as provided by California law, as well as attorneys' fees and civil penalties as provided for under Labor Code § 2699.

Mr. Morel requests the LWDA to investigate the above claims and to provide notice of the agency's intent to investigate under the PAGA's provisions. Alternatively, Mr. Morel requests the agency please inform him if it does not intend to investigate these violations so that he may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW



Jacob N. Whitehead

JNW/eem