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April 14, 2021

VIA ELECTRONIC SUBMISSION

Julie A. Su
Acting Secretary
California Labor & Workforce Development Agency
800 Capital Mall, MIC-55
Sacramento, CA 95814

Re: **Siemens Healthcare Diagnostics, Inc.**
PAGA Case No. LWDA-CM-815938-20 Supplemental Notice

Dear Ms. Su:

I am writing again on behalf of aggrieved employee Veronica Graham (“Ms. Graham” or “Plaintiff”). This updated notice for PAGA Case No. LWDA-CM-815938-20 is being submitted as a supplement or follow-up to the original notice filed on December 18, 2020 on behalf of Ms. Graham and the other aggrieved employees who were employed by **Siemens Healthcare Diagnostics, Inc.** (“Siemens” or “Defendant”) in the job title of Account Manager, Account Executive, or similar titled/dutied sales related positions in California and were misclassified as “exempt” by Siemens.

As previously discussed in Ms. Graham’s original notice, Siemens’ policies and practices, including the misclassification of Ms. Graham and the other aggrieved employees has resulted in violation of the following Labor Code sections: 201, 202, 203, 204, 226, 226.3, 510, 515(d), 558, 1174(d), 1194, 1198, 2802, and the IWC Wage Orders. However, as additional grounds for the before noted underpayment of overtime wages, termination wages, and failure to provide accurate wage statements, Siemens has also failed to include all remuneration, including commissions and bonuses into Ms. Graham and the other aggrieved employees’ regular rate of pay for the purposes of making the correct overtime calculation and payments owed to these individuals. Since the aggrieved employees were misclassified, as set forth in Ms. Graham’s original notice, all forms of remuneration including bonuses and commissions for reaching sales goals/targets, should be included in the overtime rate of pay. Siemens has also failed to reimburse all necessary home office expenses Ms. Graham and the other aggrieved employees incurred while working from home, especially during the last year as a result of the pandemic.

Under California law, all commissions and non-discretionary bonuses must be included in the regular rate of pay for the purposes of correctly calculating overtime. Furry v. East Bay Publishing, LLC, (2018) 30 Cal.App.5th 1072, 1081. Ms. Graham and the other aggrieved employees, earn commissions and bonuses from their sales activities, however these commissions and bonuses were not included in Ms. Graham and the other aggrieved employees’

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regular rate of pay for the purposes of calculating the overtime that they are owed as a result of their misclassification. This failure to include all remuneration, including appropriate commissions and non-discretionary bonuses into the regular rate of pay has contributed to Siemens' failure to pay all overtime wages, its provision of inaccurate wage statements with incorrect/missing overtime totals and hourly straight and overtime rates of pay on the statements (including the number of hours worked at each rate), and its failure to pay all wages at termination of employment. After Ms. Graham's initial notice Siemens sought to limit the amount of overtime the aggrieved employees worked through training/presentations but has still failed to pay the aggrieved employees any overtime or to keep records of the start and end time of all work periods and meal periods as required by Labor Code §§ 1174(d), 1198 and the IWC Wage Orders.

Labor Code § 2802 requires an employer to reimburse all necessary business expenses incurred by their employees. Siemens required Ms. Graham and the other aggrieved employees to be based out of their homes, necessitating that Ms. Graham and the other aggrieved employees perform their work and sales duties there as well. In order to carry out their work duties from home, Ms. Graham and the other aggrieved employees were required to purchase and/or maintain necessary office supplies and office infrastructure including but not limited to: internet connections and telephone services, paper, printing supplies, video conference software subscriptions and myriad other necessary office equipment and services in order to carry out their necessary and essential work duties. Ms. Graham and the other aggrieved employees have had to purchase and/or maintain these materials and services, but Siemens has failed to properly reimburse the aggrieved employees for these necessary business expenses as required by Labor Code § 2802.

Very truly yours,

GLEASON & FAVAROTE LLP

A handwritten signature in black ink, appearing to read 'Torey Favarote', with a long horizontal line extending to the right.

Torey Joseph Favarote

TJF/dd

cc: Siemens Healthcare Diagnostic, Inc.
CT Corp.
818 West Seventh Street, Suite 930
Los Angeles, California 90017
[certified mail]

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