



GLEASON & FAVAROTE LLP

213.452.0510 Main
213.452.0514 Fax

4014 Long Beach Blvd., Suite 300
Long Beach, CA 90807

gleasonfavarote.com

December 18, 2020

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.**
California Labor Code section 2699, *et seq.* violations

Dear Ms. Su:

I am writing on behalf of aggrieved employee Veronica Graham (“Graham” or “Plaintiff”). This notice is being made to the Labor & Workforce Development Agency pursuant to the requirement of Labor Code section 2699 *et al.* that Graham, and other aggrieved employees, who were employed by **Siemens Healthcare Diagnostics, Inc.** (“Siemens” or “Defendant”) in the job title of “Account Manager” or similar titled/dutied position and were misclassified as “exempt” by Siemens throughout California. Graham and each of the aggrieved employees employed by Siemens in this past year are (1) primarily engaged in sales activities, (2) are classified by Siemens as exempt employees, (3) customarily work more than 8 hours a day and/or 40 hours a week but are not paid statutory overtime pay, (4) do not earn at least half of their compensation from paid commissions and (5) do not spend more than half of their time away from their home offices. As set forth in the standardized offer letter to Ms. Graham, attached as Exhibit “A” hereto, “account managers” for Siemens are **“based out of [their] home[s].”** (See Exhibit “A” attached hereto.)

Over the last 12 months, Ms. Graham and the aggrieved employees **have not** spent **“more than half the working time away from [their place of business (i.e., home)] selling tangible or intangible items or obtaining orders or contracts for products, services or use of facilities”** as set forth in IWC Wage Order 4, ¶ 2(M). Due to the COVID-19 pandemic, Ms. Graham and the other aggrieved employees have been required to spend nearly *all* of their work time at their place of business selling Siemens’ products via phone calls and through videoconferencing. Ms. Graham and other aggrieved employees work significant overtime to meet the sales criteria required by Siemens, typically 60-70 hours per week but are not paid overtime for such overtime worked. Moreover, Ms. Graham and the aggrieved employees do not receive commissions in excess of 50% of their overall compensation as required for the “inside sales” exemption. As neither the “inside” nor “outside” sales exemptions apply and Siemens has failed to pay its account managers statutory overtime, significant California Labor Code violations have occurred and continue to occur.

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As a result of the misclassification of Ms. Graham and the other account manager aggrieved employees, the following Labor Code provisions have been violated: §§ 201, 202, 203, 204, 223, 226, 510, 512, 515(d), 558, 1194, 1198, and IWC Wage Order 4.

As set forth above, by misclassifying Ms. Graham and the other aggrieved employees as “exempt” from overtime, Siemens has failed to pay all wages due to the aggrieved employees, including overtime pay (Lab. Code § 201, 202, 203, 510, 512, 515(d), 558, 1194, 1198 and IWC Wage Order 4). Additionally, by failing to pay all overtime wages to the aggrieved employees, Siemens violated by Labor Code § 226 by providing the aggrieved employees with itemized wage statements that did not accurately reflect the number of regular and overtime hours worked or the regular and overtime hourly rates earned by such aggrieved employees, nor the correct wages earned. Finally, as to terminated employees who were not paid all overtime worked and earned while employed, Siemens failed to pay such employees for all earned wages at the time of termination in violation of Labor Code § 203.

The specified Labor Code and wage orders provide that the aggrieved employees shall not be employed more than eight (8) hours in any workday or more than forty (40) hours in any workweek unless the employee receives one and one-half (1 1/2) times his regular rate of pay and shall not be employed more than twelve (12) hours in any workday or more than eight (8) hours on the seventh (7th) consecutive workday in any workweek unless the employee receives double his regular rate pay.

Ms. Graham and the aggrieved employees regularly worked over eight (8) hours per day and over forty (40) hours per week for Siemens, but Siemens willfully and intentionally refused, and continues to refuse, to pay Ms. Graham and the aggrieved employees the required overtime compensation. Additionally, Ms. Graham and the aggrieved employees are required to attend training sessions throughout the year (approximately 2-4 weeks per year) while simultaneously performing their sales tasks but, once again, are not paid overtime for any of the time spent in excess of 8 hours a day performing such work. This is another example of a company-wide violation.

Defendant’s pattern, practice and uniform administration of its corporate policy and practice to not pay Ms. Graham and the aggrieved employees all wages when due, as described herein, is unlawful and violates Labor Code §§ 201, 202, 203, 510, 512, 515(d), 558, 1194, 1198 and IWC Wage Order 4.

Labor Code section 226 requires an employer to furnish its employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned, net wages earned, all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual. As a pattern and practice, in violation of Labor Code section 226(a), Defendant did not furnish accurate itemized wage statements. As one example, since Ms. Graham and the aggrieved employees were misclassified as “exempt” by Defendant, Defendant did not accurately record or

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document the actual hours worked, including overtime, by Ms. Graham and the aggrieved employees as required by California law.

Additionally, Labor Code 1174(d) requires that employers also keep records showing the hours worked daily and wages paid to every employee. Defendant failed to comply with this provision as it did not keep a record of Ms. Graham or the aggrieved employees' time that they spent under the control of the Defendant.

Because Ms. Graham and the aggrieved employees were misclassified and not paid proper overtime or double time pursuant to California law, Defendant failed to remit all wages earned by the aggrieved employees at the time of termination.

This letter sets forth the specific provisions of the California Labor Code and IWC Wage Orders that have been violated by Siemens and the facts and theories supporting those violations pursuant to California Labor Code section 2699.3.

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/ts

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

Connie L. Michaels
Laura E. Schneider
Littler Mendelson
2049 Century Park East, 5th Floor
Los Angeles, CA 90067-3107
cmichaels@littler.com
lschneider@littler.com

EXHIBIT A



PERSONAL & CONFIDENTIAL

July 29, 2016

Veronica Latrice Graham
REDACTED

Dear Veronica,

Siemens is pleased to extend an offer of employment as Account Manager - Clinical Lab DX (Orange County), Level – 11-S01 for the Healthineers Division, reporting into the Deerfield, Illinois office location. In this role, you will be based out of your home. You will be reporting to Cynthia Rudy.

We are offering you an annual salary of REDACTE to be paid on a bi-weekly basis. Your hours in this position may fluctuate, and each weekly portion of your salary will compensate you for all hours you work during that week.

You are eligible to participate in the Sales Incentive Plan. Your annualized incentive target is REDACTE. Your manager will provide a document containing plan details in the weeks following your hire.

You are eligible for benefits under the Siemens Group Health & Welfare Benefits Program and the Siemens Savings Plan. These programs offer a variety of benefit options for you and, if applicable, your spouse or domestic partner and dependent children. The benefits offered include medical, prescription drug, dental, vision, flexible spending accounts, life, disability, financial planning, Siemens Savings 401(k) plan and an employee assistance program. You must enroll in your Siemens benefits within 30 days of your start date to have coverage effective as of your start date. If you do not enroll within this 30-day period, certain coverage will not be available to you until the next annual enrollment period. Please visit the Siemens Benefits QuickStart website (www.benefitsquickstart.com) to learn more about your benefit options.

You will be eligible for Paid Time Off (PTO) per the Siemens Healthineers Division PTO policy. For your first calendar year, your PTO will be prorated based on your start date. PTO can be used for any reason, including vacation, an occasional sick day, doctor appointments for you or your family, or for personal business. Please refer to the Siemens Healthineers Division PTO policy for further details.

You will be receiving an American Express Corporate Card, please complete the enclosed application. Once complete, please bring a printed copy with you on your first day of employment and have your manager sign the application. You will return your completed application by logging into AskHR on Demand at: <https://ps-americas21.gss.siemens.com/psp/AskHROnDemand/> and create a case.

Acceptance of this position requires participation in the Siemens Business Vehicle Plan. This offer is contingent upon you meeting the eligibility requirements of the plan. Your driving record must be verified and eligibility approved according to the Siemens Healthineers Management Services Vehicle Safety Program prior to being allowed to participate in the plan or drive on company business.

This offer is contingent upon confirmation of a satisfactory driving record as documented through receipt and review of a Motor Vehicle Report from the applicable government agency that is acceptable to the Siemens Healthineers Division.

Your offer of employment is contingent upon successful completion of a pre-employment drug test. You will be receiving an email or an overnight package with specific instructions related to the testing facility. The collection must be completed within 48 hours not including holidays or weekends. If you are unable to complete the collection within the time limit, please contact your Recruiter or Staffing Coordinator immediately. If the collection is not performed within 48 hours and scheduling conflicts are not communicated to Siemens, your employment eligibility may be discontinued.

SIEMENS

This letter sets forth the entire offer of employment. Any promises, agreements or understandings not stated herein are not binding. Certain benefits referred to herein are subject to defined plans or policies, which may change at Siemens's discretion. This offer of employment does not constitute a contract of employment between Siemens and the employee for any fixed term. All Siemens employees are employed on an at-will basis, whereby the employment may be terminated with or without cause or advance notice by either the employee or the employer. Further, the terms of employment may be altered at any time at Siemens's sole discretion. No one other than an officer of Siemens has the authority to enter into an agreement for employment for a specified period of time, and any such agreement must be in writing and must be signed by you and an officer of Siemens. No other policies or practices of Siemens should be construed as varying the at-will status of any employee.

This offer of employment is contingent upon your meeting the Company's employment standards, including, but not limited to, acceptable results of verification of all information provided on your application and resume, and successful results of a pre-employment drug-test. Prior to the start of your employment, you will be required to read and sign several policies covering the Siemens Healthineers Division's business practices. In addition, you will be required to provide verification of Employment Eligibility as required under the Immigration Reform and Control Act of 1986. You must provide proof of your eligibility to work within your first three business days of employment.

If you believe that you will be unable to accept this offer due to your inability to furnish satisfactory proof of employment eligibility, please contact Gretchen Holly immediately.

On behalf of Siemens we look forward to welcoming you and we anticipate that our relationship will be mutually beneficial.

This offer expires at the end of the fifth business day following the date of this offer.

You will receive an email in the near future advising you of your official start date. This is the only date you should rely upon when making plans regarding your start of employment with Siemens.

You also understand that by clicking the "Accept" button in the electronic Employee On-Boarding process, you are confirming that you have read, understand, accept and agree to be legally bound to the terms and conditions contained in this offer as well as the New Hire documents, agreements, and policies contained in the electronic Employee On-Boarding process.

Sincerely,

Cynthia Rudy
Siemens Healthineers, Hiring Manager

Gretchen Holly
Siemens Talent Acquisition Recruiter