

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CRISTIANO DINIZ and ANTONIO)
THOMAS, individually and on behalf of)
all those similarly situated,)

Plaintiffs,)

v.)

ALPHA OB GYN GROUP, P.C. and DR.)
DANIEL E. MCBRAYER SR.,)

Defendants.)

CIVIL ACTION NO.:
1:12-cv-02621-JOF

**PLAINTIFFS’ STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF THEIR
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs Cristiano Diniz (“Diniz”) and Antonio Thomas (“Thomas”) hereby submit this Statement of Undisputed Material Facts in Support of their Motion for Partial Summary Judgment.

I. Defendants Failed To Pay Plaintiffs Time And A Half Their Regular Rates For All Hours Over Forty In A Workweek On The Regular Pay Day For The Period In Which Such Workweek Ended.

1. During Plaintiff Diniz's employment with Defendants, he was paid on an hourly basis. (Ex. A (McBrayer Dep. Vol. I) at 22:9-24; Ex. B (Payroll Ledgers).)¹

2. During Plaintiff Thomas's employment with Defendants, he was paid on an hourly basis. (Ex. A (McBrayer Dep. Vol. I) at 22:9-24; Ex. B (Payroll Ledgers).)

3. Plaintiff Diniz worked more than 40 hours in a workweek during his employment with Defendants. (Ex. D (Defendants' List of Diniz Hours); Ex. E (McBrayer Dep. Vol. 3) at 19:2-12.)

4. Plaintiff Thomas worked more than 40 hours in a workweek during his employment with Defendants. (Ex. F (Thomas Timesheet); Ex. E (McBrayer Dep. Vol. 3) at 30:19-32:5.)

5. Before July 27, 2012 – the date on which Plaintiff Diniz filed the Complaint in this action – Plaintiff Diniz did not receive one and one-half times his regular rate of pay for all time he worked over 40 hours in each workweek in

¹ Exhibit numbers refer to the exhibits attached hereto.

which he worked over 40 hours for Defendants. (Ex. B (Payroll Ledgers); Ex. E (McBrayer Dep. Vol. 3) at 19:13-21:6; Ex. I (Diniz Paychecks).)

6. Before July 27, 2012 – the date on which Plaintiff Diniz filed the Complaint in this action – Plaintiff Thomas did not receive one and one-half times his regular rate of pay for all time he worked over 40 hours in each workweek in which he worked over 40 hours for Defendants. (Ex. B (Payroll Ledgers); Ex. E (McBrayer Dep. Vol. 3) at 31:24-33:13; Ex. F (Thomas Timesheet), p. 2; Ex. J (Thomas Paycheck).)

7. Defendants did not pay any hourly employees at a rate of time-and-a-half their regular rate of pay for hours they worked over 40 in a particular workweek at the time that they worked those hours on the regular pay day for the period in which such workweek ends. (Ex. E (McBrayer Dep. Vol. 3) at 28:9-23; Ex. B (Payroll Ledgers).)

8. Defendants deny in this litigation that (a) Plaintiff Diniz was paid on an hourly basis, (b) Plaintiff Diniz worked over 40 hours during one or more workweeks, and (c) prior to July 27, 2012, Plaintiff Diniz was not paid one and a half times his regular rate of pay for all time worked over 40 hours in one or more of those workweeks. (Ex. G (Pls.’ First Set of Requests for Admission to Defendants (“RFAs”)) at Nos. 13, 14, 16; Ex. H (Defs.’ Responses to Plaintiffs’

First Set of Requests for Admissions to Defendants (“RFA Responses”)) at Nos. 13, 14, 16.)

9. Defendants deny in this litigation that (a) Plaintiff Thomas was paid on an hourly basis, (b) Plaintiff Thomas worked over 40 hours during one or more workweeks, and (c) prior to July 27, 2012, Plaintiff Thomas was not paid one and a half times his regular rate of pay for all time worked over 40 hours in one or more of those workweeks. (Ex. G (RFAs) at Nos. 20, 21, 23); Ex. H (RFA Responses) at Nos. 20, 21, 23.)

DATED: January 10, 2014

By: s/ Andrew L. Weiner
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CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1

I certify that this document was prepared in compliance with Local Rule 5.1.

This document was prepared in Times New Roman 14-point font.

By s/ Andrew L. Weiner
Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I certify that on January 10, 2014, I electronically filed the foregoing Statement of Undisputed Material Facts in Support of Plaintiffs’ Motion for Partial Summary Judgment with the Clerk of the Court using the CM/ECF system, which will automatically send notice of such filing to the following attorneys of record:

A. Keith Logue, Esq.
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By s/ Andrew L. Weiner
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