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1 C O N T E N T S

2 E X A M I N A T I O N

3 Examination by Mr. Weiner 4

4 E X H I B I T S

5

6 Plaintiff's Description Marked/First
7 Exhibit Identified

8 III.1 Cristiano Diniz Hours 15

9 27 Time Sheet 16

10 III.2 Payroll Ledger 17

11 III.3 Antonio Thomas' Hours 29

12 III.4 Alpha Gyn Time Sheet 30

13 15 Letter 8/29/12 44

14 III.5 Statement 51

15 III.6 Statement 51

16 III.7 Affidavit 62

17 25 Notes and Check 8724 66

18 (Plaintiff's Exhibit Numbers 15, 25, and 27

19 were previously marked.)

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1 P R O C E E D I N G S

2 (Whereupon,

3 DANIEL E. MCBRAYER, SR.,

4 was called as a witness and, having first been

5 duly sworn, was examined and testified as

6 follows:)

7 EXAMINATION

8 BY MR. WEINER:

9 Q Good afternoon, Dr. McBrayer. You
10 understand that you're still under oath; right?

11 A Correct.

12 Q Are you physically and mentally able to
13 answer my questions fully and truthfully today?

14 A Yes.

15 Q Is there any reason why you think you cannot
16 physically and mentally answer my questions fully and
17 truthfully?

18 A No.

19 Q Are you taking any medications or have you
20 taken any medications today that would affect your
21 ability to answer my questions fully and truthfully?

22 A No.

23 Q Do you regularly take any medications you
24 haven't taken today that might affect your ability to
25 answer my questions fully and truthfully?

1 A No.

2 Q We've previously met in January; right?

3 A Yes.

4 Q And you gave testimony at that time --

5 A Yes.

6 Q -- in connection with this case; right?

7 A Correct.

8 Q Prior to today, have you reviewed that
9 testimony?

10 A No.

11 Q Have you reviewed anyone else's testimony in
12 this case prior to today?

13 A No.

14 Q Did you do anything to prepare for today's
15 deposition?

16 A No.

17 Q Did you speak with Mr. Logue prior to
18 today's deposition?

19 A No.

20 Q Did you speak with Sheila Bynum prior to
21 today's deposition --

22 A Oh, yes, I did.

23 Q -- about this deposition?

24 A I did, yes.

25 Q When did you speak with Ms. Bynum?

1 A This morning.

2 Q Any other times?

3 A Yesterday afternoon for a few minutes.

4 Sorry.

5 Q Any other times?

6 A No.

7 Q The discussion with Ms. Bynum this morning,
8 approximately how long did that last?

9 A Five minutes.

10 Q And your discussion yesterday afternoon and
11 this morning, were they in-person discussions?

12 A Yes.

13 Q Talking about yesterday afternoon's
14 five-minute discussion or a couple -- I think you said
15 a couple-minute discussion, actually -- what did you
16 speak about?

17 A Just sticking with what I remembered,
18 telling the truth.

19 Q Did she say that to you, or did you say that
20 to her?

21 A Both. It was both our conversations.

22 Q Did you talk yesterday afternoon with
23 Ms. Bynum about what had happened with either Cris
24 Diniz or Antonio Thomas's employment?

25 A Yes.

1 Q What did you talk about?

2 A Just the fact that I didn't recall that much
3 about the whole issue anymore.

4 Q Do you remember anything else you talked
5 about yesterday afternoon with Ms. Bynum?

6 A I don't recall anything else.

7 Q Was anyone else with you when you had this
8 discussion with Ms. Bynum yesterday afternoon?

9 A No.

10 Q The discussion this morning, the five-minute
11 discussion, do you remember what you spoke to
12 Ms. Bynum about this morning?

13 A Yes.

14 Q What?

15 A Just telling the truth, sticking to the
16 facts.

17 Q Anything else?

18 A If I don't recall, say I don't recall.

19 Q In either discussion with Ms. Bynum, did you
20 speak with her about whether or not Mr. Thomas or
21 Mr. Diniz had been properly paid overtime when they
22 worked for your company?

23 A No, not directly.

24 Q Did you speak indirectly about that issue?

25 A I think I asked her if there was ever any

1 evidence that he had any overtime that we knew was
2 discovered.

3 Q Who is the "he" in that sentence?

4 A Cris.

5 Q What did she say?

6 A She said no, that he had never brought
7 forward any evidence that he had any overtime.

8 Because I had asked him -- I'd asked him to prove to
9 me that he had overtime before he left. And if he had
10 proved it, I would have -- I told him I'd pay him.

11 Q When did the discussion take place in which
12 you asked Ms. Bynum if he had any overtime for which
13 he hadn't been paid?

14 A Today.

15 Q That was part of today's five-minute
16 discussion?

17 A Correct.

18 Q You know who Heidi Loner is; right?

19 A Yes.

20 Q She was an hourly employee at your medical
21 practice; right?

22 A Correct.

23 Q Is she still employed there?

24 A Yes.

25 Q After your previous deposition in this case

1 back in January, did you have any discussions with
2 Ms. Loner, either alone or with anyone else,
3 concerning the payment of overtime to hourly employees
4 at your office?

5 A I don't recall that. I couldn't tell you if
6 I did or not. I think sometime I had a conversation
7 with her regarding overtime, but I'm not -- I'm not
8 even certain of that.

9 Q Do you remember having any conversation with
10 Ms. Loner, Ms. Bynum, and Angela Buckner about payment
11 of overtime since your last deposition in January?

12 A I don't recall any -- I think -- I think so,
13 but I don't recall any specifics about it.

14 Q Do you remember saying to Ms. Loner that you
15 hadn't been informed that overtime hadn't been paid
16 and asking her why you weren't informed?

17 A Repeat your question, please.

18 MR. WEINER: Do you mind reading it
19 back?

20 (The record was read by the reporter.)

21 THE WITNESS: I don't recall that.

22 BY MR. WEINER:

23 Q Do you remember asking Ms. Loner why she
24 didn't come to you with issues concerning overtime?

25 A I don't recall that.

1 Q When you say you don't recall that, does
2 that mean --

3 A I don't recall it.

4 Q For the sake of the record, let me finish my
5 question. I'll let you finish your answer.

6 A Sure.

7 Q When you say you don't recall that, does
8 that mean you don't remember or you don't think it
9 happened?

10 A It means I don't recall it.

11 Q Could it have happened?

12 A Sure.

13 Q If Ms. Loner said that it happened, would
14 you have any reason to dispute her memory?

15 A No.

16 Q Do you remember telling Ms. Loner that you
17 were upset that she hadn't come to you with issues
18 concerning overtime?

19 A No. I don't recall.

20 Q If Ms. Loner remembered that you were upset
21 with her, would you have any reason to dispute that?

22 A No, I would not.

23 Q Do you remember either Ms. Loner, Ms. Bynum,
24 or Ms. Buckner telling you that there had been an
25 error in overtime that Margaret Sampson started and it

1 had been carried forward?

2 A I vaguely remember some form of
3 conversation, yes.

4 Q Tell me what you remember about that.

5 A Not any more than what you just stated, that
6 there had been some -- there had been a mistake. I
7 can't -- it's so vague that I can't put any specifics
8 to it.

9 Q Do you remember who told you that?

10 A No.

11 Q Do you remember where you were when they
12 told you that?

13 A I told you it was so vague that I can barely
14 remember that such a conversation happened.

15 Q If Ms. Loner testified that it had been an
16 error from Margaret Sampson that had been carried
17 forward, would you have any reason to dispute her
18 testimony?

19 A I've never been proven that there was a
20 mistake in overtime. I don't know.

21 Q I appreciate that answer, but that wasn't
22 actually my question.

23 If Heidi Loner testified that there had been
24 an error from Margaret Sampson that had been carried
25 forward relating to overtime, would you have any

1 reason to dispute Ms. Loner's testimony?

2 A Yes, because I don't know that she's an
3 expert on overtime.

4 Q Okay.

5 A Or ever was.

6 Q I'll try it one more time.

7 A I already said yes, because I don't know
8 that she is a -- she has any real knowledge of what
9 overtime really is.

10 Q So you would dispute that Ms. Loner
11 testified --

12 A No --

13 Q -- that there was --

14 A -- I wouldn't dispute that. I would dispute
15 the fact that she -- you asked if I would dispute the
16 fact that she said that. And I said the fact is I
17 don't know that she has any expertise in overtime.

18 Q Putting aside whether she's correct in what
19 she said or not, would you dispute whether Heidi Loner
20 came to you and said that there was an error from
21 Margaret Sampson that had been carried forward
22 relating to overtime?

23 A No.

24 Q Do you know whether Cris Diniz ever worked
25 over 40 hours in workweek during his employment with

1 you and your company?

2 A Not specifically, no. I've been told that
3 he did not. And it was my policy, office policy, that
4 if anyone had overtime, they were supposed to let us
5 know that they were in overtime.

6 Q How were they supposed to let you know that
7 there was overtime?

8 A They were supposed to let the office manager
9 know.

10 Q How were they supposed to let the office
11 manager know?

12 A It was just a verbal or written. There was
13 no -- there was no specifics to it --

14 Q How were they --

15 A -- to my knowledge.

16 Q How were they --

17 A To my knowledge.

18 Q Were you finished? I didn't mean to
19 interrupt.

20 A I'm sorry.

21 Q Hourly employees kept time sheets; right?

22 A Correct.

23 Q And those time sheets listed the hours that
24 they worked; correct?

25 A Correct; as far as I know. I didn't look at

1 them.

2 Q And if those time sheets showed that an
3 employee had worked more than 40 hours in a workweek,
4 was that good enough to let you know that they worked
5 overtime?

6 A I had never seen any time sheets.

7 Q If a time sheet showed that there was an
8 employee who worked 40-plus hours in a workweek, was
9 that enough to tell a supervisor that overtime had
10 been worked, or did they have to also verbally tell
11 the supervisor about the overtime?

12 THE WITNESS: That's speculation, isn't
13 it? I don't know.

14 MR. LOGUE: Answer him if you know.

15 THE WITNESS: I don't know.

16 BY MR. WEINER:

17 Q I'm asking about your practice. I'm not
18 asking you to speculate.

19 A Bottom line is that I would assume that it
20 would be.

21 Q You would assume that the time sheet would
22 be enough?

23 A Yes.

24 MR. LOGUE: While you're looking for
25 the document, I'm going to get a pen.

1 (Brief pause in the proceedings.)

2 (Plaintiff's Exhibit No. III.1 was marked
3 for identification.)

4 BY MR. WEINER:

5 Q Dr. McBrayer, I've handed you a document
6 that Defendants produced to us that's titled Cristiano
7 Diniz Hours from 2011, dash, 2012.

8 A I -- this was from my office?

9 Q Well, let me ask the question. Then you can
10 clarify. Okay?

11 A Okay.

12 Q I'd like you to take a minute to look at the
13 document. And then first let me know if you've ever
14 seen this before.

15 A First let you know -- I've never seen this.

16 Q As I said, Defendants produced this document
17 to us. If you could, please, turn to page 17.

18 A I'm on page 17.

19 Q If you could look at the very top of the
20 page for the workweek that is delineated here starting
21 May 13th, 2012.

22 A Yes.

23 Q Do you see that -- where it has a total, it
24 says 40.5 hours?

25 A Yes, I do.

1 Q Does that indicate to you that Cris Diniz
2 worked overtime that week?

3 A Not -- no, it doesn't, because it's
4 impossible, because on 5/17, he's got nine hours.
5 We're only open six hours a day. It's got to be
6 wrong. It's got to be an error.

7 Q I'm going to hand you a document that's
8 previously marked Exhibit 27.

9 A It's still going to be an error. It may be
10 an exhibit, but it's still going to be an error.

11 Q Okay. Let me ask the question, please.

12 A Sure.

13 Q Do you see on Plaintiff's Exhibit 27, this
14 is an Alpha Gyn time sheet for Cris Diniz from 5/16 to
15 5/31; right?

16 A Yes.

17 Q Okay. If you look at the date 5/17, there's
18 a time in of 6:30 and a time out of 3:30; right?

19 A Yes.

20 Q And that's a total hours of nine; right?

21 A Yes.

22 Q And when you add all the hours up on this
23 time sheet under total hours -- at the bottom you'll
24 see total -- it 100.75; right?

25 A Yes.

1 Q Do you know if Mr. Diniz was paid for 100.75
2 hours for this pay period?

3 A No.

4 (Witness confers with counsel.)

5 BY MR. WEINER:

6 Q Do you have something you want to say on the
7 record?

8 A Yeah. We're not -- he's not even supposed
9 to be there at 1:30.

10 (Witness confers with counsel.)

11 MR. WEINER: All right. It's fine if
12 you want to confer. But, please, let's go off
13 the record and go outside if you want to do that.

14 THE WITNESS: Oh, okay. Sure.

15 (Plaintiff's Exhibit No. III.2 was marked
16 for identification.)

17 BY MR. WEINER:

18 Q All right. Dr. McBrayer, I'm handing you
19 what's been marked Plaintiff's -- it's been marked
20 Exhibit III.2. This is a payroll ledger that's been
21 produced to us by Defendants.

22 If you could turn to about halfway into the
23 document, there's going to be a page where on the top
24 in handwriting, it says dated 6/1/12. Can you let me
25 know when you get there?

1 A 6/1/12?

2 Q Right.

3 A Yes. I'm there.

4 Q If you'll look about five lines down,
5 there's an entry for Cris Diniz. Do you see that?

6 A Five lines down. Oh, okay. All right.
7 Yes.

8 Q You'll see it says rate, fourteen. That's
9 \$14 an hour; right?

10 A Yes.

11 Q And then hours, the next column, it says
12 100.75; right?

13 A Yes.

14 Q And then gross, it says 1410.5 for
15 Mr. Diniz; right?

16 A Correct.

17 Q Would you agree with me that this payroll
18 ledger in Plaintiff's Exhibit III.2 covers the same
19 period as the Alpha Gyn time sheet that's Plaintiff's
20 Exhibit 27?

21 A Yes.

22 Q And so even though you contend now that
23 there was an error on the time sheet, you and Alpha
24 still paid Mr. Diniz for the amount of time that's
25 indicated on Plaintiff's Exhibit 27; correct?

1 A Correct.

2 Q So, now, again, looking at both
3 Exhibit III.1 and Plaintiff's Exhibit 27, do these
4 indicate that Mr. Diniz worked more than 40 hours --

5 A Yes.

6 Q -- during --

7 A I'm sorry.

8 Q Looking again at Exhibit III.1 and
9 Plaintiff's Exhibit 27, do these indicate that
10 Mr. Diniz worked more than 40 hours during that
11 particular workweek?

12 A According to this, yes.

13 Q And if you're looking again at
14 Exhibit III.2, where Mr. Diniz's rate was \$14 an hour,
15 worked 100.75 hours, gross was 1410.5, does this
16 indicate to you that Mr. Diniz was paid time and a
17 half for any of the hours of that 100.75 that he
18 worked?

19 A I don't -- I don't know what you're
20 referring to. Again, you'll have to show me where
21 you're talking about again. Are you talking about the
22 40.5 hours here on this?

23 Q We're looking at Exhibit III.2.

24 A Yes.

25 Q If you look at the line Mr. Diniz, at a rate

1 of \$14 an hour, he worked 100.75 hours.

2 A Right.

3 Q He was paid fourteen ten point five gross
4 for those hours; right?

5 A Correct.

6 Q Does that indicate to you that Mr. Diniz
7 received time and a half for any of the hours he
8 worked of those 100.75?

9 A I think this is where we went ahead and --
10 he came in and complained that he had that overtime,
11 and I paid him for that overtime.

12 Q When did that happen?

13 A I don't recall exactly.

14 Q It happened after this --

15 A Yes.

16 Q -- payroll; right?

17 A Right. He came in and complained that he
18 hadn't been paid, and I paid. And there was -- there
19 was a check I wrote him out for time that he was
20 claiming he had overtime.

21 Q So I just want to make sure we're on the
22 same page here.

23 At the time that Mr. Diniz worked these
24 100.75 hours, he wasn't paid overtime, or time and a
25 half, for any of those hours at this time; right?

1 A According to this.

2 Q Well, do you have any reason to believe he
3 was paid overtime --

4 A No.

5 Q -- at the time he worked those hours?

6 A No.

7 Q Okay. But it's your testimony that at some
8 point later in time, he was paid some amount of
9 overtime; correct?

10 A Correct.

11 Q Okay.

12 A And there had been a -- on his word.

13 Q If you could, please, turn in Plaintiff's
14 Exhibit III.2, the document in front of you --

15 A Okay.

16 Q -- about four pages -- no -- three pages
17 beyond, you'll see a page that's titled Payroll
18 Ledger, date, June 15, 2012.

19 A Yes.

20 Q You'll see there's a line there for Cris
21 Diniz that says rate, \$14.

22 A Mm-hm (affirmative).

23 Q Hours, 110.

24 A Mm-hm (affirmative).

25 Q And it says gross, \$1540. Do you see that?

1 A Yes.

2 Q Do you know if Mr. Diniz received time and a
3 half for any of those 110 hours that he worked?

4 A According to the fact that he came to me and
5 said he had had overtime he wanted me to pay for, I
6 paid him for that.

7 Q Okay. So, again, I want to be absolutely
8 clear.

9 A Well, you did. I answered you.

10 Q Let me ask the question.

11 A You asked a question. I answered you.

12 MR. LOGUE: Go ahead. Ask a question.

13 MR. WEINER: That's what I'm trying to
14 do.

15 MR. LOGUE: Okay.

16 BY MR. WEINER:

17 Q At the time Mr. Diniz worked these 110 hours
18 that are indicated on the payroll ledger dated
19 June 15, 2012, do you know if he was paid overtime at
20 that time for any of those 110 hours?

21 A Now you said at that time. No, I do not.
22 You didn't say that before. That's okay.

23 MR. LOGUE: Let's don't argue. Let's
24 just --

25 THE WITNESS: Okay.

1 BY MR. WEINER:

2 Q Are you saying that you don't know if he was
3 paid -- if he was paid overtime at that time for those
4 110 hours or no, he wasn't paid overtime for any of
5 those 110 hours?

6 A I don't know. Then you left it open again,
7 so -- but he did come back to me and ask me for
8 overtime pay, and then I paid him for it.

9 Q Okay. The overtime pay that he came back to
10 you and you paid him for, that was later; right?

11 A Correct.

12 Q That was right after he had filed his
13 complaint in this case; right?

14 A I don't know that.

15 Q Do you remember when you paid him that
16 overtime?

17 A No, I do not. But I did not know that he
18 had filed.

19 MR. WEINER: There's no question
20 pending.

21 MR. LOGUE: Don't.

22 THE WITNESS: Okay.

23 MR. LOGUE: No, don't argue.

24 THE WITNESS: Okay.

25 BY MR. WEINER:

1 Q Now, looking at Plaintiff's Exhibit III.2,
2 you'll see there are a number of employees who are
3 listed on each of these pages; right?

4 A Correct.

5 Q And they all have various hourly rates;
6 right?

7 A Correct.

8 Q And they all worked different amounts of
9 hours; right?

10 A Correct.

11 Q Looking at the amounts that they were
12 paid -- and I'm talking about the gross amounts
13 here -- do you know if any of these employees were
14 paid time and a half for the hours they worked over 40
15 in a workweek at the time that they had worked those
16 hours?

17 A No, I do not.

18 Q Well, look through the document and tell me
19 if you see any employees who you believe might have
20 been paid time and a half for hours that they worked
21 over 40 in a workweek? And I'm talking about the
22 whole document, not just the first page.

23 A I don't see -- I'm -- I don't -- I had
24 nothing to do with any of this. I don't see where
25 people were paid overtime, but I wouldn't even know

1 how to know if they were paid overtime or not. I
2 don't have a calculator with me.

3 Q Is Pamela Combs an hourly employee?

4 A Yes.

5 Q What about Judy Pumarejo? Is she an hourly
6 employee?

7 A Judy who?

8 Q Pumarejo.

9 A You're asking me, really, a question I don't
10 even really know for sure, but I would assume so.

11 Q Well, I'm not trying to trick you here.

12 Let's --

13 A I know that. I know you're not trying to
14 trick me.

15 Q Let's take an example. If you could flip in
16 Plaintiff's Exhibit III.2 to the page that's titled
17 Payroll Ledger, dated August 31st, 2012.

18 MR. LOGUE: Should be further back.

19 THE WITNESS: August 31st, I have
20 that.

21 BY MR. WEINER:

22 Q Okay. Let's look at the line for
23 Ms. Pumarejo.

24 A Okay.

25 Q It says rate, \$13 an hour; right?

1 A Correct.

2 Q Hours, 100.25; right?

3 A Correct.

4 Q And a gross, thirteen-oh-three point

5 twenty-five. Do you see that?

6 A Yes.

7 Q Do you know if Ms. Pumarejo was paid time

8 and a half for any hours she worked over 40 in a

9 particular workweek for this pay period?

10 A Yes. She was paid later.

11 Q Okay. Do you know if Ms. Pumarejo was paid

12 time and a half for hours over 40 she worked in a

13 particular workweek at the time she worked, she

14 performed this work?

15 A No. I don't know that.

16 Q So when you say she was paid later, is it

17 your understanding that she was given a check at some

18 point later in time that paid her for the overtime she

19 had previously worked?

20 A Yes.

21 Q Do you know approximately how much later she

22 was given that check?

23 A No, I do not.

24 Q Do you remember if it was a week? A month?

25 Six months?

1 A Do not -- do not recall.

2 Q So this gross number, thirteen-oh-three
3 point two five, does not include time and a half;
4 right?

5 A It does -- it does when you calculate that
6 she was paid later on for the overtime.

7 Q Let me ask again. The thirteen-oh-three
8 point two five, that's simply thirteen times a hundred
9 point two five; right?

10 A Correct.

11 Q And you can see far on the right-hand side
12 of the page, there's a check number for Ms. Pumarejo,
13 8765?

14 A Correct.

15 Q So she was paid at that point in time with a
16 check in the gross amount of thirteen-oh-three point
17 two five?

18 A Correct.

19 Q So prior to issuing checks to pay employees
20 back for overtime, do you know if any employees
21 received time and a half for hours they worked over 40
22 in a workweek during any of the pay periods that are
23 contained in Plaintiff's Exhibit III.2?

24 A No, I do not.

25 Q Well, if you could take a minute to look

1 through Plaintiff's Exhibit III.2 and let me know if
2 you see any employees who were paid time and a half, I
3 would appreciate it.

4 A Well, they were paid time and a half when
5 they were corrected. You left that open again. On
6 the sheets --

7 Q Let me ask a close-ended question. Okay?

8 A Mm-hm (affirmative).

9 Q Do you know if any employees were paid time
10 and a half at the time that they were paid as shown in
11 Exhibit III.2 for hours they worked over 40 in a
12 particular workweek?

13 A No, I do not.

14 Q Okay. Can you please go through the
15 document and let me know if you see any employees who
16 were paid time and a half at the time that they worked
17 over 40 hours in a particular workweek.

18 MR. LOGUE: We'll stipulate they
19 weren't.

20 MR. WEINER: Thank you.

21 BY MR. WEINER:

22 Q Do you agree with that stipulation?

23 A Yes.

24 Q Do you know if Antonio Thomas ever worked
25 more than 40 hours in a particular workweek?

1 A No, I do not.

2 (Plaintiff's Exhibit No. III.3 was marked
3 for identification.)

4 BY MR. WEINER:

5 Q Dr. McBrayer, I'm showing you what's been
6 marked Plaintiff's Exhibit III.3. This is a document
7 that I'll represent to you has been produced by
8 Defendants to us. It's titled Antonio Thomas' Hours
9 for 2012. Have you ever seen this document before?

10 A No.

11 Q So I take it you don't know who created it;
12 right?

13 A Correct.

14 Q If you look down right in the middle of the
15 page, there's a time period, 6/1/12 to 6/15/12. And
16 it says hours, 117.25. Do you see that?

17 A Yes.

18 Q Does that help you remember whether
19 Mr. Thomas worked more than 40 hours in a particular
20 workweek during his employment with Defendants?

21 MR. LOGUE: Just --

22 THE WITNESS: Yes.

23 BY MR. WEINER:

24 Q Did you say yes?

25 A Yes.

1 MR. LOGUE: Does that refresh your
2 memory?

3 THE WITNESS: I have no memory of it.
4 I mean this is the first time I've seen -- this
5 is the first time -- I know this -- again, he
6 came to me and claimed that he had overtime, and
7 I just paid him.

8 BY MR. WEINER:

9 Q I'd really appreciate it if you'd just stick
10 to the question.

11 A Okay. Sorry.

12 Q Do you remember if Mr. Thomas worked more
13 than 40 hours in a particular workweek during his
14 employment with Defendants?

15 A No.

16 (Plaintiff's Exhibit No. III.4 was marked
17 for identification.)

18 BY MR. WEINER:

19 Q Dr. McBrayer, I'm handing you Plaintiff's
20 Exhibit III.4. It's an Alpha Gyn time sheet for
21 Mr. Thomas for the pay period 6/1 to 6/15.

22 Do you see that?

23 A Yes.

24 Q And this time sheet covers the same period
25 that we were just talking about in Plaintiff's

1 Exhibit III.3; right?

2 A Correct. Yes.

3 Q Looking at this time sheet, does this time
4 sheet indicate that Mr. Thomas worked more than 40
5 hours in a particular workweek while he was employed
6 by Defendants?

7 A Yes.

8 Q Okay. And I apologize if this is the same
9 question I just asked you, but I think I might have
10 left out a word.

11 Does this time sheet, Plaintiff's
12 Exhibit III.4, indicate to you that Mr. Thomas worked
13 40 or more hours in a particular workweek?

14 A Yes.

15 Q Do you know when the workweek for Defendants
16 typically started?

17 A During this timeframe, if I recall, it was
18 Sunday through Saturday.

19 Q Okay. So looking at Plaintiff's
20 Exhibit III.4, the first workweek, the first full
21 workweek indicated on this time sheet is starting on
22 6/4/2012; right?

23 A According to this, yes.

24 Q And if we take the hours worked during that
25 workweek starting 6/4/2012, that would take us from

1 6/4 through 6/9; correct?

2 A Correct.

3 Q And if you add the hours up from 6/4 to 6/9,
4 that would give you more than 40 hours; correct?

5 A Correct.

6 Q If you could pull out Plaintiff's
7 Exhibit III.2 one more time, and if you could turn to
8 the page that's titled June 15th, 2012.

9 A I've got it.

10 Q You see the very last line, you see an entry
11 for Toni Thomas; right?

12 A Yes.

13 Q And that very last line covers the same time
14 period that we've been looking at in Exhibit III.4;
15 correct?

16 A Correct.

17 Q For that time period, Mr. Thomas was paid
18 \$12 an hour; correct?

19 A Correct.

20 Q For 117.25 hours; right?

21 A Correct.

22 Q That's the same number of hours that were
23 indicated on Plaintiff's Exhibit III.4; right?

24 A Correct.

25 Q For a gross total of \$1407; right?

1 A I don't see that.

2 Q Well, I think you're pointing to the wrong
3 column. Just the gross total (indicating).

4 A Yes.

5 Q Okay. Do you know if Mr. Thomas was paid
6 time and a half at this time for any of the hours that
7 are indicated on this payroll ledger for June 15,
8 2012?

9 A No.

10 Q No. Are you saying no, he wasn't or no, you
11 don't know?

12 A No, I don't know. But, you know, it appears
13 he wasn't.

14 Q Now, this payroll ledger that we're looking
15 at, Exhibit III.2, the first one starts at January 15,
16 2012, and the last one goes through November of 2012;
17 correct?

18 A Correct.

19 Q You and Alpha don't have any records that
20 predate this payroll ledger; correct?

21 A Not to my knowledge.

22 Q Would somebody know more information than
23 you?

24 A Yes.

25 Q Who?

1 A Angela Buckner.

2 Q Anyone else?

3 A Not to my knowledge.

4 Q Prior to 2012, do you have any reason to
5 believe that you or Alpha had paid hourly employees at
6 a rate of time and a half for hours they worked over
7 40 in a particular workweek?

8 A Repeat -- I'm sorry. Repeat your question.

9 MR. WEINER: Do you mind reading it
10 back, please.

11 (The record was read by the reporter.)

12 THE WITNESS: No. Again, it was
13 against office policy to have overtime.

14 BY MR. WEINER:

15 Q So prior to 2012, if an employee worked more
16 than 40 hours in a particular workweek, did they get
17 paid anything for those hours that were over 40?

18 A Should have been.

19 Q Were they paid straight time?

20 A Don't know. In other words, I did not have
21 anything to do with the payroll. You won't see one
22 check or one point where I did payroll.

23 Q Do you remember an hourly employee named
24 Victoria Cherry --

25 A Victoria Cherry. No.

1 Q When you say no, you don't remember her or
2 she wasn't an employee?

3 A I don't know. I don't remember her.

4 Q Do you have any knowledge of whether she
5 worked more than 40 hours in any workweek for
6 Defendants?

7 A Again, it was supposed to -- I was supposed
8 to be informed if someone had more than 40 hours a
9 week. I was not informed that anyone had more than 40
10 hours a week. I had an abundance -- I had an
11 abundance of employees. It was just -- I had 15
12 people, 15 to 17 people working for me.

13 Q So was it hard to keep track?

14 A I didn't try to keep track. It was also
15 office policy not to work overtime.

16 Q Do you remember if Victoria Cherry ever
17 worked more than 40 hours in a particular workweek?

18 A I don't remember her, so how can I remember
19 that?

20 Q So is the answer, no, you don't remember --

21 A No.

22 Q -- her ever doing that?

23 A Correct.

24 Q Do you know what a bona fide meal break is
25 under the Fair Labor Standards Act?

1 A No.

2 Q Do you or anyone at Alpha do anything to
3 train employees as to what constitutes a bona fide
4 meal break under the Fair Labor Standards Act?

5 A Not -- the office manager.

6 Q What does the office manager do to train
7 employees as to what constitutes a bona fide meal
8 break --

9 A I don't know.

10 Q -- under the Fair Labor Standards Act?

11 A I don't know.

12 Q Do you know if she does anything?

13 A No.

14 Q And the office manager that we're talking
15 about when Cris Diniz and Antonio Thomas were
16 employed, that was Angela Buckner; right?

17 A Correct.

18 Q Do you or anyone else at Alpha do anything
19 to monitor hourly employees or otherwise ensure that
20 they receive a bona fide meal break?

21 A I don't know.

22 Q Do you or anyone at Alpha do anything to
23 ensure that hourly employees do not perform
24 compensable work during their meal breaks?

25 A I don't know.

1 Q How about you? Do you do anything to ensure
2 that hourly employees do not perform compensable work
3 during their meal breaks?

4 A No.

5 Q Do you know if you and Alpha have ever
6 automatically deducted 30 minutes for a meal break
7 from Cris Diniz's compensable times when he worked a
8 shift over six hours?

9 A No.

10 Q Do you know if you've ever done that for
11 Antonio Thomas?

12 A No.

13 Q When you say no, does that mean no, you
14 don't know or no, you haven't done it?

15 A No, I don't know.

16 Q Would the best source to understand whether
17 that happened or not be the time records?

18 A I don't know.

19 Q Well, if you wanted to find out whether
20 30 minutes had automatically been deducted, what would
21 you do to find that out?

22 A I wouldn't do it.

23 Q What would you do?

24 A I would go to the office manager.

25 Q Okay. So you'd talk to the office manager?

1 A Correct.

2 Q What do you think the office manager would
3 do --

4 A I don't know.

5 Q -- when presented with that question?

6 A I don't know.

7 Q When Cris Diniz worked for Defendants, do
8 you know where he usually ate his lunch?

9 A No.

10 Q Did you sometimes buy him lunch?

11 A No.

12 Q Did you sometimes have your own lunch and
13 share some of your lunch with him?

14 A Yes.

15 Q Did you sometimes bring him the lunch in the
16 recovery room?

17 A I don't recall that. No.

18 Q Okay. To be clear, do you not recall it or
19 no, you didn't do that?

20 A No, I didn't do that, not the recovery room.

21 Q When you were bringing him your lunch to
22 share, where did you do that?

23 A That was outside in the break room.

24 Q Where was the break room actually located?

25 A As you enter, on the right.

1 Q Which way?

2 A Third floor. There's also one on the first
3 floor, the top floor.

4 Q As far as Victoria Cherry goes, do you know
5 if you ever automatically deducted 30 minutes from her
6 compensable times on days she worked more than six for
7 a meal break?

8 A I don't recall Victoria Cherry.

9 Q Now, we talked a little earlier about
10 payments of overtime that you had made to Cris Diniz
11 and Antonio Thomas at a later period of time.

12 Do you remember that testimony?

13 A Yes.

14 Q Tell me about that. What happened?

15 A Basically, they just came to the office
16 manager and then came to me and said that they had had
17 overtime. And I told the office manager, pay them for
18 their overtime, just on their claim that they had had
19 it.

20 Q And after they went to the office manager,
21 did either the office manager or them come to you?

22 A The office manager came to me.

23 Q Were they with the office manager when she
24 came to you?

25 A I don't recall.

1 Q Was the office manager Angela Buckner at
2 that time?

3 A Yes.

4 Q And what did Ms. Buckner say to you?

5 A I don't recall their exact conversation.
6 She said that they were claiming they had overtime.

7 Q Did she tell you how much overtime they had?

8 A I don't recall the actual amount.

9 Q Did she have any documents with her?

10 A No.

11 Q And what did you say back to her when she
12 said they have overtime?

13 A I said pay them if they -- you know,
14 according to what was going on.

15 Q How did she respond to that?

16 A I don't -- I don't recall. She did it. She
17 paid them.

18 Q Do you know if she paid them for the amount
19 of overtime that they were claiming?

20 A For that time period, because I actually was
21 there with them during this. To my knowledge, she
22 did, yes.

23 Q When you say for that time period, what do
24 you mean?

25 A For the time period where they were

1 claiming -- you're talking about "they." So this was
2 during the fire, as I recall, right after the fire.

3 Q So you're talking about overtime from May,
4 June, July?

5 A As far as I can recall, yes.

6 Q And you don't remember whether that payment
7 was made before or after they filed the lawsuit;
8 right?

9 A I had -- I had heard nothing about a lawsuit
10 at this time.

11 Q The question was a little bit different.

12 A I don't know then.

13 Q You don't know whether it was before or
14 after the lawsuit; right?

15 A I know that I hadn't heard of any lawsuit
16 when we paid them. But that doesn't mean there's not
17 a lawsuit in place.

18 Q Okay. I think we're saying the same thing,
19 but I just want to make sure the record is clear.

20 When they were paid the overtime that you're
21 talking about, you don't know whether they had already
22 filed the lawsuit or not; correct?

23 A That would be correct.

24 Q In addition to the overtime that Defendants
25 paid them, did Defendants also pay them liquidated

1 damages?

2 A I don't know.

3 Q Did --

4 MR. WEINER: Go ahead.

5 MR. LOGUE: Objection.

6 BY MR. WEINER:

7 Q Did Defendants pay them any amounts more
8 than the overtime that they were -- they told you that
9 they believed they were owed?

10 A No, not to my knowledge.

11 Q When Defendants paid them the overtime that
12 they said that they were owed, did Defendants also pay
13 them for any of their attorney's fees?

14 A I just discussed with you that we didn't
15 know that there was -- I didn't know there was a
16 lawsuit involved.

17 Q Is the answer to my question no?

18 A Correct.

19 Q Are you aware that if Mr. Diniz and
20 Mr. Thomas are successful in this case that they could
21 be entitled to their attorney's fees from you and from
22 Alpha?

23 A No.

24 MR. WEINER: Let's take a short break,
25 please.

1 (Brief pause in the proceedings.)

2 MR. WEINER: We're back on the record.

3 Dr. McBrayer, remember your testimony is still
4 under oath.

5 BY MR. WEINER:

6 Q Do you remember that Defendants terminated
7 Mr. Diniz's employment at the end of August 2012?

8 A I remember that, yes.

9 Q What were the reasons for the termination?

10 A I don't recall everything, but the Number 1
11 reason was because he didn't bring me a certificate
12 from the doctor to return to work.

13 Q Anything else that you remember?

14 A I don't recall anything else at this time.

15 Q Is there anything that I could show you that
16 could help you remember?

17 A Sure.

18 Q Like what?

19 A That's up to you. That's your stuff.

20 Q Well, I'm asking you. Is there anything
21 that you can think of that I could show you that could
22 help you remember any other reasons?

23 A If I recall, there was a termination note.

24 Q Anything else?

25 A That's all I can remember.

1 Q Dr. McBrayer, I'm showing you what's
2 previously marked as Plaintiff's Exhibit 15. Take a
3 minute to look at the document. Let me know if this
4 is the termination note that you're referring to.

5 A Yes.

6 Q Does this help you remember additional
7 reasons why Mr. Diniz's employment was terminated?

8 A It's in clear language as far as the
9 exhibit, yes.

10 Q So what were the reasons that Mr. Diniz's
11 employment was terminated?

12 A It's stated here. Do you want me to state
13 all this again?

14 Q Yes, please.

15 A Insubordination for failure to sign Alpha
16 Group's policies and procedures on drugs and
17 alcohol --

18 (The court reporter asked for
19 clarification.)

20 A (Continuing) Insubordination for failure to
21 sign Alpha Group's policies and procedures on drugs
22 and alcohol and computer usage of the internet and
23 e-mail; unprofessional derogatory statements made
24 while working at the clock -- on the clock at Alpha
25 Group -- Group to current and former employees about

1 Alpha Group Gyn; derogatory statements about me while
2 working on the clock; and unprofessional conduct,
3 causing employees to not want to come to work at Alpha
4 Group -- Alpha Gyn Group.

5 Q Okay. Were there any other reasons for this
6 termination?

7 A I think we've already stated the fact that,
8 if I remember correctly, again, he had not brought in
9 his "may return to work" release from his doctor. And
10 also he had gone to employees asking them to sign on
11 with him on this lawsuit. That, I do recall too.

12 Q Anything else?

13 A That's all I can remember.

14 Q Is there anything else I could show you that
15 would help you remember additional reasons?

16 A I don't know.

17 Q Is there anything you can think of?

18 A I don't -- no, I can't think of anything.

19 Q Did you write the letter that's Plaintiff's
20 Exhibit 15?

21 A No.

22 Q Who wrote it?

23 A Who this was written by, I don't -- I don't
24 know.

25 Q Your signature; right?

1 A Correct.

2 Q And there are initials next to your
3 signature. Is that just M.D.?

4 A Correct.

5 Q Do you remember if you read the letter
6 before you signed it?

7 A I didn't write the letter.

8 Q I said: Do you remember if you read the
9 letter before you signed it?

10 A Yes, I read it.

11 Q And you agreed with everything it said;
12 right?

13 A Correct. Yes.

14 Q Do you remember if when you read the letter,
15 making any changes to it?

16 A Again, this -- I didn't write -- write it.
17 It was my office -- I guess it was my office
18 secretary. And at that time, that was --

19 Q I don't want you to speculate.

20 A I can't -- then I don't know.

21 Q Do you remember if when you read the letter
22 for the first time and before you signed it, if you
23 made any changes to it?

24 A No, I don't recall.

25 Q Now, you gave me -- I think it was six

1 reasons for the termination, but there's only four
2 listed here.

3 Do you know why two of the reasons aren't
4 listed?

5 A I don't know.

6 Q Do you remember saying to anyone at the time
7 the letter was written that, hey, we didn't put all
8 the reasons in here?

9 A No, I do not.

10 Q Do you recall saying to anyone at the time
11 the letter was written, hey, we didn't put the
12 Number 1 reason in here?

13 A No, I do not. I was trying to run my office
14 at the same time all this was going on, trying to see
15 patients.

16 Q Let's talk about the reason that's listed as
17 Number 1 here, the insubordination for failure to sign
18 policies and procedures. Okay.

19 Can you tell me what were the circumstances
20 of Mr. Diniz's supposed failure to sign the policies
21 and procedures?

22 A No.

23 Q Do you know anything about his supposed
24 failure to sign the policies and procedures?

25 A No. No, other than I was told by the office

1 manager that he hadn't.

2 Q So you were told by Angela Buckner?

3 A Pardon?

4 Q You were told by Angela Buckner?

5 A Yes.

6 Q Do you remember when you were told by Angela

7 Buckner?

8 A Pardon?

9 Q Do you remember when you were told --

10 A No.

11 Q -- by Angela Buckner?

12 A No.

13 Q Do you know if any other employees refused

14 to sign --

15 A No.

16 Q -- the policies and procedures?

17 A No, I do not.

18 Q So you don't know if Ms. Loner refused to

19 sign them; correct?

20 A Correct.

21 Q Did you take any kind of employment action

22 against Ms. Loner for refusing to sign the policies

23 and procedures?

24 A I did not know that she did not sign.

25 Q Do you know if Alpha took any employment

1 action against Ms. -- Ms. Loner for refusing to sign
2 the policies and procedures?

3 A Again, I did not know that -- how would I
4 know that if I did not know that she refused to sign?

5 Q So just to be clear, when I'm saying Alpha,
6 you're responding with "I." You consider yourself to
7 be Alpha; right?

8 A No, not entirely. Employees.

9 Q Okay. Then I want to ask the question again
10 just so I'm clear.

11 Do you know if Alpha took any kind of
12 employment action against Ms. Loner for refusing to
13 sign the policies and procedures?

14 A Again, I did not know that she refused, so
15 how can I -- I can't answer your question.

16 Q You can say I don't know --

17 A I don't know.

18 Q -- if you don't know.

19 A I don't know.

20 Q The second thing in the letter, Plaintiff's
21 Exhibit 15, is unprofessional, derogatory statements.

22 Do you see that?

23 A Yes.

24 Q Tell me about that.

25 A Again, this was -- this was -- this letter

1 was from my office manager. I don't -- I don't know
2 any -- the statements that were being related to here,
3 personally.

4 Q Okay. Putting aside what you know
5 personally, do you know anything about any kind of
6 unprofessional or derogatory statements that are
7 described in Plaintiff's Exhibit 15?

8 A I was told that he had said there were a
9 bunch of -- there was a bunch of heifers at the
10 office.

11 Q Okay. Anything else?

12 A That's all I recall.

13 Q Who told you that?

14 A I don't recall that.

15 Q Do you remember if it was Angela Buckner?

16 A I don't recall.

17 Q Prior to Mr. Diniz's termination, do you
18 know if other Alpha employees had made unprofessional
19 and derogatory statements while working there?

20 A No, I do not.

21 Q Do you remember an employee named Ramona
22 Thomas?

23 A Yes.

24 Q Do you remember Ms. Thomas having a problem
25 with Angela Buckner?

1 A No.

2 (Plaintiff's Exhibits No. III.5 and III.6
3 were marked for identification.)

4 BY MR. WEINER:

5 Q Dr. McBrayer, I'm handing you what's been
6 marked as Plaintiff's Exhibit III.5 and III.6.

7 Could you take a minute to look at the
8 documents and let me know if you've ever seen them
9 before.

10 A I haven't seen -- never seen Exhibit III.6.
11 Haven't seen Exhibit III.5. Don't recall seeing them.

12 Q Okay. Exhibit III.5 looks like a note dated
13 February 29, 2012. On the bottom there's initials.
14 It looks like PC.

15 Does that look to you like Pamela Combs's
16 initials?

17 A I don't know.

18 Q In the document, you'll see it says: Every
19 time Angela tried to speak to Ramona, she walked away
20 and was very disrespectful in every way. She is
21 always disrespectful to Angela.

22 Do you see that?

23 A Yes.

24 Q And then in the third paragraph, it says:
25 Angela wrote her up over the incident on Friday,

1 February 24th. Ramona refused to sign it. She said
2 she would sign it in front of Dr. McBrayer only.

3 Do you see that?

4 A Yes.

5 Q Do you remember -- strike that.

6 Does Plaintiff's Exhibit III.5 refresh your
7 recollection as to any issues between Ramona and
8 Angela Buckner?

9 A No. No, it does not.

10 Q Do you know if Alpha took any employment
11 action against Ramona for her disrespectful attitude?

12 A Not -- not to my knowledge.

13 Q Let's look at Exhibit III.6. It's a
14 statement dated February 28th, 2012. It's signed
15 Heidi Loner. Do you see that?

16 A Yes.

17 Q It says: Ramona came in, was very pleasant
18 until Angela spoke to her. Angela tried to talk to
19 her and even complimented Ramona. However, Ramona
20 rolled her eyes, was nonresponsive, and this was very
21 defiant and somewhat disrespectful. This behavior
22 continued throughout the day towards Angela.

23 Do you see that?

24 A Yes.

25 Q And at the bottom, it says: Ramona

1 continued to refuse to deal with the reprimand, and
2 Angela told her not to come in tomorrow if she was not
3 going to sign the reprimand. Ramona said fine.

4 Do you see that?

5 A Yes.

6 Q Does this refresh your recollection as to
7 any issues between Ramona and Angela?

8 A No.

9 Q Do you know if Alpha took any employment
10 action against Ramona other than sending her home that
11 day --

12 A No.

13 Q -- in response to Ramona's defiant and
14 disrespectful behavior?

15 A No.

16 Q Okay. If you'll come back to Plaintiff's
17 Exhibit 15, Number 3 is derogatory statements about me
18 while working on the clock.

19 Do you see that?

20 A Yes.

21 Q Do you have any knowledge as to those
22 derogatory statements?

23 A He was -- if my memory is correct, he said I
24 was running a slaughterhouse. I was told he said I
25 was running a slaughterhouse.

1 Q Did he say that to you?

2 A No.

3 Q Who did he say it to?

4 A I don't recall.

5 Q How did you find out that he said that?

6 A Through -- just through my office. I don't
7 recall that even. I'm sure it was through the office
8 manager then.

9 Q Do you remember specifically who?

10 A No.

11 Q The office manager that you just referred to
12 was Angela Buckner?

13 A Yes.

14 Q Did she tell you when he said that?

15 A No.

16 Q Did she tell you in what circumstances he
17 said that?

18 A No.

19 Q Do you remember anything else about these
20 supposed derogatory statements that Mr. Diniz
21 supposedly made?

22 A No.

23 Q Number 4 is unprofessional conduct, causing
24 employees to not want to come to work at Alpha Gyn
25 Group. Do you see that?

1 A Yes.

2 Q Does that refer to what you were saying
3 earlier about Mr. Diniz trying to get other employees
4 to join the lawsuit?

5 A As far as I can recall, yes.

6 Q Well, let me ask the question a different
7 way. What does Number 4 refer to?

8 A I don't -- I don't recall, to be quite
9 frank.

10 Q Is there anything that I could show you that
11 could help you remember what Number 4 refers to?

12 A That would be up to you.

13 Q Is there anything that you can think of that
14 I could show you?

15 A No. No.

16 Q How did you learn that Mr. Diniz was talking
17 to other employees about the lawsuit?

18 A They came -- came to Angela, and then they
19 came to me.

20 Q Which employees came to you?

21 A If I recall, it was Heidi Loner and Kensey.
22 And I may have -- I don't recall exactly.

23 Q Do you know which -- I'm sorry. Were you
24 finished?

25 A Yes.

1 Q Do you know which employees went to
2 Ms. Buckner?

3 A No.

4 Q When Ms. Loner came to you, what did she
5 tell you?

6 A I don't recall the exact conversation, but
7 more or less that he was trying to get them to join
8 the lawsuit.

9 Q What did she tell you about that?

10 A That's all I can recall, that he was just
11 trying to get them to join the lawsuit against me.

12 Q And that was one of the reasons why his
13 employment was terminated; right?

14 A Yes.

15 Q When Kensey -- and I assume you mean Kensey
16 Griffith; is that right?

17 A Correct.

18 Q When Kensey came to you, what do you
19 remember her saying?

20 A Nothing more than what I've just stated.

21 Q You said one of the other reasons for the
22 termination was Mr. Diniz did not bring a certificate
23 to return to work; right?

24 A Correct.

25 Q You said that was the Number 1 reason;

1 right?

2 A That was a very imposing reason, because I
3 didn't know if he was going to have a seizure at the
4 office.

5 Q It was a very important reason; right?

6 A Yes.

7 Q And it's not listed in Plaintiff's
8 Exhibit 15; correct?

9 A Correct.

10 Q When did you ask Mr. Diniz to bring a return
11 to work note?

12 A Several times, but I don't -- I don't recall
13 the exact dates. It's approximately two weeks before
14 termination. And several days before the termination,
15 I asked him again.

16 Q Let's take the approximately two weeks
17 timeframe. Was that the first time that he had been
18 requested to bring one?

19 A Yes, as far as I know. I mean the office
20 manager may have asked for one before that.

21 Q Okay. Approximately two weeks before this
22 termination, was that the first time you had asked him
23 to bring a return to work --

24 A I'd say it was approximately two to three
25 weeks, yeah.

1 Q Okay. And you said that the concern was
2 that he might have a seizure in the office?

3 A Correct.

4 Q At the time that he was asked to bring the
5 note, what was his job?

6 A He had different jobs. They were
7 cross-trained. But, basically, I think he was working
8 autoclave at that time.

9 Q Prior to him being asked to bring the note,
10 he was in the recovery room; right?

11 A Correct.

12 Q And then at some point, he got moved to the
13 autoclave; right?

14 A Correct.

15 Q In the recovery room, he's dealing with
16 patients; right?

17 A Correct.

18 Q He's not dealing with patients in the
19 autoclave room; correct?

20 A Correct.

21 Q He's dealing with equipment; correct?

22 A Correct.

23 Q Was Mr. Diniz moved to the autoclave room
24 because the concern was that he would have a seizure
25 with a patient present?

1 A Correct.

2 Q When Mr. Diniz was moved to the autoclave,
3 was somebody moved out of the autoclave to make room
4 for him?

5 A Yes.

6 Q Who?

7 A I don't recall.

8 Q Do you remember where that person was moved?

9 A No.

10 Q Do you remember if that person took
11 Mr. Diniz's spot in recovery?

12 A I don't recall.

13 Q After Mr. Diniz was moved to the autoclave,
14 from that point in time through his termination, was
15 he in the autoclave the whole time?

16 A As I recall.

17 Q Did Mr. Diniz need to bring a return to work
18 note in order to stay working in the autoclave?

19 A Period, he needed one, period, because he
20 could harm himself or harm someone else.

21 Q Okay. Explain -- help me understand.
22 Working in the autoclave, how could Mr. Diniz harm
23 someone else?

24 A Well, people walk in there. You know,
25 people bring, you know, other supplies in there. It's

1 not that he could -- during a seizure, he can --
2 someone trying to clear your throat, clear someone's
3 mouth, they can bite you. They can do numerous things
4 to you. They can strike you.

5 Q So because you believed Mr. Diniz was at
6 risk for having a seizure, is it correct to say that
7 you didn't believe he could perform any job in the
8 office?

9 A Yeah, because he was a danger to himself and
10 other people.

11 Q When was the last time Mr. Diniz had a
12 seizure?

13 A Don't know.

14 Q When you asked him for that return to work
15 note or immediately prior to that, did you have a
16 conversation with him about his seizures?

17 A No.

18 Q Did you have any conversations with him
19 about what could happen if he had a seizure in the
20 office?

21 A No.

22 Q Were you concerned when you moved him to the
23 autoclave that he might have a seizure in the
24 autoclave that could harm him or other people?

25 A I became concerned. I started thinking

1 about it, and I became concerned he could harm himself
2 or other people.

3 Q For a period of time, he was working in the
4 autoclave without a return to work note; right?

5 A Correct.

6 Q Did that concern you?

7 A Yeah. He told me he was going to bring it.

8 Q Did you ever think of telling him to go home
9 until he brings in the note?

10 A He had -- he had been -- he had been
11 instructed to bring the note several times. No.

12 Q And while you were waiting for the note, he
13 was continuing to work; right?

14 A Yeah, because he said he had a note to be
15 given.

16 Q How was -- well, strike that.

17 Mr. Diniz did a good job while he was
18 working, at least in the autoclave; right?

19 A Yes.

20 Q Did you ever have any discussions with him
21 about permanently switching his job from recovery to
22 the autoclave?

23 A No.

24 Q After Mr. Diniz's employment was terminated,
25 did somebody then move into the autoclave?

1 A Yes.

2 Q Do you remember who?

3 A No.

4 (Plaintiff's Exhibit No. III.7 was marked
5 for identification.)

6 BY MR. WEINER:

7 Q Dr. McBrayer, the court reporter has just
8 handed you a document that's marked as Exhibit III.7.
9 You'll see it's titled Affidavit of Daniel E.
10 McBrayer, Sr. If you'll take a minute to look at the
11 document and let me know if you've ever seen it
12 before.

13 A I don't recall. It's got my signature, so
14 I've definitely seen it. That's my signature.

15 Q Okay. You'll see in the first real
16 paragraph, it says: Daniel E. McBrayer, Sr., who,
17 being duly sworn on oath, states as follows.

18 You see that; right?

19 A Correct.

20 Q Then it says you -- paragraph 1 says you
21 have firsthand knowledge of all statements contained
22 in this affidavit; right?

23 A (No response.)

24 Q That's what it says; right?

25 A Correct.

1 Q Paragraph 3 says: A thorough search has
2 been conducted of my office, and all employee and
3 other documents as requested by Plaintiff and in my
4 possession have been produced to Plaintiff in this
5 matter. Do you see that?

6 A Yes.

7 Q Tell me about your firsthand knowledge of
8 the search that had been conducted.

9 A I was -- just been told that the search had
10 happened. And, of course, I conducted some of the
11 search myself.

12 Q What did you do in the search that you
13 conducted yourself?

14 A I went upstairs to make sure that any --
15 there was any documents, and I went through as much as
16 I could and made sure that I was -- that had happened.

17 Q When you said you went upstairs for
18 documents, where did you look?

19 A In the document area.

20 Q Well, could you, please, be more specific.

21 A There was a -- there was documents in the
22 backroom to the right and backroom to the left on the
23 upstairs level. There was documents stored there.

24 Q What kind of documents were you looking at?

25 A The documents as far as all the employees

1 and payments and so forth.

2 Q Payroll ledgers?

3 A As far as I know, yes.

4 Q Do you have any other firsthand knowledge of
5 the search that had been conducted?

6 A No, except I was told that everybody
7 searched.

8 Q Who told you that?

9 A Angela and Sheila.

10 Q You'll see that you signed this document on
11 or about May 16th.

12 A Correct.

13 Q I acknowledge that there's no specific date
14 on here. But the document was filed with the Court on
15 May 16th, and then the notary signed it on May 16th.

16 Was Angela Buckner employed by Alpha as of
17 about May 16th, 2013?

18 A I don't recall if she was still working or
19 not then, if she taken her medical leave before or
20 after that, to be quite frank.

21 Q So as you sit here today, do you remember
22 whether Angela Buckner told you about a search, or you
23 do not remember?

24 A I don't specifically remember that.

25 Q Do you remember if Sheila Bynum told you

1 about a search?

2 A I don't recall that specifically. The
3 specifics, I don't.

4 Q So other than the search that you testified
5 a minute ago that you did, do you have any other
6 firsthand knowledge of searches that were done?

7 A No. There were -- no, I do not, except for
8 the fact that they claimed they had done them.

9 Q I'm sorry?

10 A In other words, they claimed they had made
11 searches, also, the employees.

12 Q Who is "they"?

13 A Angela and Sheila Bynum, Angela Buckner and
14 Sheila Bynum.

15 Q Okay. A minute ago, you told me that you
16 weren't sure if Angela was even employed and you
17 didn't know whether Sheila had done searches. But
18 then you just said --

19 A Well, this would be --

20 Q Let me finish my question, please.

21 Then you testified that they told you that
22 other employees had done searches. I'm asking you
23 now. Do you remember having a conversation or
24 conversations with Sheila Bynum or Angela Buckner
25 about searches that had been done for documents?

1 A Vaguely, yes.

2 Q Do you remember having discussions with one
3 of them or both of them?

4 A Both of them.

5 Q What do you remember Ms. Bynum telling you
6 about searches that had been done?

7 A I just recall the fact that searches -- she
8 was telling me that searches had been done.

9 Q Did she tell you who had done the searches?

10 A No.

11 Q Do you remember --

12 A Not to my memory.

13 (The court reporter asked for
14 clarification.)

15 THE WITNESS: Not to my memory. I'm
16 sorry.

17 BY MR. WEINER:

18 Q What do you remember Ms. Buckner telling you
19 about searches that had been done?

20 A Same general aspect of the conversation,
21 that searches had been done.

22 Q Dr. McBrayer, I'm handing you what's
23 previously been marked as Exhibit 25.

24 I'd ask you to take a minute and look at the
25 two pages of the document and let me know if you've

1 ever seen them before.

2 A I don't -- I think -- I think that -- this
3 is dated 8/3/12? Yeah. I think I've -- I'm pretty
4 sure I've seen this.

5 Q Okay. This document shows the payment of
6 overtime that you referred to earlier; correct?

7 A I think so.

8 Q And it's the payment of overtime to
9 Mr. Diniz; correct?

10 A Correct.

11 Q As we discussed earlier, this payment does
12 not include any liquidated damages; correct?

13 A Correct.

14 Q And this payment does not include any
15 attorney's fees; correct?

16 A Correct.

17 Q And the first page here is dated August 3rd
18 of 2012; right?

19 A Correct.

20 Q And the check was written on August 3rd,
21 2012; correct?

22 A Correct.

23 Q When -- strike that.

24 Prior to the check in Exhibit 25 being
25 written, I think you testified earlier that Mr. Diniz

1 and Mr. Thomas had come to you, either you or
2 Ms. Buckner, requesting overtime; right?

3 A Correct.

4 Q Do you know if they came to you or
5 Ms. Buckner in person?

6 A How do you come to someone without coming in
7 person?

8 Q Did they call you?

9 A No.

10 Q I apologize if I've asked this earlier.
11 Did they come to you first or did they come
12 to Ms. Buckner first?

13 A I don't recall.

14 Q Prior to them coming to either you or
15 Ms. Buckner and saying, we believe we're entitled to
16 overtime -- I think you said they came to you in
17 person or Ms. Buckner in person -- did you have any
18 knowledge that they might be owed overtime before
19 that?

20 A No.

21 Q Did Mr. Diniz ever talk to you on the phone
22 about being owed overtime?

23 A I don't recall.

24 Q Does that mean you don't remember or no, he
25 didn't?

1 A I don't -- I don't remember.

2 Q After Mr. Diniz and Mr. Thomas came to you
3 or Ms. Buckner about the overtime issue, do you know
4 if anyone at Alpha went through other employees' time
5 records to see whether any of them were owed overtime?

6 A No.

7 Q Do you know if Ms. Bynum went through other
8 employees' time records to see whether they were owed
9 overtime?

10 A Do I know if she went through? No, I do
11 not.

12 Q You testified earlier that at some point
13 later on, other employees did receive payment for
14 overtime.

15 A Correct.

16 Q And we went through an example for
17 Ms. Pumarejo. Do you remember that?

18 A Correct.

19 Q How did that process come about where you
20 and Alpha paid those employees for their overtime at
21 that -- some later point?

22 A I don't recall the conversation I got going,
23 but I know that I wanted to make sure that if anyone
24 had had overtime, that they had been paid.

25 Q Okay. And did you give instructions to

1 anyone to enact that?

2 A Yeah. I talked to the office manager, Angie
3 Buckner.

4 Q Okay. Do you remember what you said to her?

5 A No, not exactly.

6 Q Do you remember how many employees received
7 overtime pay at that later point in time?

8 A No.

9 Q Was it more than one?

10 A Yes.

11 Q Was it more than ten?

12 A No.

13 Q Did you write the checks, or did somebody
14 else write them for those other employees?

15 A I don't recall. I don't remember.

16 Q When was the first time you learned about
17 this lawsuit?

18 A I think, to the best of my knowledge, I
19 heard something probably about two or three days
20 before the actual lawsuit was served, that Cris had
21 told Angela that -- that he was going to sue me for
22 overtime. I believe it was two or three days. It
23 could have been three or four.

24 Q Do you remember a process server coming to
25 the office in an attempt to serve the complaint?

1 A I heard about it.

2 Q When did you hear about it?

3 A I heard about it the very day it happened.

4 Q Who did you hear about it from?

5 A I heard it from Angela.

6 Q What did she tell you?

7 A She just told me that the process server had
8 come to the office to serve the -- serve a lawsuit and
9 that Cris had changed his mind, did not want it done.

10 Q Where were you when she told you that?

11 A I think I was in surgery.

12 Q Do you remember her telling you anything
13 else?

14 A I don't recall anything else.

15 Q After you found out about the process server
16 coming and Cris supposedly changing his mind, did you
17 then go talk to Cris?

18 A Yes, I did.

19 Q Tell me about that conversation.

20 A I don't recall, except for the fact that I
21 told him if I owed him overtime, you know, please
22 bring me proof, and I'd paid him, if I owed him more
23 overtime.

24 Q And is after that conversation when

25 Exhibit 25 came about?

1 A That was before, if I recall correctly.

2 This was another issue. In other words, I had already
3 paid him this. This was new stuff to me.

4 Q So is it your testimony sitting here today
5 that you had already paid Cris what's shown on
6 Exhibit 25, then Cris tried to file a lawsuit for more
7 overtime and ultimately decided he didn't want to go
8 forward with it?

9 A That's correct.

10 Q Do you remember at what time of day on
11 August 3rd Plaintiff's Exhibit 25 came about?

12 A That was probably around noonish, if I
13 remember correctly, maybe 1:00.

14 Q So we talked earlier about the fact that you
15 don't know about if Alpha has any pay or time records
16 from before 2012. Do you remember that testimony?

17 A Please repeat yourself.

18 Q Do you remember that we talked earlier about
19 the fact that Alpha doesn't have any time or pay
20 records from before 2012?

21 A Correct.

22 Q Do you know whether Mr. Diniz worked
23 overtime in any particular workweek for the years
24 before 2012?

25 A It would be very unusual for him to work

1 overtime.

2 Q I'm asking if you know.

3 A No.

4 Q Why would it be unusual?

5 A Because I had 15, 16 employees. In other
6 words, I have one or two -- I have two more employees
7 than I need every day to run the office because
8 there's a lot of single mothers there. I run the
9 office with two more employees than I need on a given
10 day because I typically have two to three people out
11 every day.

12 Q So is it fair to say that you're making the
13 assumption that he didn't work overtime before 2012,
14 but you don't know for a fact one way or the other?

15 A Correct.

16 Q Do you know that Mr. Diniz and Mr. Thomas
17 have offered to go to mediation for this matter?

18 A No, I didn't know that.

19 Q If they agree to go to mediation in this
20 matter, would you agree to go to mediation in this
21 matter?

22 A I really don't see anything to mediate.
23 I'll be glad to pay him for the overtime the one time
24 you showed me that he didn't get paid for. I'd pay
25 him right now. Nothing to mediate.

1 MR. WEINER: Would you read back my
2 question.

3 THE WITNESS: I'd go to mediation,
4 yeah. Yes.

5 (The court reporter asked for
6 clarification.)

7 MR. WEINER: If you got the answer,
8 that's just fine. I pass the witness.

9 MR. LOGUE: I don't have anything.

10 MR. WEINER: Thank you very much.

11 (Whereupon it was agreed that the witness
12 will waive signature.)

13 (Deposition concluded at 3:07 p.m.)

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1 DISCLOSURE

2 STATE OF GEORGIA

3 COUNTY OF CHEROKEE

4 DEPOSITION OF: DANIEL E. MCBRAYER, SR.

5 Pursuant to Article 8.B of the Rules and
6 Regulations of the Board of Court Reporting of the
7 Judicial Council of Georgia, I make the following
8 disclosure:

9 I am a Georgia Certified Court Reporter. I
10 am here as an independent contractor for American
11 Court Reporting Company, Inc.

12 The firm was contracted by the offices of
13 Andrew Weiner, Esq., to provide court reporting
14 services for this deposition. The firm will not be
15 taking this deposition under any contract that is
16 prohibited by O.C.G.A. 15-14-37(a) and (b).

17 Option A: The firm has no contract/agreement to
18 provide reporting services with any party to the case,
19 any counsel in the case, or any reporter or reporting
20 agency from whom a referral might have been made to
21 cover this deposition. The firm will charge its usual
22 and customary rates to all parties in the case, and a
23 financial discount will not be given to any party to
24 this litigation.

25 (Signature of Attorneys optional.)

26 _____ October 17, 2013
27 AUDREY MICHELLE LING, CCR-B-1752

28 _____
29 Attorney for Plaintiff Date:

30 _____
31 Attorney for Defendant Date:

32

1 C E R T I F I C A T E

2 STATE OF GEORGIA)

3 COUNTY OF CHEROKEE)

4 I hereby certify that the foregoing
5 transcript was taken down, as stated in the
6 caption, and the proceedings were reduced to
7 typewriting under my direction and control.

8 I further certify that the transcript is a
9 true and correct record of the evidence given at
10 the said proceedings.

11 I further certify that I am neither a
12 relative nor employee nor attorney nor counsel to
13 any of the parties, nor financially or otherwise
14 interested in this matter.

15 This the 21st day of October 2013.

16

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AUDREY MICHELLE LING, CCR-B-1752

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