

**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' FIRST SET OF REQUESTS
FOR ADMISSION TO DEFENDANTS**

Plaintiffs Cristiano Diniz and Antonio Thomas, through their attorneys and pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, hereby request that Defendants answer separately and fully in writing each of the following Requests for Admission (the "Requests") and serve a copy of said answers upon counsel for Plaintiffs within thirty days after service of these Requests.

DEFINITIONS & INSTRUCTIONS

In the interest of clarity, Plaintiffs submit the following definitions of certain words and phrases used in these Requests and instructions for responding:

1. “Plaintiffs” means Cristiano Diniz and Antonio Thomas, unless otherwise specified.

2. “Defendants” unless otherwise specified, means either or both Alpha OB GYN Group, P.C. (“Alpha”) and Dr. Daniel E. McBrayer, Sr. (“McBrayer”) and their agents, affiliates, executives, officers, board members, employees, and consultants.

3. “Agent” means any employee, officer, director, attorney, or any other person acting on behalf or at the direction of another.

4. The term “document” is defined so as to reach all “documents,” “electronically stored information,” and “tangible things” as used in Rule 34 of the Federal Rules of Civil Procedure as well as all “writings,” recordings,” and “photographs” as defined by Rule 1001 of the Federal Rules of Evidence, and includes without limitation any written, printed, typed, drawn, punched, taped, filmed, electronic, recorded, photographic, or graphic materials, and any drafts, copies, or duplicates of the foregoing that are not identical by reason of handwritten notations, initials, identification marks, or any other modification.

5. The “Material Period” means the period from July 27, 2009 through the present.

6. “FLSA” refers to the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*

7. “Bona Fide Meal Break” means an uninterrupted break of at least 30 minutes during which an employee is completely relieved from duty and not required to perform any duties, whether active or inactive.

8. Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Defendants must answer each Request in full. If a Request (or portion thereof) is not admitted, the answer must specifically deny it or state in detail why Defendants cannot truthfully admit or deny it. A denial must fairly respond to the substance of the Request; and when good faith requires that Defendants qualify an answer or deny only a part of a Request, the answer must specify all portions admitted and set forth the details of any qualification.

9. In accordance with Rule 36 of the Federal Rules of Civil Procedure, If Defendants lack knowledge or information necessary to admit or deny any Request (or portion thereof) after exercising due diligence to secure the information, they must answer to the extent possible, specify the reason(s) for their inability to answer the remainder, and verify that they have made reasonable inquiry to obtain the information necessary to enable them to admit or deny.

10. Defendants must state all grounds for objecting to a Request in their answer. Pursuant to Rules 36(a)(1)(A) and 36(a)(5) of the Federal Rules of Civil Procedure, Defendants may not object on the grounds that the Request (i) relates to the application of law to fact or opinions about the application of law to facts, or (ii) presents a genuine issue for trial.

11. Pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, these Requests are continuing in nature, and Defendants are requested to promptly supplement and/or amend their answers to provide all additional information that Defendants or any person acting on their behalf hereafter obtain that augment or modify Defendants' initial responses.

REQUESTS FOR ADMISSION

1. Admit that throughout the Material Period Defendants have used the same timekeeping and payroll policies and practices for all hourly employees.

2. Admit that during the Material Period, Defendants have required hourly employees to obtain approval of hours worked over eight in a day to be compensated for that time.

3. Admit that Defendants' policy and/or practice described in Request No. 2 applied to all hourly employees throughout the Material Period.

4. Admit that during the Material Period, Defendants have required hourly employees to obtain approval of hours worked over 40 in a workweek to be compensated for that time.

5. Admit that Defendants' policy and/or practice described in Request No. 4 applied to all hourly employees throughout the Material Period.

6. Admit that during the Material Period, Defendants have paid hourly employees at their regular hourly rate for all hours that they worked.

7. Admit that Defendants' policy and/or practice described in Request No. 6 applied to all hourly employees throughout the Material Period.

8. Admit that during the Material Period, Defendants automatically deducted 30 minutes for a meal break from hourly employees' compensable time for shifts worked over 6 hours.

9. Admit that Defendants' policy and/or practice described in Request No. 8 applied to all hourly employees throughout the Material Period.

10. Admit that throughout the Material Period, Defendants did not monitor or ensure that hourly employees received a bona fide meal break despite imposing the policy and/or practice described in Request No. 8.

11. Admit that throughout the Material Period, Defendants did not monitor or ensure that hourly employees did not perform compensable work during

their meal break despite imposing the policy and/or practice described in Request No. 8.

12. Admit that during the Material Period, Defendants did not train or inform hourly employees and management as to what constitutes a bona fide meal break under the FLSA.

13. Admit that throughout his employment with Defendants, Plaintiff Diniz was paid on an hourly basis.

14. Admit that during one or more workweeks of Plaintiff Diniz's employ with Defendants, he worked over 40 hours.

15. Admit that for one or more of those workweeks during Plaintiff Diniz's employ with Defendants in which Plaintiff Diniz worked over 40 hours, he was not paid one and one-half times his regular rate of pay for all time worked over 40 hours.

16. Admit that before July 27, 2012, 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 which he worked over 40 hours for Defendants.

17. Admit that on one or more days of his employment with Defendants, Plaintiff Diniz did not take a Bona Fide Meal Break.

18. Admit that for one or more workweeks during Plaintiff Diniz's employ with Defendants, Defendants automatically deducted 30 minutes from Plaintiff Diniz's compensable time on days that he worked more than six hours.

19. Admit that for one or more workweeks during Plaintiff Diniz's employ with Defendants, Defendants applied the automatic deduction described in Request No. 18 to Plaintiff Diniz's compensable time regardless of whether Plaintiff Diniz received a Bona Fide Meal Break or performed any compensable work during his purported meal break.

20. Admit that throughout the period Plaintiff Thomas performed services for Defendants, he was paid on an hourly basis.

21. Admit that during one or more workweeks of the period Plaintiff Thomas performed services for Defendants, he worked over 40 hours.

22. Admit that for one or more of those workweeks in which Plaintiff Thomas worked over 40 hours performing services for Defendants, he was not paid one and one-half times his regular rate of pay for all time worked over 40 hours.

23. Admit that before July 27, 2012, 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 performing services for Defendants.

24. Admit that on one or more days during the period Plaintiff Thomas performed services for Defendants, Plaintiff Thomas did not take a Bona Fide Meal Break .

25. Admit that for one or more workweeks during the period Plaintiff Thomas performed services for Defendants, Defendants automatically deducted 30 minutes from Plaintiff Thomas's compensable time on days that he worked more than six hours.

26. Admit that for one or more workweeks during the period Plaintiff Thomas performed services for Defendants, Defendants applied the automatic deduction described in Request No. 25 to Plaintiff Thomas's compensable time regardless of whether Plaintiff Thomas received a Bona Fide Meal Break or performed any compensable work during his purported meal break.

27. Admit that Defendants do not have documents in their possession, custody, or control showing the amounts Defendants paid to any hourly employee at any time from 2003 to 2010 other than those they have already produced to Plaintiffs as of the date of service of these Requests.

28. Admit that other than those documents Defendants have produced to Plaintiffs as of the date of service of these Requests, all Defendants' records of the

amounts they paid to each hourly employee before 2011 were destroyed in a fire in May 2012 or in the months following the fire.

29. Admit that since July 27, 2012, Defendants have not destroyed or otherwise disposed of any documents that show time worked by and/or amounts paid to any hourly employee at any time between July 2009 and the present.

30. Admit that all remuneration and/or compensation paid to Plaintiffs for services rendered to Defendants is reflected in the payroll records of Defendant Alpha.

31. Admit that Defendants have provided and/or will provide Plaintiff Thomas with a Form W-2 form showing compensation he received from Defendants.

32. Admit that all remuneration and/or compensation paid to Plaintiffs for services rendered to Defendants is reflected correctly in the W-2 forms provided to Plaintiffs.

33. Admit that all remuneration and/or compensation paid to Plaintiffs for services rendered to Defendants was reported correctly to the Internal Revenue Service and Social Security Administration.

34. Admit that during the Material Period, Defendants have paid hourly employees at their regular hourly rate for all hours that they worked over 40 in a workweek.

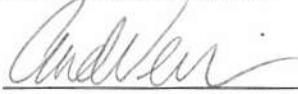
35. Admit that Defendants charge patients for the services Defendants provide.

36. Admit that throughout the Material Period, two or more of Defendants' employees regularly used the mails, telephone, facsimile, or internet for interstate communication.

37. Admit that throughout the Material Period, two or more of Defendants' employees regularly mailed letters, checks, reports, or other documents to points outside Georgia.

38. Admit that throughout the Material Period, two or more of Defendants' employees regularly handled goods, materials or equipment that were shipped to Defendants from outside Georgia.

Respectfully submitted this 19 day of December 2012.

By:  _____

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COUNSEL FOR PLAINTIFFS

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CERTIFICATE OF SERVICE

I certify that on December 19, 2012, I served Plaintiffs' First Set of Requests for Admission upon all parties via email and U.S. Mail, postage prepaid, addressed as follows:

A. Keith Logue, Esq.
LAW OFFICE OF A. KEITH LOGUE
3423 Weymouth Court
Marietta, GA 30062


Counsel for Plaintiffs