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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,

CIVIL ACTION FILE

vs.

NO. 1:12-cv-02621-JOF

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

Defendants.

DEPOSITION OF  
DANIEL E. MCBRAYER, SR.

January 21, 2013  
2:23 p.m.

2985 Gordy Parkway  
Marietta, Georgia

Jennifer D. Hamon, CCR-B-2287, RPR

Job No. CS1595001

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3 Exhibit 8 Memo dated February 24,  
4 2012 80

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5 Exhibit 9 Copy of cover page and  
6 one-page excerpt from the  
7 Handy Reference Guide  
8 to the Fair Labor  
9 Standards Act 90

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13 Exhibit 13 Letter from Andrew L.  
14 Weiner to Dr. Daniel E.  
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17 Exhibit 15 Letter from Daniel E.  
18 McBrayer, M.D., to  
19 Cristiano Diniz dated  
20 August 29, 2012 189

19

20

21 (Original Exhibits 1 through 15 have been  
22 attached to the original transcript.)

22

23

24

25

1 MR. WEINER: Good afternoon,  
2 Dr. McBrayer. My name is Andy Weiner. We just  
3 met. I represent Cris Diniz and Antonio Thomas  
4 in this lawsuit.

5 As your counsel knows, we are proceeding  
6 today. We have a couple of outstanding  
7 discovery issues, and we may need to come back  
8 if there are additional documents that need to  
9 be produced or if the Court grants our motion  
10 to compel, but we can address that at another  
11 time.

12 Dr. McBrayer, we have a court reporter  
13 here. She is taking down everything that we  
14 say. She's typing everything down. So if your  
15 answers are yes or no, please give me a yes or  
16 no answer. She can't take down head nods, so  
17 I'd ask that all of your responses be verbal.

18 DR. MCBRAYER: Okay. Great.

19 MR. WEINER: Does that sound fair?

20 DR. MCBRAYER: Yeah.

21 DANIEL E. MCBRAYER, SR.,  
22 being first duly sworn, was examined and  
23 testified as follows:

24 - - -

25 - - -

EXAMINATION

1  
2 BY MR. WEINER:

3 Q. As the court reporter just put you under  
4 oath, you understand that you're testifying today  
5 under oath, under penalty of perjury.

6 Do you understand that?

7 A. Yes.

8 Q. And you're testifying today just as if  
9 you were testifying in court under oath.

10 Do you understand that?

11 A. Correct.

12 Q. You're here with your counsel, Keith  
13 Logue, who's representing you today; is that right?

14 A. Correct.

15 Q. And his associate is also here today,  
16 Lane?

17 MR. WEINER: I apologize.

18 MR. FROSTBAUM: Frostbaum.

19 Q. (By Mr. Weiner) He is representing you  
20 as well today; right?

21 A. Correct.

22 Q. You and Alpha are represented by  
23 Mr. Logue's law firm in this FLSA case; is that  
24 correct?

25 A. That's correct.

1 Q. Are you represented by any other attorney  
2 or any other law firm in this FLSA case?

3 A. No.

4 Q. And when I refer to FLSA, I'm talking  
5 about the Fair Labor Standards Act.

6 Do you understand that?

7 A. I understand.

8 Q. Do you remember when you retained  
9 Mr. Logue's law firm in connection with this FLSA  
10 case?

11 A. That was done through my secretary,  
12 Angela Buckner, no.

13 Q. Did you sign an engagement letter with  
14 Mr. Logue's law firm in connection with this FLSA  
15 case?

16 A. I don't recall.

17 Q. Do you remember when Mr. Logue's law firm  
18 began representing you in this FLSA case?

19 A. I don't recall exactly.

20 Q. Do you remember approximately when?

21 A. No.

22 Q. So could you tell me if it was in  
23 September of 2012?

24 A. All that's gone because of the fire we  
25 had. Everything is kind of vague from that point in

1 time.

2 Q. You couldn't even give me an approximate?

3 A. Approximately two months ago.

4 Q. So we are in January.

5 So to the best of your memory as you sit  
6 here today, Mr. Logue's law firm started  
7 representing you at some point in November; is  
8 that --

9 A. Two or three months ago.

10 Q. So October or November; is that accurate?

11 A. As far as I can remember. I've already  
12 told you I don't recall exactly.

13 Q. Do you remember if you and Alpha signed a  
14 representation letter at all in connection with this  
15 FLSA case?

16 A. I don't recall. I've already told you  
17 that.

18 Q. Did any attorney other than Mr. Logue,  
19 his associate, or Mr. Logue's law firm represent you  
20 in connection with this FLSA case prior to Alpha  
21 entering into an engagement with Mr. Logue's law  
22 firm?

23 A. No.

24 Q. I'm going to give you a piece of paper,  
25 Dr. McBrayer. Could you please write out the



1 sentence, "Angie is a bitch."

2 THE WITNESS: Should I do so?

3 MR. LOGUE: Sure.

4 A. Angie is a bitch?

5 Q. (By Mr. Weiner) Yes.

6 A. Just write that out?

7 Q. Yes.

8 A. (Witness complies with request of  
9 counsel.)

10 Q. Thank you.

11 A. Uh-huh.

12 MR. WEINER: Just mark this as  
13 Plaintiffs' Exhibit 1, please.

14 (Whereupon a document was identified as  
15 Plaintiffs' Exhibit 1.)

16 Q. (By Mr. Weiner) Dr. McBrayer, have you  
17 ever been deposed before?

18 A. Pardon?

19 Q. Have you ever been deposed before?

20 A. Yes.

21 Q. How many times, to the best of your  
22 memory?

23 A. Probably ten times.

24 Q. Do you remember the subject matters of  
25 those depositions?

1           A.       Several divorces that were involved,  
2       several lawsuits, malpractice suits.

3           Q.       Anything else?

4           A.       No.

5           Q.       Have you ever been arrested?

6           A.       Yes.

7           Q.       How many times?

8           A.       Once.

9           Q.       Can you tell me the circumstances  
10       surrounding that arrest.

11          A.       It's a well-known road rage episode three  
12       or four years ago.

13          Q.       What happened?

14          A.       Basically a person -- a woman cut me off  
15       several times as far as traffic was concerned,  
16       proceeded to get in front of me, where I had to slam  
17       on my brakes.

18                   Basically at the red light where she  
19       stopped and pulled in front of me again, I pulled up  
20       and approached her car and knocked on the window.  
21       And she proceeded to roll her window down and  
22       started yelling and screaming at me, started to  
23       strike me, and I just blocked her blow.

24          Q.       Were you charged with a crime?

25          A.       Yes.

1 Q. What was that?

2 A. A misdemeanor. Just a misdemeanor,  
3 assault.

4 Q. Did you end up having to go to trial on  
5 that.

6 A. No. I don't know if you'd call what we  
7 had a trial. We went before the judge, and it  
8 was -- if that's what you call a trial, yes.

9 Q. Did you have to pay a fine in relation to  
10 that?

11 A. A \$1500 fine.

12 Q. Were there any other penalties associated  
13 with that incident?

14 A. I had to go to anger management.

15 Q. Dr. McBrayer, can you tell me what  
16 licenses you hold in relation to your medical  
17 practice.

18 A. Just the Georgia license.

19 Q. Is that specific to OB/GYN work?

20 A. No. It's just a Georgia medical license.  
21 No one has a specific license.

22 Q. Do you remember when you first obtained  
23 that license?

24 A. It was probably in 1976.

25 Q. And am I correct to say that you

1 periodically have to renew the license?

2 A. Yes.

3 Q. Am I also correct to say that the license  
4 is currently active as of today?

5 A. Yes.

6 Q. Dr. McBrayer, do you own Alpha OB GYN  
7 Group?

8 A. Yes.

9 Q. Does anybody else own it with you?

10 A. I don't recall anyone else.

11 Q. So is it fair to say that you own  
12 100 percent of Alpha OB GYN Group?

13 A. Yes.

14 Q. And for the ease of this deposition, when  
15 I refer to "Alpha," I'm referring to Alpha OB GYN  
16 Group.

17 Is that fair?

18 A. That's fair.

19 Q. Where is Alpha located as of today?

20 A. 1640 Powers Ferry Road, Building 23,  
21 Marietta, Georgia.

22 Q. When did you start Alpha?

23 A. It was probably 1984.

24 Q. Has it always been in that location?

25 A. No.

1 Q. Where was it in 1984 when you started it?

2 A. Georgia Baptist Medical Center.

3 Q. How many locations has Alpha been in  
4 since 1984?

5 A. It's been in three different locations.

6 Q. So Georgia Baptist is one. The Powers  
7 Ferry address you just gave me is two.

8 Where else has it been located?

9 A. It was located in Roswell, Georgia, also.

10 Q. When did it move to the Powers Ferry  
11 location that it currently occupies?

12 A. Approximately five years ago.

13 Q. Where was it immediately before that?

14 A. At Atlanta -- at Georgia Baptist, Atlanta  
15 Medical, and Roswell.

16 Q. How long was it at Georgia Baptist?

17 A. Approximately from 1984, '85 until  
18 approximately five years ago.

19 Q. Are there any other businesses, medical  
20 practices, or anything else located at the Powers  
21 Ferry address, or is Alpha the only entity located  
22 there?

23 A. I have -- I do my flip property  
24 managements from there too.

25 Q. Just let me --

1           A.     It's just a flip -- it's just a property.  
2     I own some properties, and it's owned for the flip.

3           Q.     Do you have a company that you use to do  
4     those flips?

5           A.     Yes.

6           Q.     What is that company called?

7           A.     It's called McBrayer Family Limited  
8     Partnership.

9           Q.     When did you start McBrayer Family  
10    Limited Partnership?

11          A.     It's probably been 15, 20 years ago.

12          Q.     It's still active today; is that right?

13          A.     Correct.

14          Q.     Any other businesses or entities that  
15    operate out of that Powers Ferry address?

16          A.     No.

17          Q.     Does McBrayer Family Limited Partnership  
18    have any employees at that Powers Ferry address?

19          A.     Megan McBrayer.

20          Q.     Is Megan McBrayer related to you?

21          A.     Yes. She's my daughter.

22          Q.     What is her position with McBrayer Family  
23    Limited Partnership?

24          A.     She's just an associate there helping me  
25    with the management of the properties.

1 Q. Moving back to Alpha, you testified  
2 earlier that you own the company.

3 Do you hold any other positions? Are you  
4 chief executive officer or anything like that?

5 A. No.

6 Q. How many employees does Alpha currently  
7 employ?

8 A. I would just refer you to my office  
9 secretary for that.

10 Q. Can you give me an estimate?

11 A. 15, 20.

12 Q. Who is your office secretary?

13 A. Manager is Angela Buckner.

14 Q. Your office secretary and office manager,  
15 is that the same person?

16 A. Per se. I don't have an office  
17 secretary.

18 Q. I want to be clear. You've said a couple  
19 of times now, I'd refer you to my office secretary.

20 Are you referring to Angela Buckner when  
21 you say that?

22 A. Yes. Office manager/secretary.

23 Q. Of those approximately 15 to 20  
24 employees, can you tell me the range of positions  
25 that they occupy.

1           A.     You would have to refer to my office  
2 manager again, Angela Buckner.

3           Q.     Can you tell me, to the best of your  
4 memory, what some of those positions might be.

5           A.     There's various office management issues  
6 as far as MAs, medical assistants, in the sense of  
7 helping me do different things in the office.

8           Q.     Any other positions?

9           A.     No.

10          Q.     Does Alpha charge patients for the  
11 services that it provides?

12          A.     Yes.

13          Q.     Does operating Alpha require  
14 communicating with persons or entities outside of  
15 the state of Georgia?

16          A.     No. Or there may be -- I'm sorry. They  
17 may order different office supplies outside the  
18 state of Georgia, if that's the measure of your  
19 question.

20          Q.     Do you know from where --

21          A.     No.

22          Q.     -- they order?

23          A.     No.

24          Q.     I understand that sometimes you're going  
25 to know where I'm going, but because we have a



1 transcript being taken down, I want to make sure the  
2 transcript is as clear as possible. So I'd  
3 appreciate it if you'd let me finish my question. I  
4 will in turn let you finish your answers.

5 A. Sure.

6 Q. Do you know from where the employees  
7 order the office equipment?

8 A. No, I really do not. I just know some  
9 things are out of the state for the office supplies.

10 Q. Who is responsible for ordering those  
11 office supplies?

12 A. Angela Buckner is responsible and also  
13 the CRNAs in the office and also my PA, Eileen  
14 Jackson.

15 Q. What is a CRNA?

16 A. Certified nurse practitioner, anesthesia  
17 practitioner.

18 Q. How many CRNAs do you have?

19 A. Three.

20 Q. What are their names?

21 A. Sylvia Hutchings, Steve Hardman, and Ida  
22 Anderson.

23 Q. I think you mentioned a second ago that  
24 one, two, or even three of them were  
25 anesthesiologist assistants.

1 Did I get that correct?

2 A. Correct.

3 Q. How many of those people?

4 A. Three.

5 Q. All three of them?

6 A. Well, Eileen Jackson is not. She's a  
7 nurse practitioner.

8 Q. But Sylvia, Steve, and Ada?

9 A. Ida.

10 Q. They are all anesthesiologist assistants?

11 A. CRNAs.

12 Q. I understand that they're CRNAs, but I  
13 think you had also said that some, if not all of  
14 them, are anesthesiologist assistants.

15 A. No. If I said that, I didn't mean to  
16 imply that.

17 Q. Do you employ an anesthesiologist  
18 assistant?

19 A. No. Unless you refer to them as an  
20 anesthesia assistant, which could, in slang, be  
21 perceived that way.

22 Q. Do any of them do anesthesia for Alpha?

23 A. All three of the CRNAs.

24 Q. Are they licensed?

25 A. Yes.

1 Q. All three?

2 A. Correct.

3 Q. When did Sylvia start working for you?

4 A. Probably three and a half, four years  
5 ago.

6 Q. When did Steve start working for you?

7 A. Ten years ago.

8 Q. When did Ida start working for you?

9 A. Probably five or six years ago.

10 Q. Does Alpha regularly bill insurance  
11 companies for medical procedures that it performs?

12 A. Yes.

13 Q. Does it regularly bill insurance  
14 companies outside of the state of Georgia?

15 A. I don't know.

16 Q. Do any of Alpha's employees order  
17 prescriptions or medicines from outside of the state  
18 of Georgia?

19 A. I believe so.

20 Q. Who would do that?

21 A. Eileen Jackson, Steve Hardman, Sylvia  
22 Hutchings, me.

23 Q. Do any of Alpha's employees mail letters,  
24 checks, reports, or any other documents outside of  
25 Georgia?

1 A. Repeat your question, please.

2 Q. Do any of Alpha's employees mail letters,  
3 checks, reports, or really any other document  
4 outside of the state of Georgia?

5 A. I don't know of any.

6 Q. Do you know an entity called Henry  
7 Schein's?

8 A. Yes.

9 Q. What is Henry Schein's?

10 A. It's just an office supply, medical  
11 supply.

12 Q. Do you know where Henry Schein's is  
13 located?

14 A. No. No, I don't.

15 Q. Do you know if it's in the state of  
16 Georgia?

17 A. I think they have a satellite in Georgia.

18 Q. Does Alpha order items from Henry  
19 Schein's?

20 A. Yes.

21 Q. Does Alpha work with the insurance  
22 company Cigna?

23 A. Yes.

24 Q. Do you know where Cigna is located?

25 A. No.

1 Q. Does Alpha regularly mail letters,  
2 checks, or other documents to Cigna?

3 A. Yes.

4 Q. Who would know where Cigna is located at  
5 Alpha?

6 A. My office manager.

7 Q. And that would be Angela?

8 A. Correct.

9 Q. Anybody else that you can think of?

10 A. No. Oh, anyone doing the insurance in  
11 the insurance. That would be Heidi Loner, Leslie  
12 Summerour.

13 Q. Do you believe Alpha is engaged in  
14 interstate commerce?

15 A. I don't know what you mean by that.

16 Q. Does Alpha conduct business that crosses  
17 state lines?

18 A. In the sense of what?

19 MR. LOGUE: I object to the extent it  
20 calls for a legal conclusion since he's not an  
21 attorney.

22 Q. (By Mr. Weiner) Does Alpha order goods  
23 from out of state?

24 A. I think we do, yes.

25 Q. Does Alpha order medicines from out of

1 state?

2 A. Yes.

3 Q. Does Alpha order equipment from out of  
4 state?

5 A. I'm not aware of any equipment.

6 Q. Does Alpha see patients who reside  
7 outside the state of Georgia?

8 A. Yes.

9 Q. We talked a few minutes ago about the  
10 number of employees that Alpha has, and you said  
11 approximately 15 to 20.

12 Are any of those employees paid on a  
13 salary basis?

14 A. Angela Buckner, I believe.

15 Q. Are any of those employees paid on an  
16 hourly basis?

17 A. All of them except for Angela Buckner.

18 Q. And I think you know that my law firm  
19 represents Cris Diniz and Antonio Thomas in this  
20 lawsuit; is that right?

21 A. Correct.

22 Q. When they worked for Alpha, did Alpha pay  
23 them on an hourly basis?

24 A. Yes.

25 Q. Going back within the last three years,

1 did Alpha employ any employees other than Angela  
2 Buckner who it paid on a salary basis?

3 A. Margaret Sampson.

4 Q. Anyone else?

5 A. Not to my knowledge.

6 Q. What was Mr. Sampson's position?

7 A. You mean Mrs. Sampson? I'm sorry?

8 Q. What was Mr. Sampson's position?

9 A. Mr.?

10 MS. RUSHING: What was the first name you  
11 said?

12 THE WITNESS: Margaret.

13 Q. (By Mr. Weiner) I apologize. I thought  
14 you said Mark.

15 What was Ms. Sampson's position?

16 A. She was the office manager.

17 Q. And when was she the office manager?

18 A. From approximately 1985, '86 until her  
19 death in June of 2011.

20 Q. Was she the only office manager for Alpha  
21 between those time periods?

22 A. Yes.

23 Q. After Ms. Sampson ended her tenure, did  
24 Angela Buckner take over?

25 A. Yes.

1 Q. Are Ms. Buckner and Ms. Sampson related?

2 A. Yes.

3 Q. What's their relationship?

4 A. Mother/daughter.

5 Q. When did Ms. Buckner start working for  
6 you?

7 A. Approximately two thousand -- probably  
8 January of 2011. But I don't recall exactly.

9 Q. When Ms. Buckner started working for  
10 Alpha, what was her position?

11 A. She was an MA, also telephone  
12 receptionist.

13 Q. Between January of 2011 and June of 2011,  
14 did Ms. Buckner perform office manager duties?

15 A. No. Excuse me. Restate your question,  
16 please.

17 Q. Let me clarify.

18 While Ms. Sampson was employed by Alpha,  
19 did Ms. Buckner perform office manager duties as  
20 well?

21 A. No.

22 Q. After Ms. Sampson passed away and stopped  
23 working for Alpha in June of 2011, did Ms. Buckner  
24 immediately take over the office manager duties?

25 A. Yes.



1 Q. Was there anything that Ms. Buckner did  
2 when she took over the duties that Ms. Sampson had  
3 not been doing in terms of being an office manager?

4 A. Not to my knowledge.

5 Q. I'm going to ask the reverse.

6 Was there anything that Ms. Sampson did  
7 as an office manager that Alpha did not have  
8 Ms. Buckner do as an office manager when she took  
9 over?

10 A. Not to my knowledge.

11 Q. Does Alpha employ nonmedical employees?

12 A. Yes.

13 Q. What kind of positions do those employees  
14 occupy?

15 A. Just answering the phones, taking phone  
16 messages.

17 Q. Anything else?

18 A. If you mean nonmedical, they call  
19 insurance companies -- I don't know if you would  
20 call that nonmedical or not -- for certification of  
21 patients and so forth.

22 Q. Anything else?

23 A. No.

24 Q. How many employees, to the best of your  
25 knowledge, does Alpha employ in nonmedical

1 positions?

2 A. Four or five.

3 Q. Who are those employees?

4 A. Heidi Loner, Angela Buckner, Leslie  
5 Summerour, Megan McBrayer.

6 Q. Do those people have job titles?

7 A. You would have to refer to my office  
8 secretary again -- I mean my office manager as far  
9 as their job titles.

10 Q. So is it fair to say you don't know?

11 A. I don't know.

12 Q. And to confirm, each of those people you  
13 just mentioned other than Angela Buckner is paid on  
14 an hourly basis; is that correct?

15 A. Correct.

16 Q. You and Alpha employed Cris Diniz from  
17 September of 2003 until August 2012; is that right?

18 A. I suppose that's approximately correct.

19 Q. I'll ask the question a better way.

20 Did you and Alpha employ --

21 A. I don't know the exact dates.

22 Q. That's why I'm clarifying.

23 A. Yeah. I don't know the exact dates.

24 Q. Did you and Alpha employ Mr. Diniz at  
25 some point in time?

1 A. Yes.

2 Q. What position did Mr. Diniz hold?

3 A. He was just a medical assistant.

4 Q. Did Alpha employ a woman named Pamela  
5 Combs?

6 A. Yes.

7 Q. What was Ms. Combs' position?

8 A. She was an office secretary, phone  
9 receptionist.

10 Q. Do you remember when she started with  
11 Alpha?

12 A. No.

13 Q. Is she currently employed there?

14 A. No.

15 Q. When did her employment end?

16 A. Approximately two weeks ago.

17 Q. Did she resign?

18 A. Yes.

19 Q. Did she give you a reason for her  
20 resignation?

21 A. No.

22 Q. Did you ask?

23 A. No.

24 Q. Did Ms. Combs play any role in handling  
25 compensation for employees?

1 MR. LOGUE: Clarify that a little bit.

2 You mean hand out checks, write checks?

3 MR. WEINER: I'll leave the question to  
4 the witness.

5 A. I don't know what you mean.

6 Q. (By Mr. Weiner) Did Ms. Combs sign  
7 checks for employee compensation?

8 A. No.

9 Q. Did Ms. Combs handle timesheets for  
10 employees?

11 A. I think so.

12 Q. Now, we were talking about Cris Diniz,  
13 and you had testified that he was a medical  
14 assistant.

15 Did he hold any other position with  
16 Alpha?

17 A. No.

18 Q. Do you know if Mr. Diniz had any medical  
19 certifications?

20 A. No.

21 Q. To be clear, are you testifying that he  
22 did not hold any medical certifications?

23 A. I just don't know.

24 Q. Could he have held medical certifications  
25 and you not know it?

1 A. Of course.

2 Q. Who was Mr. Diniz's supervisor in 2012?

3 A. I was, along with Angela Buckner.

4 Q. Anybody else?

5 A. No.

6 Q. Other than you and Ms. Buckner, did  
7 anyone supervise Mr. Diniz prior to 2012?

8 A. Margaret Sampson.

9 Q. Is Margaret any relation to Jennifer  
10 Sampson?

11 A. Yes.

12 Q. What is the relationship?

13 A. They were mother-in-law/daughter-in-law  
14 through marriage to Rodney Sampson.

15 Q. Was Jennifer Sampson the daughter-in-law?

16 A. Step-daughter-in-law.

17 Q. And did Jennifer Sampson work for Alpha?

18 A. Yes.

19 Q. What was her position?

20 A. She was assistant office manager.

21 Q. Approximately when did she work for  
22 Alpha?

23 A. Two thousand -- I really don't know.  
24 2009 through 2011.

25 Q. Did she resign her position?

1 A. Yes.

2 Q. Do you know why she resigned her  
3 position?

4 A. She was looking for a better job.

5 Q. Did Jennifer Sampson ever supervise Cris  
6 Diniz?

7 A. Not to my knowledge. It could have  
8 happened. I just don't know. I just don't know  
9 that.

10 Q. What were Mr. Diniz's job duties with you  
11 and Alpha?

12 A. Just taking patients' vital signs,  
13 escorting patients from the office to their cars,  
14 helping take care as far as autoclave.

15 Q. Anything else?

16 A. I'm sure there's other duties. You'll  
17 just need to talk to my office manager for his job  
18 duties.

19 Q. So is it your testimony that Ms. Buckner  
20 could tell me all of Cris's --

21 A. Yes.

22 Q. -- job duties?

23 A. Yes.

24 Q. Did you or Alpha ever give Mr. Diniz a  
25 document that contained his job duties?

1 A. Yes. According -- I think.

2 (Whereupon a document was identified as  
3 Plaintiffs' Exhibit 2 and Plaintiffs'  
4 Exhibit 3.)

5 Q. (By Mr. Weiner) Dr. McBrayer, the court  
6 reporter has marked two documents as Plaintiffs'  
7 Exhibits 2 and 3.

8 MR. FROSTBAUM: Do you have extra copies?

9 MR. WEINER: I don't. I'm sorry.

10 Q. (By Mr. Weiner) I'd ask you to take a  
11 minute to look at the documents and let me know when  
12 you're ready.

13 A. These are somewhat of his job  
14 descriptions.

15 Q. Just tell me when you're ready, and I'll  
16 ask questions.

17 A. Okay.

18 Q. Have you seen these documents before?

19 A. Yes.

20 Q. What are they?

21 A. It says Cris job description.

22 Q. So both Plaintiffs' Exhibits 2 and 3 are  
23 Cris's job descriptions? Is that your testimony?

24 A. I'm just saying that's what they say.  
25 That doesn't mean that's all that he was responsible

1 for.

2 Q. Let's take Plaintiffs' Exhibit 2. It's  
3 dated August 23rd, 2011.

4 Do you see that?

5 A. Yes.

6 Q. Did you write this?

7 A. No.

8 Q. Do you know who wrote it?

9 A. No.

10 Q. Plaintiffs' Exhibit 2 contains a number  
11 of duties for Mr. Diniz.

12 Are these consistent with your knowledge  
13 as to what Mr. Diniz's job duties were?

14 A. Some of them, yes.

15 Q. Is there anything on Plaintiffs'  
16 Exhibit 2 that you would say was not part of  
17 Mr. Diniz's job duties?

18 A. No.

19 Q. Is there anything that is not on  
20 Plaintiffs' Exhibit 2 that you would say was part of  
21 Mr. Diniz's job duties?

22 A. I just don't recall right now.

23 Q. Today is your deposition, so -- you  
24 operate the practice.

25 Is there anything else that you had



1 Mr. Diniz do --

2 A. I just don't recall right now.

3 Q. -- that is not listed on here?

4 A. I just don't recall right now.

5 Q. Dr. McBrayer, do you ever have problems  
6 remembering things?

7 A. Yes. You asked me a question twice a  
8 while ago. I recall that.

9 Q. I should have asked this earlier.  
10 Are you currently taking any medication?

11 A. Yes, I am.

12 Q. Would that medication affect your ability  
13 to testify truthfully today?

14 A. No.

15 Q. Would that medication affect your ability  
16 to testify accurately and completely today?

17 A. No.

18 Q. So that medication doesn't affect your  
19 memory; is that right?

20 A. No.

21 Q. Is that right?

22 A. No. Correct. I just don't recall all of  
23 his job duties right now. That would take me half  
24 an hour to sit down. I can refer back to you if  
25 that's what you'd like for me to do.

1 Q. So Mr. Diniz worked for you for nine  
2 years --

3 A. Uh-huh.

4 Q. -- and you couldn't tell me if there are  
5 other items that are not on Plaintiffs' Exhibit 2  
6 that Mr. Diniz did for you; is that right?

7 MR. LOGUE: Asked and answered.

8 Q. (By Mr. Weiner) You can answer.

9 A. I've already told you I don't know if  
10 there's any more things that he did around the  
11 office as far as that's concerned. Workup patients  
12 is a very broad statement there.

13 Q. Let's look at Plaintiffs' Exhibit 3.

14 A. Okay.

15 Q. As best as I can tell, there are a number  
16 of different dates on this document. I see  
17 March 31st, 2005; June 18th, 2010; August 16th,  
18 2012, which is listed twice.

19 Do you know when this document was  
20 created?

21 A. I can't -- I can only assume, according  
22 to Cris's signature, it was 6/18/10.

23 MR. LOGUE: Don't assume.

24 A. I don't know.

25 Q. (By Mr. Weiner) I don't want you to

1 assume.

2 A. I don't know.

3 Q. To confirm, the typed portion of this  
4 document, do you know who typed that?

5 A. No.

6 Q. And you had mentioned a second ago that  
7 Cris signed this document.

8 You recognize Cris's signature, I take  
9 it; is that right?

10 A. Yes.

11 Q. And there appears to me at least to be  
12 another set of handwriting on this, another person's  
13 handwriting.

14 Do you recognize that handwriting?

15 A. Yes. There's my handwriting on there.

16 Q. Which portion of this document is your  
17 handwriting?

18 A. Number 8, which is dated 8/16/12, which  
19 was --

20 Q. Anything else?

21 A. And I also made a -- it looks like my --  
22 this is my handwriting, Note the dates of signature  
23 of the above employee, the dates, the actual dates  
24 of the signature.

25 So I would assume this went all the way

1 back to March 31st of '05 and was resigned on  
2 6/18/10 and resigned on 8/16/12.

3 Q. What did you mean by, "Note the dates of  
4 signature of the above employee"?

5 A. I mean note that he had signed it at one  
6 time on 3/31/05, he had signed it one time on  
7 6/18/10, and he had signed it again on 8/16/12.

8 Q. Alpha's produced a number of documents to  
9 us that have been signed by various employees at  
10 various points in time.

11 Do you typically write on documents and  
12 note the dates of signature of the above employee?

13 A. No, I don't.

14 Q. So why did you write it this time?

15 A. Because he had signed this at different  
16 times, and we had had sit-downs with him to make  
17 sure that he understood at these different times --  
18 I had different sit-downs with him about his --  
19 about what he was responsible for because at times  
20 he would not perform his duties.

21 Q. And you said "we" had sit-downs with him.

22 Who is "we"?

23 A. Margaret Sampson and I and also -- I'll  
24 be honest. I don't remember who sat down with me on  
25 8/16/12.

1 Q. Anyone else besides you and Margaret  
2 Sampson have sit-downs with Cris?

3 A. I don't recall who sat down with me on  
4 8/16/12. It's generally my -- that I do have  
5 someone sit down with me to authenticate things.

6 Q. Do you recall if Angela Buckner ever had  
7 a sit-down with Cris?

8 A. I don't recall if Angela was with me here  
9 or -- I'm sure she had some, but I'm not aware.

10 Q. My questions are not necessarily related  
11 to August 16th. I'm asking in general.

12 Is it your testimony that Angela Buckner  
13 had some sit-downs with Cris?

14 A. I would assume. I don't know.

15 Q. Again, I don't want you to assume.

16 A. I can't answer you then.

17 Q. What about Pamela Combs? Do you remember  
18 if she had any sit-downs with Cris?

19 A. I don't recall.

20 Q. Are there any items listed on Plaintiffs'  
21 Exhibit 3 as far as job duties that Mr. Diniz did  
22 not do?

23 MR. LOGUE: You mean those that are  
24 listed that he didn't do?

25 MR. WEINER: That was my question.

1 Q. (By Mr. Weiner) Are there any duties  
2 listed on --

3 A. I thought we already addressed that. I  
4 don't recall if there's any -- in other words,  
5 there's other duties that he's -- I'm sure that he  
6 does that may not be there. I can't recall any of  
7 them.

8 Q. Please listen to my question very  
9 closely.

10 A. I'm sorry.

11 Q. Are there any duties listed on  
12 Plaintiffs' Exhibit 3 that Mr. Diniz did not do?

13 MR. LOGUE: On any particular date or --

14 A. Are you telling me -- well, I had the  
15 sit-down with him because he was not doing his  
16 duties at certain times.

17 Q. (By Mr. Weiner) Which items listed on  
18 Plaintiffs' Exhibit 3 did Mr. Diniz not do?

19 A. I can't recall exactly. It could have  
20 been all of them at different times.

21 Q. Let's talk about August of 2012.  
22 Which items listed on Plaintiffs'  
23 Exhibit 3 was Mr. Diniz not doing?

24 A. I don't recall.

25 Q. Who would know?

1 A. Angela Buckner should know.

2 Q. Anyone else?

3 A. 2012 -- yeah. If you said August 2012,  
4 that would be Angela Buckner's responsibility.

5 Q. Anyone else?

6 A. No.

7 Q. One thing I noticed that's not on  
8 Plaintiffs' Exhibit 2 or Plaintiffs' Exhibit 3 is  
9 Mr. Diniz doing anesthesia.

10 Did Mr. Diniz ever help you with  
11 anesthesia?

12 A. You mean as far as in the -- no. He did  
13 not help me with anesthesia as far as the anesthesia  
14 is concerned.

15 Q. And I'm talking about from the beginning  
16 of Mr. Diniz's employment in 2003 until the  
17 termination of his employment in 2012.

18 Is it your testimony that Mr. Diniz never  
19 had any job duties related to anesthesia?

20 A. No.

21 Q. That's not your testimony?

22 A. No.

23 Q. What did Mr. Diniz do in relationship to  
24 anesthesia with you between 2003 and 2012?

25 A. He just assisted in the surgery room as

1 far as the surgery was concerned.

2 Q. What does that mean?

3 A. It means he would assist with vital  
4 signs. He would assist with making sure that --  
5 helping with the ultrasound.

6 Q. Does the ultrasound have anything to do  
7 with anesthesia?

8 A. No.

9 Q. My question is specifically in relation  
10 to anesthesia.

11 What did he do in relation to anesthesia?

12 A. He just monitored the patients' vital  
13 signs.

14 Q. Anything else?

15 A. No.

16 Q. Would it be proper for Mr. Diniz to help  
17 you administrate anesthesia?

18 A. No.

19 Q. Would it be illegal?

20 A. No.

21 Q. When you bill insurance companies for  
22 procedures that you do, do you have to certify that  
23 you used a proper anesthesiologist or  
24 anesthesiologist assistant?

25 A. We don't bill -- I don't bill



1 anesthesia -- for anesthesia.

2 Q. Was it part of Mr. Diniz's job duties to  
3 clean your house?

4 A. No.

5 Q. You laugh.  
6 Why is that funny?

7 A. Because it's not part of his job duties.

8 Q. Did Mr. Diniz ever clean your house?

9 A. Yes.

10 Q. Did you pay him for that?

11 A. I don't know if Margaret paid him or not.  
12 I paid him several times.

13 Q. What do you mean by you "paid him several  
14 times"?

15 A. I paid him cash several times.

16 Q. Do you remember when that was?

17 A. No.

18 Q. Do you know if Mr. Diniz listed that time  
19 on his timesheets?

20 A. No.

21 Q. Would it surprise you if Mr. Diniz listed  
22 that time on his timesheets?

23 A. Yes.

24 Q. Did Mr. Diniz do any other work at your  
25 house, other than cleaning it?

1 A. No.

2 Q. How often did Mr. Diniz clean your house?

3 A. Approximately every month.

4 Q. How much did you pay Mr. Diniz?

5 A. When he came over, I paid him \$20 an  
6 hour.

7 Q. Did you pay him for cleaning your house  
8 after each time?

9 A. No, I did not.

10 Q. How did that work? What was the  
11 frequency?

12 A. He would be gone when I would return,  
13 when I would get home. The frequency would be every  
14 three or four weeks, as far as I can remember.

15 Q. Did you just hand him an envelope of  
16 cash?

17 A. Yes. Well, no. I just handed him some  
18 cash, \$60.

19 (Whereupon a document was identified as  
20 Plaintiffs' Exhibit 4.)

21 Q. (By Mr. Weiner) Dr. McBrayer, the court  
22 reporter has just marked this document as  
23 Plaintiffs' Exhibit 4. It's an Alpha GYN timesheet  
24 for the pay period between 4/16/12 and 4/30/12.

25 I'd refer you to the entry on 4/25.

1 There's a notation to the right that says doctor  
2 house.

3 Do you see that?

4 A. Yes.

5 Q. Do you know what that means?

6 A. No. I suppose it means doctor's house.

7 Q. Do you know whose handwriting that is?

8 A. No.

9 Q. You testified earlier that it would  
10 surprise you if Mr. Diniz -- the time he spent  
11 cleaning your house was on his timesheets; right?

12 A. Yes. That still doesn't prove that this  
13 was on his timesheet.

14 Q. I'm sorry?

15 A. That still doesn't prove that this was on  
16 his timesheet. That could have been written any  
17 time.

18 Q. Do you recognize any of the other  
19 handwriting on this sheet?

20 A. Other than his, no.

21 Q. Where is Cris's handwriting that you  
22 recognize?

23 A. Right at the bottom here (indicating).

24 Q. And you're referring to the employee  
25 signature?

1 A. Correct.

2 Q. If you look next to the total, it says  
3 75.25, and there are initials right below that.

4 Do you recognize that handwriting?

5 A. No.

6 Q. Does anyone who worked at Alpha have the  
7 initials PC?

8 A. Pamela Combs.

9 Q. And would Ms. Combs be responsible for  
10 some portion of filling out this timesheet?

11 A. I don't know.

12 Q. Would it surprise you if that was  
13 Ms. Combs' signature?

14 A. No, it wouldn't surprise me.

15 Q. Does it appear to you that Ms. Combs'  
16 signature was written in the same pen as doctor  
17 house?

18 A. Pardon? Repeat your question, please.

19 Q. Would it surprise you that Ms. Combs'  
20 signature is written in the same type of pen as  
21 doctor house?

22 MR. LOGUE: I would object to that to the  
23 extent it's a copy. One may have been blue.

24 One may have been black.

25 A. I can't answer your question.

1 MR. WEINER: Keith, I would appreciate it  
2 if you would just object and not lead the  
3 witness.

4 Okay?

5 MR. LOGUE: I can state a basis for my  
6 objection.

7 MR. WEINER: No, you can't. You can  
8 object to form under the Federal rules.

9 MR. LOGUE: Sure, I can.

10 MR. WEINER: No, you can't, Keith.

11 MS. RUSHING: No, you can't. That's a  
12 speaking objection.

13 MR. WEINER: You may want to catch up on  
14 the Federal rules. You can object to form, and  
15 that preserves your objections.

16 MR. LOGUE: Okay.

17 A. Again, I can't answer your question  
18 because I don't know when this document came about  
19 even.

20 Q. (By Mr. Weiner) Let me ask you about  
21 that.

22 These Alpha GYN timesheets, are they  
23 generally kept contemporaneously with when the time  
24 is incurred?

25 A. Yes.

1 Q. So do you think that there's a chance  
2 that this document for the pay period between  
3 4/16/12 and 4/30/12 was created at some time other  
4 than --

5 A. No.

6 Q. -- April or May of 2012?

7 A. No. I just don't create these documents.  
8 I don't know anything -- I just don't create these  
9 documents.

10 Q. Who does?

11 A. I don't know who did this one.

12 Q. Who's generally responsible for creating  
13 these timesheets?

14 A. Angela Buckner.

15 Q. Anyone else?

16 A. She's the person who's really responsible  
17 for it.

18 Q. Anyone else?

19 A. Not to my knowledge.

20 Q. What is her role? What does she do in  
21 relation to these timesheets?

22 A. She would be the one who fills them out.  
23 And the -- to my knowledge, this is also done by the  
24 person -- employee themselves. They're supposed to  
25 help generate this.

1 Q. Do you or Alpha give employees  
2 instructions as to how to fill out timesheets?

3 A. Alpha would, I guess.

4 Q. I don't want you to guess.

5 A. I don't know.

6 Q. To your knowledge, what part of this did  
7 Ms. Buckner do?

8 A. I don't know.

9 Q. Was it also part of Mr. Diniz's job  
10 duties to shave your back?

11 A. That was just something he did for me in  
12 the office.

13 Q. Is that a yes?

14 A. No, it's not a part of his job duties.  
15 That was just a personal thing he did for me.

16 Q. Was Mr. Diniz paid for the time he spent  
17 shaving your back?

18 A. I don't know.

19 Q. So is there a chance that he wasn't paid  
20 for that time?

21 A. He may have been paid for it.

22 Q. That wasn't my question.

23 Is there a chance he wasn't paid for it?

24 A. Pardon?

25 Q. Is there a chance that he was not paid

1 for that time?

2 A. Is there a chance he wasn't paid for --

3 Q. That he was not paid for the time he  
4 spent shaving your back.

5 A. I would hope he did that as a friend.

6 MR. WEINER: Could you please read back  
7 the question.

8 (The record was read by the reporter.)

9 A. Yes, there's a chance.

10 Q. (By Mr. Weiner) You mentioned a minute  
11 ago that he shaved your back in the office.

12 Did he shave your back anywhere else?

13 A. Not to my knowledge.

14 Q. Did he ever shave your back at your  
15 house?

16 A. I don't recall.

17 Q. How often did he shave your back?

18 A. I don't recall that. Probably three or  
19 four times. I have no idea of the time frames.

20 Q. Three or four times per week, per month,  
21 per year?

22 A. Three or four times total.

23 Q. How long did it typically take him to do  
24 that?

25 A. Probably 15 minutes.



1 Q. Did any other employees at Alpha clean  
2 your house?

3 A. Yes.

4 Q. Who?

5 A. Leslie Summerour.

6 Q. Did she clean your house during the same  
7 rough time frames that Mr. Diniz cleaned your house?

8 A. No.

9 Q. Did Mr. Diniz clean your house before  
10 Ms. Summerour did so?

11 A. Yes.

12 Q. When did Ms. Summerour start cleaning  
13 your house?

14 A. Probably -- let me see. Probably 2010 to  
15 2011.

16 Q. In July, August of 2012, when Mr. Diniz's  
17 employment was terminated, was he cleaning your  
18 house right up until the point of termination of  
19 employment?

20 A. I don't recall him doing this.

21 Q. That's not my question.

22 A. I don't recall.

23 Q. When was the last time you recall him  
24 cleaning your house?

25 A. Three years -- two or three years ago.

1 Q. Did any other Alpha employee shave your  
2 back?

3 A. Not that I recall.

4 Q. Why did you ask Mr. Diniz to clean your  
5 house?

6 A. I thought he might could use some extra  
7 money.

8 Q. Any other reason?

9 A. No.

10 Q. Why did you ask Mr. Diniz to shave your  
11 back?

12 A. He was a friend. I thought -- I asked  
13 him to shave my back.

14 Q. Anyone else at Alpha that you consider a  
15 friend?

16 A. Yes.

17 Q. Who?

18 A. All the employees there.

19 Q. But you didn't ask any of them to shave  
20 your back; right?

21 A. Correct.

22 Q. Why not?

23 Why did you ask Cris?

24 A. Because I thought I had a -- he would be  
25 happy to do it.

1 Q. Was it part of Mr. Diniz's job duties to  
2 drive you to the airport?

3 A. No.

4 Q. Did he ever drive you to the airport?

5 A. Yes.

6 Q. Was it part of his job duties to pick you  
7 up from the airport?

8 A. No.

9 Q. Was it part of his job duties to take  
10 your BMW in for inspections?

11 A. No.

12 Q. Did he ever do so?

13 A. Yes.

14 Q. When Mr. Diniz drove you to the airport,  
15 picked you up from the airport, took your car in for  
16 inspections, did you pay him for the time he spent  
17 doing so?

18 A. No.

19 Q. How often did he drive you to the  
20 airport?

21 A. I can only tell you he probably drove me  
22 a total of five times to the airport.

23 Q. How often do you remember him picking you  
24 up from the airport?

25 A. Perhaps five times.

1 Q. Do you remember the last time he either  
2 drove you or picked you up from the airport?

3 A. No.

4 Q. Was it 2012?

5 A. I don't recall.

6 Q. Was it 2010?

7 A. I don't recall.

8 Q. Could you tell me if it was recent?

9 A. Nothing recent that I recall.

10 Q. Take your best guess.

11 What was the last time you can  
12 remember --

13 MR. LOGUE: Object --

14 Q. (By Mr. Weiner) -- that he drove you to  
15 the airport or picked you up from the airport?

16 A. I've already said I don't recall. My  
17 best guess --

18 THE WITNESS: You objected to it; right?

19 MR. LOGUE: I did.

20 Q. (By Mr. Weiner) You can still answer.

21 A. I don't recall.

22 Q. So Mr. Diniz worked for you starting in  
23 2003.

24 Do you remember him driving you and  
25 picking you up from the airport when he first

1 started working for you?

2 A. No.

3 Q. He'd been there for a couple of years  
4 when he started taking you to the airport and  
5 picking you up from the airport?

6 A. Yes, to the best of my recollection.

7 Q. Taking your car in for the inspections,  
8 how many times do you think he did that for you?

9 A. Probably four or five times.

10 Q. Four or five times over what time period?

11 A. Over four or five years.

12 Q. And those four or five years, were those  
13 towards the beginning of his employment, the middle,  
14 the end?

15 A. The end. Toward the -- the five years  
16 toward the end.

17 Q. Dr. McBrayer, you testified earlier that  
18 Mr. Diniz was paid on an hourly basis.

19 Do you remember that testimony?

20 A. Yes.

21 Q. Was he paid on an hourly basis from the  
22 beginning of his employment in 2003 through the  
23 termination of his employment in 2012?

24 A. Yes.

25 Q. Did that ever change during that time

1 period to a salary basis?

2 A. Not to my knowledge.

3 Q. Did it ever change to anything other than  
4 an hourly basis?

5 A. Not to my knowledge.

6 Q. The timesheet we had looked at earlier,  
7 Plaintiffs' Exhibit 4, where does Alpha typically  
8 keep this kind of document in its office?

9 A. That's just in the manager's office.

10 Q. What floor is the manager's office  
11 located on?

12 A. Bottom floor.

13 Q. And this timesheet, Plaintiffs'  
14 Exhibit 4, is Mr. Diniz's timesheet; right?

15 A. Pardon?

16 Q. This Plaintiffs' Exhibit 4 is Mr. Diniz's  
17 timesheet; right?

18 A. Correct.

19 Q. Are all timesheets kept in the manager's  
20 office?

21 A. Yes.

22 Q. Are any timesheets kept on the third  
23 floor of Alpha's office?

24 A. Yes.

25 Q. Which timesheets are kept in the third

1 floor versus in the manager's office?

2 A. Just the old timesheets.

3 Q. What do you mean by "old"? Can you give  
4 me a more specific answer?

5 A. Anything over a year old, to my  
6 knowledge.

7 Q. Is your answer applicable to all  
8 employees, meaning timesheets that are more than a  
9 year old are all kept on the third floor?

10 A. To my knowledge, yes.

11 Q. So any employee's timesheet within the  
12 last year, to the best of your knowledge, would be  
13 located in the manager's office; is that right?

14 A. Yes.

15 Q. And that's Angela Buckner?

16 A. Yes.

17 Q. We had asked you and Alpha to produce to  
18 us all timesheets that Alpha has for its hourly  
19 employees, and we received timesheets for various  
20 employees from 2011 and 2012.

21 To your knowledge, does Alpha currently  
22 have in its possession any timesheets from before  
23 2011?

24 A. Not to my knowledge.

25 Q. Can you tell me why not?

1 A. There was a fire in the office.

2 Q. And that fire was in May of 2012; is that  
3 right?

4 A. That's correct.

5 Q. And that fire was on the third floor; is  
6 that right?

7 A. That's correct.

8 Q. Were all documents on the third floor  
9 destroyed in the fire?

10 A. All documents were wet or smoke damaged  
11 or destroyed.

12 Q. Were there some documents on the third  
13 floor that weren't wet or weren't smoke damaged?

14 A. Not to my knowledge.

15 Q. Did Alpha do anything with those  
16 wet/smoke-damaged documents following the fire?

17 A. We destroyed them all.

18 Q. When did that happen?

19 A. The same day, next day.

20 Q. How did Alpha go about destroying them  
21 all?

22 A. We hired a document destroy -- a company  
23 to destroy documents that was recommended by MAG.

24 Q. I'm sorry? Recommended by?

25 A. MAG Mutual, our insurer.



1 Q. And to the best of your knowledge, were  
2 all timesheets from before 2011 destroyed in that  
3 destruction?

4 A. To the best of my knowledge. I don't  
5 know of anything -- I mean, some from 2011 could  
6 have been destroyed for all I know.

7 Q. Did you personally go through the  
8 documents that were to be destroyed before they were  
9 destroyed?

10 A. No.

11 Q. Did anyone at Alpha do that?

12 A. No. I don't know.

13 Q. So is it fair to say -- and tell me if  
14 you just don't know.

15 But is it fair to say that all documents  
16 that had been on the third floor were destroyed  
17 shortly after the fire by the company that Alpha  
18 hired?

19 A. I can't exactly answer your question  
20 because I'm not -- I don't know exactly what  
21 happened in that. All I know is everything that was  
22 on that third floor was wet or smoke damaged and was  
23 destroyed.

24 Q. And prior to the fire, were timesheets  
25 kept -- how were documents kept, I should ask?

1           A.     You'd have to refer to my office manager  
2 for that. They were kept by her.

3           Q.     Does Alpha keep personnel files on  
4 individual employees?

5           A.     To my knowledge, yes.

6           Q.     And where are those personnel files kept  
7 in Alpha's office?

8           A.     Well, some were kept on the third floor,  
9 and some were kept in the bottom floor.

10          Q.     Is there any rhyme or reason for why some  
11 were on the third floor and some were on the bottom  
12 floor?

13          A.     I don't know.

14          Q.     Does Alpha have any timesheets for any of  
15 its employees from before 2011?

16          A.     I don't know. You'd have to ask my  
17 office manager.

18          Q.     Would anyone other than Ms. Buckner know  
19 the answer to that question?

20          A.     Not to my knowledge.

21          Q.     Does Alpha keep documents in any format  
22 other than paper hard copy?

23          A.     Not to my knowledge.

24          Q.     Who would know a definitive answer to  
25 that?

1 A. Angela Buckner.

2 (Whereupon documents were identified as  
3 Plaintiffs' Exhibit 5 and Plaintiffs'  
4 Exhibit 6.)

5 Q. (By Mr. Weiner) Dr. McBrayer, I'm  
6 handing you two documents. The first has been  
7 marked Plaintiffs' Exhibit 5.

8 MR. LOGUE: Let me see that.

9 Q. (By Mr. Weiner) It's called Plaintiffs'  
10 First Set of Requests for Admission to Defendants.

11 And the second document is Plaintiffs'  
12 Exhibit 6, and it's Defendants' Responses to  
13 Plaintiffs' First Set of Requests for Admissions to  
14 Defendants.

15 Take your time to review them, but my  
16 question will be: Have you ever seen either of  
17 these documents before?

18 A. Yes. I've seen document 5, and I've seen  
19 document 6 also.

20 Q. On document 5, if you'd please turn to  
21 page 6 and look at RFA No. 13.

22 Do you see it?

23 A. Yes.

24 Q. Can you read No. 13 to me, please.

25 A. Admit that throughout his employment with

1 Defendants, Plaintiff Diniz was paid on an hourly  
2 basis.

3 Q. Plaintiffs' Exhibit 6, if you look at  
4 paragraph 2, paragraph 2 contains Defendants'  
5 response to RFA No. 13.

6 Can you tell me how Defendants responded  
7 to RFA No. 13.

8 A. I'm not connected to what you're asking.

9 Q. What does paragraph 2 say on Plaintiffs'  
10 Exhibit 6?

11 A. Paragraph 2 --

12 Q. Yes.

13 A. -- on 6?

14 Responding to Requests 2 through 26, 34,  
15 36, 38, Defendants deny same.

16 Q. So is it fair to say that in Plaintiffs'  
17 Exhibit 6, Defendants denied that throughout  
18 Mr. Diniz's employment with Defendants, Plaintiff  
19 Diniz was paid on an hourly basis?

20 A. Restate your question, please.

21 Q. Is it fair to say that Defendants denied  
22 that throughout Mr. Diniz's employment with  
23 Defendants, that Mr. Diniz was paid on an hourly  
24 basis?

25 A. No. It says, Responding to Requests 1

1 through 27 through 33, Defendants admit same, that  
2 he was paid on an hourly basis.

3 Q. I'd ask you to look at paragraph 2,  
4 please, on Plaintiffs' Exhibit 6.

5 A. And I'm looking at requests 2 through 26.

6 Q. Do Defendants deny or admit paragraph 13?

7 A. We denied it. I mean, we admitted that  
8 he did get paid on an hourly basis, No. 13 on  
9 page 6.

10 Q. Can you show me where you're looking at.

11 A. On No. 1, admits requests 1 through 27.

12 Q. No. 1 says, Responding to Requests 1 and  
13 27 to 33.

14 Do you see that?

15 A. Uh-huh.

16 Q. Is it your reading of this that No. 13 is  
17 included --

18 A. Yes.

19 Q. -- in 1 and 27 to 33?

20 A. Yes.

21 Q. So paragraph 2, where it says, Responding  
22 to Requests 2 to 26, do you read that as covering  
23 only requests 2 and 26 or 2 through 26?

24 A. I had to leave that to the lawyer to  
25 determine that.

1 Q. No. I'd like your answer to that since  
2 this is your response.

3 A. My response, again, is that he was paid  
4 on an hourly basis.

5 Q. So if a Court looked at Plaintiffs'  
6 Exhibit 6 and said Defendants denied that Mr. Diniz  
7 was paid on an hourly basis, you would say that  
8 would be incorrect; right?

9 MR. LOGUE: I would object to your asking  
10 him a question concerning what the Court would  
11 do.

12 A. I've already answered that we paid him on  
13 an hourly basis.

14 Q. (By Mr. Weiner) So if Defendants denied  
15 that Mr. Diniz was paid on an hourly basis, that  
16 would be false; right?

17 A. If we denied?

18 THE WITNESS: Interpret what he's trying  
19 to say.

20 Q. (By Mr. Weiner) No. I'm sorry,  
21 Dr. McBrayer. I'm asking the questions here.

22 A. And I'm asking for clarification. What  
23 are you trying --

24 Q. If Defendants denied that Mr. Diniz was  
25 paid on an hourly basis, that denial --

1 A. That would be incorrect.

2 Q. -- would be incorrect; is that right?

3 A. Correct.

4 Q. Thank you.

5 MR. WEINER: Keith, you'll be getting a  
6 Rule 37 letter shortly.

7 MR. LOGUE: Okay.

8 Q. (By Mr. Weiner) Dr. McBrayer, you and  
9 Alpha also employed Toni Thomas; is that correct?

10 A. Correct.

11 Q. And you employed him from approximately  
12 May until August of 2012; is that right?

13 A. I don't know when he was hired.

14 Q. Do you have any reason to dispute those  
15 dates?

16 A. No.

17 Q. And you and Alpha terminated Mr. Thomas's  
18 employment; right?

19 A. Correct.

20 Q. What was Mr. Thomas's position with  
21 Alpha?

22 A. He was there to help with IT issues.

23 Q. Anything else?

24 A. And just helping in the office as far as  
25 his capabilities were concerned.

1 Q. Can you explain what that means. I don't  
2 understand.

3 A. Well, it would be hard to -- if he  
4 understood what I asked him to do -- he would be  
5 asked to do certain things. If he understood, he  
6 would -- he would be requested to do certain things  
7 in the office that I felt like he could understand  
8 doing, minimal things.

9 Q. What kind of things?

10 A. Just cleaning up, IT issues.

11 Q. Anything else?

12 A. Just helping patients out of the office.

13 Q. Anything else?

14 A. You would have to refer to my office  
15 manager for other duties.

16 Q. Did Mr. Thomas ever place orders for  
17 medications?

18 A. I'm not aware of that.

19 Q. What about placing orders for office  
20 supplies or --

21 A. I'm not aware. I don't know.

22 Q. Did Mr. Thomas hook up IVs for patients?

23 A. No.

24 Q. So when he arrived at work each day, the  
25 first thing he did, you're telling me, was not hook



1 up IVs?

2 A. No.

3 Q. Did he start saline IVs for patients?

4 A. No.

5 Q. Now, you and Alpha have taken the  
6 position in this lawsuit that Mr. Thomas was an  
7 independent contractor; is that right?

8 MR. LOGUE: To your understanding.

9 A. To my understanding.

10 Q. (By Mr. Weiner) Yes?

11 A. Yes.

12 Q. What is your understanding based on?

13 A. I had minimal contact with Mr. Thomas, so  
14 you'd have to really, again, refer to my office  
15 manager as far as his whole tenure there. Because  
16 he had no medical background, according to my  
17 knowledge.

18 Q. How is that relevant to whether he was an  
19 independent contractor or an employee?

20 A. I don't even know what independent  
21 contractor means.

22 Q. Mr. Thomas filled out a form W-4 for tax  
23 purposes when he started; right?

24 A. I don't know.

25 Q. Who would know?

1 A. The office manager.

2 Q. And Alpha withheld Social Security,  
3 Medicare, and State income tax from his --

4 A. I don't know.

5 Q. -- paycheck?

6 A. I don't know.

7 Q. Please let me finish the question.

8 Did Alpha withhold Social Security,  
9 Medicare, and State income tax from his paychecks?

10 A. You'd finished. I don't know.

11 Q. Would Ms. Buckner know?

12 A. Yes.

13 Q. Anyone else?

14 A. Not to my knowledge.

15 Q. Did Mr. Thomas have to fill out  
16 timesheets?

17 A. Don't know. I don't know.

18 Q. Who was Mr. Thomas's supervisor?

19 A. I would have been his supervisor, and  
20 Cris would have been.

21 Q. Anyone else?

22 A. Anyone who worked there, because he had  
23 minimal experience.

24 Q. So you could fire him if you wanted;  
25 right?

1 A. Pardon?

2 Q. You could fire him if you wanted; right?

3 A. I'm sure I could.

4 Q. Could Cris fire him?

5 A. No.

6 Q. Could Cris discipline him?

7 A. It was never set up in the office as far  
8 as -- no.

9 Q. Who determined Mr. Thomas's work duties?

10 A. Angela Buckner and Cris.

11 Q. Anyone else?

12 A. Not to my knowledge.

13 Q. Did you help determine Mr. Thomas's work  
14 duties?

15 A. Yes.

16 Q. Could Mr. Thomas hire employees to do  
17 work for him?

18 A. No. Not to my knowledge.

19 Q. Did you and Alpha provide Mr. Thomas with  
20 the equipment that he needed to do his job?

21 A. I don't know.

22 Q. Who would know?

23 A. Angela Buckner.

24 Q. Did you tell Mr. Thomas when he could  
25 come and go from the office?

1 A. No.

2 Q. Who did?

3 A. Angela Buckner.

4 Q. Anyone else?

5 A. Not to my knowledge.

6 Q. Was Mr. Thomas paid on an hourly basis?

7 A. Yes, to my knowledge.

8 Q. Could he do activities at work that would  
9 earn him more than his standard hourly rate?

10 A. Not to my knowledge.

11 Q. You and Alpha owned the facility that  
12 Mr. Thomas was working in; right?

13 A. Correct.

14 Q. You have Plaintiffs' Exhibits 5 and 6 in  
15 front of you.

16 A. Yes.

17 Q. If you could, please look at Plaintiffs'  
18 Exhibit 5, paragraph 20, please.

19 A. This is page 7?

20 Q. Yes.

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

24 Do you see that?

25 A. Yes.

1 Q. Please look at Plaintiffs' Exhibit 6 and  
2 tell me how you believe Defendants responded to  
3 paragraph 20.

4 A. To me, this admits that he did perform  
5 the services for an hourly basis.

6 Q. What is the wording in Plaintiffs'  
7 Exhibit 6 that your answer is based on?

8 A. Responding to Requests 1 through 27 --  
9 one and 27 through -- and 27 through 33 Defendants  
10 same.

11 Q. I think the record might have gotten  
12 garbled there a little bit. Can we try that one  
13 more time.

14 What is the language in Plaintiffs'  
15 Exhibit 6 that your answer is based on?

16 A. On No. 1 where it says, Responding to  
17 Requests 1 and 27-33, Defendants admit same.

18 Q. So paragraph 2, where it says, Responding  
19 to Requests 2-26, 34, and 36-38, Defendants deny  
20 same, is it your belief that that paragraph that I  
21 just read has no relationship to RFA No. 20?

22 A. I can't interpret that as having anything  
23 to do with 20. I see No. 1 as admitting the same in  
24 20, is the way I see it.

25 Q. So you think RFA No. 20, do you admit

1 that throughout the period Plaintiff Thomas  
2 performed services for Defendants, he was paid on  
3 hourly basis -- you think Alpha and your own  
4 response is covered by paragraph No. 1 in  
5 Plaintiffs' Exhibit 6 and not paragraph No. 2; is  
6 that right?

7 A. Correct. That's right. And I'm saying  
8 for the record that Thomas was paid on an hourly  
9 basis as far as any knowledge I have.

10 Q. So if Defendants denied that Mr. Thomas  
11 was paid on an hourly basis, that denial would be  
12 incorrect; right?

13 A. Correct.

14 Q. And that would have been pretty easy to  
15 figure out just by looking at his pay documents;  
16 right?

17 A. Correct.

18 Q. Did Mr. Thomas have any written job  
19 description?

20 A. I don't recall any.

21 Q. Who would know if he had one or not?

22 A. Angela Buckner.

23 Q. Did Mr. Thomas have a job title?

24 A. No. Not to my knowledge.

25 Q. We had talked earlier about who was

1 Mr. Thomas's supervisors, and one person you did not  
2 mention was Pamela Combs.

3 Was Pamela Combs one of Mr. Thomas's  
4 supervisors?

5 A. I would not refer to Pamela Combs as his  
6 supervisor.

7 Q. Did she have the authority to discipline  
8 Mr. Thomas for things he did at work or didn't do at  
9 work?

10 A. Not to my knowledge.

11 (Whereupon a document was identified as  
12 Plaintiffs' Exhibit 7.)

13 Q. (By Mr. Weiner) Dr. McBrayer, I've  
14 handed to you Plaintiffs' Exhibit 7 which is titled  
15 "Reprimand July 26, 2012."

16 Can you please take a look at it and let  
17 me know when you've completed your review.

18 A. I see it.

19 Q. Have you ever seen this document before?

20 A. No.

21 Q. You'll see at the bottom that there are  
22 two signatures. One is Toni Thomas, and one is  
23 Pamela Combs.

24 Do you see that?

25 A. Yes, I do.

1 Q. And the document itself which is from  
2 July 26, 2012, one paragraph says, The trash was not  
3 taken to the Dumpster.

4 One paragraph starts with, The floor in  
5 foyer has not been mopped in days. One sentence is,  
6 The spill in front off [sic] coffee pot has been  
7 there for days.

8 One sentence is, Stairs have not been  
9 vacuumed. One sentence is, Dr. McBrayer's desk was  
10 not cleaned.

11 Do you see all those?

12 A. Yes.

13 Q. Is it your understanding that Ms. Combs  
14 was reprimanding Mr. Thomas for not having done  
15 those things?

16 A. No. I've already spoken -- I've already  
17 told you I wasn't aware of it.

18 Q. What is your understanding of what this  
19 document means?

20 A. It means that Ms. Combs took it upon  
21 herself to discipline -- reprimand Mr. Thomas.

22 Q. Did you give Ms. Combs authority to  
23 reprimand or discipline employees?

24 A. No.

25 Q. So is it your testimony today that



1 Ms. Combs was doing this without your authority?

2 A. Correct.

3 Q. Does Ms. Combs typically do things  
4 without your authority?

5 A. I can't answer that. I don't know if  
6 she's done other things or not.

7 Q. Do you know if Mr. Thomas received other  
8 reprimands, write-ups, or any other kind of  
9 discipline, other than this one?

10 A. I don't recall.

11 Q. Does that mean you don't remember as you  
12 sit here today, or you just don't know?

13 A. I just don't recall.

14 Q. Does that mean you don't remember as you  
15 sit here today?

16 A. Correct.

17 Q. Who would know?

18 A. Angela Buckner should know.

19 Q. Anyone else?

20 A. Not to my knowledge.

21 Q. Do you have any knowledge of how hourly  
22 employees submitted their time to be paid?

23 A. Not until recently.

24 Q. What do you mean by "until recently"?

25 A. I became more involved as far as the

1 employees being paid lately.

2 Q. When you say "recently," what time period  
3 are you talking about?

4 A. That's the last month.

5 Q. Tell me about your knowledge as to how  
6 employees are paid.

7 A. They're just paid on an hourly basis,  
8 weekly basis.

9 Q. Do they fill out timesheets?

10 A. Yes.

11 Q. Let me back up a second.

12 Do hourly employees clock in and clock  
13 out each day?

14 A. Yes.

15 Q. All hourly employees?

16 A. They're supposed to.

17 Q. The policy of clocking in and clocking  
18 out each day, all hourly employees are supposed to  
19 do so; is that right?

20 A. Correct.

21 Q. And how do they clock in and clock out  
22 each day?

23 A. There's a clock downstairs that they all  
24 are aware of that they all clock in at.

25 Q. And do they use a timecard to do so?

1 A. Yes, they do.

2 Q. So they don't call in to a phone number  
3 or type into a computer.

4 They just take their timecard and they  
5 punch it; is that right?

6 A. Correct.

7 Q. And that would record the time that they  
8 arrived that day?

9 A. Correct.

10 Q. And then at the end of the day, do they  
11 take that same timecard and punch it?

12 A. Yes.

13 Q. All hourly employees are responsible for  
14 doing that?

15 A. Correct.

16 Q. So that policy applies across the board  
17 to hourly employees; right?

18 A. Correct.

19 Q. Alpha's hourly employees, do they do the  
20 same punch-in and punch-out when they come and go  
21 from lunch?

22 A. I don't know.

23 Q. So when that time clock records the  
24 punch-ins and punch-outs at the beginning and the  
25 end of the days, do you know what then happens with

1 those punch-in and punch-out times?

2 A. Do I know what happens with them? It's  
3 taken as far as their time is concerned.

4 Q. Who physically handles those  
5 punch-in/punch-out records?

6 A. Angela Buckner.

7 Q. Do you know if she takes those  
8 punch-in/punch-out records and records them on a  
9 timesheet?

10 A. I don't know how that's done.

11 Q. We were talking about Plaintiffs'  
12 Exhibit 4, which is the timesheet that's in front of  
13 you.

14 A. Yes.

15 Q. Do you know how the rounded time ins and  
16 rounded time outs on this Plaintiffs' Exhibit 4 got  
17 on this sheet?

18 A. Not -- no.

19 Q. Do you have any idea?

20 A. I thought it was by the employee.

21 Q. So is it your belief that somehow the  
22 punch-in and punch-outs get to the employee, and  
23 then the employee writes the time in and time out on  
24 the timesheet?

25 A. That's my -- that was my impression.

1 Q. And is it your understanding that that's  
2 the general policy that applies to all hourly  
3 employees at Alpha?

4 A. Yes.

5 Q. If you look at Plaintiffs' Exhibit 4  
6 again, the column all the way to the right, it says,  
7 Total hours minus 30 minute lunch.

8 A. I don't know.

9 Q. There was no question there.

10 A. Okay.

11 Q. Do you know who totals up the time to  
12 fill in that column all the way to the right?

13 A. I thought it was the employee.

14 Q. And at the very bottom right corner where  
15 it says total, do you know who adds up all the  
16 numbers and totals it?

17 A. I thought it was the employee.

18 Q. Is it your understanding that all hourly  
19 employees are responsible for totaling the hours in  
20 the far right column and then entering them on their  
21 timesheets?

22 A. Yes.

23 Q. Once the total is created in the lower  
24 right corner, do you know how that total is  
25 translated to a paycheck for the employee?

1 A. No.

2 Q. Who would know?

3 A. Angela Buckner would know.

4 Q. Do you know if she translates the total  
5 to the paycheck by hand, or does she use a computer  
6 program to do so?

7 A. I don't know.

8 Q. Would anyone other than Angela know how  
9 this process works?

10 A. To my knowledge, no. It seems, though,  
11 that you have Pamela -- you asked before about this  
12 being Pamela Combs' signature or whatever. I don't  
13 know that that's hers for sure or not, but if it is,  
14 I would suppose that she knows.

15 Q. Now, I understand you don't know the --  
16 or you can't remember the exact process of how the  
17 clock-in/clock-out times are translated to the  
18 timesheet which are then translated to a paycheck.

19 But does the process work in certain ways  
20 for certain hourly employees and other certain ways  
21 for other hourly employees?

22 A. Not to my knowledge.

23 Q. So it's the same for all hourly  
24 employees, to your knowledge?

25 A. To my knowledge.

1 Q. And the same whether the employee works  
2 in the OB or downstairs --

3 A. Correct.

4 Q. -- office; right?

5 A. Correct.

6 Q. And the same regardless of hourly  
7 employee position; right?

8 A. Correct.

9 Q. Who created the process, to the best of  
10 your memory, of how employees get paid at Alpha?

11 A. I don't know.

12 Q. How long has Alpha been using the process  
13 that we've been talking about?

14 A. I don't know.

15 Q. Can you remember --

16 A. I never was involved. I never was  
17 involved in any of this.

18 Q. Going back over the last ten or so years,  
19 can you remember any other process, even vaguely,  
20 that Alpha used to pay its hourly employees?

21 A. I have no clue about what they used.  
22 Never been involved.

23 Q. Do you permit Alpha's employees to come  
24 to you when there are problems?

25 A. They're supposed to go to the

1 supervisor -- to the office manager first.

2 Q. Were there any kind of problems that an  
3 employee should come to you first with?

4 A. Well, I have no -- there's no -- there's  
5 nothing in the office that says someone can't come  
6 to me with a problem as far as I know.

7 If anyone were to feel like -- I would  
8 hope that anyone who felt like there was something  
9 going on wrong would feel like they could approach  
10 me. But, no, there's no official -- I don't know if  
11 there's any official document or something in that  
12 regard.

13 (Whereupon a document was identified as  
14 Plaintiffs' Exhibit 8.)

15 Q. (By Mr. Weiner) Dr. McBrayer, I just  
16 handed you Plaintiffs' Exhibit 8. It's a memo dated  
17 February 24th, 2012. In the middle, there's a line  
18 with a signature that's signed by Angela Buckner.

19 Can you take a minute to review this and  
20 let me know when you've reviewed it.

21 A. I've reviewed this.

22 Q. The first line of the memo says, All  
23 employees have been informed time and time again not  
24 to go to Dr. McBrayer with any issues. All issues  
25 are to go through Angela and she will take it to



1 Dr. McBrayer. This is your verbal and last warning.  
2 If this happens again you will be suspended without  
3 pay.

4 Did I read that correctly?

5 A. Yes, you did.

6 Q. And on the bottom of the sheet, you have  
7 a number of signatures.

8 Do you see that?

9 A. Yes, I do.

10 Q. Those are a good number, if not all, of  
11 the hourly employees; is that right?

12 A. A good number of the employees.

13 Q. Did Ms. Buckner have your authority to  
14 issue a memo like this?

15 A. No, she did not.

16 Q. Are you surprised that she issued a memo  
17 like this?

18 A. Yes.

19 Q. Would you disagree with what she said in  
20 this memo?

21 A. Yes, I would.

22 Q. Did Ms. Buckner often do things without  
23 your authority?

24 A. No.

25 Q. Any idea why she would have done this?

1 A. No.

2 Q. So if an employee felt that he or she was  
3 not being compensated correctly, whether it's  
4 overtime or some other compensation issue, who  
5 should that employee have complained to?

6 A. To Angela Buckner presently.

7 Q. What about over the last couple of years?  
8 Could they have come to you with that issue?

9 A. Yes.

10 Q. Do you think employees felt comfortable  
11 coming to you?

12 A. Yes.

13 Q. Did employees come to you with  
14 compensation-related issues?

15 A. No.

16 Q. Do you know if employees went to  
17 Ms. Buckner with a compensation-related issue?

18 A. No.

19 Q. Did Ms. Buckner ever tell you that any  
20 employee had complained about a compensation-related  
21 issue?

22 A. No.

23 Q. Did Ms. Buckner ever tell you that an  
24 employee had complained to her that he or she was  
25 not receiving the overtime compensation that they

1 felt that he or she was entitled to?

2 A. Repeat your question.

3 Q. Did Ms. Buckner ever tell you that an  
4 employee had come to Ms. Buckner complaining that he  
5 or she did not receive the overtime compensation to  
6 which that employee believed they were entitled to?

7 A. She never came to me.

8 Q. Do you know if any employees were  
9 suspended without pay because they went directly to  
10 you with an issue?

11 A. No.

12 Q. This memo says, All employees have been  
13 informed time and time again not to go to  
14 Dr. McBrayer with any issues.

15 Were you present at any time when an  
16 employee was informed not to go to you with any  
17 issues?

18 A. No.

19 Q. Do you know what you and Alpha consider  
20 to be the workweek for overtime calculation  
21 purposes?

22 A. 40 hours.

23 Q. And how did Alpha determine which time  
24 period that 40 hours covers?

25 A. I don't know.

1 Q. Was it a Monday-to-Sunday workweek?

2 A. I don't know.

3 Q. Who would know?

4 A. Angela Buckner.

5 Q. Anyone else?

6 A. Margaret's not alive anymore.

7 Q. Anyone else?

8 A. No.

9 Q. And that 40-hour workweek that you just  
10 mentioned, that applied to all hourly employees?

11 A. Yes.

12 Q. Did you or anyone at Alpha provide  
13 training at all to Ms. Buckner concerning overtime,  
14 the FLSA -- by "FLSA," I mean the Fair Labor  
15 Standards Act -- or how to pay employees at all?

16 A. She had worked for Dr. William Reed, so I  
17 assumed she had experience. No.

18 Q. Did you or anyone at Alpha provide  
19 training to Ms. Combs about any of those items?

20 A. No.

21 Q. Did you or Alpha provide training to any  
22 hourly employee about overtime?

23 A. Yes. I posted it on the -- we had an  
24 internal memo that was posted from the federal  
25 government, 40-hour week and overtime.

1 Q. Where was that posted?

2 A. It was posted in several places in the  
3 office, on the second floor and third floor.

4 Q. How many floors of the building does  
5 Alpha occupy?

6 A. Three floors.

7 Q. Do the employees on the floors do  
8 different things?

9 A. Yes.

10 Q. Can you help me just understand that.

11 A. Well, the second floor is mostly GYN and  
12 just administrative duties except for the office  
13 manager's office, who's on the third floor, the  
14 bottom floor. The bottom floor is surgery mostly.

15 Q. Mr. Diniz, where did he do most of his  
16 work?

17 A. Third floor. The bottom floor.

18 Q. To be clear, the bottom floor being where  
19 you just described surgery; is that right?

20 A. Correct.

21 Q. Did he do all of his work down there?

22 A. No. Occasionally he would go upstairs.

23 Q. And what kind of things would he go  
24 upstairs for?

25 A. More than anything, he would go upstairs

1 to find out how many patients were coming down.

2 Q. Where on the second floor was that poster  
3 located?

4 A. It was in the administrative office  
5 where -- the reception desk.

6 Q. Was it in an office, or was it out in the  
7 open?

8 A. It was out in the open. It was also out  
9 in the open on the third floor.

10 Q. Where on the third floor was it located?

11 A. Up against the wall downstairs, right  
12 when you're -- there's two exit doors -- there's an  
13 exit door.

14 Q. To the best of your memory, what does the  
15 poster say?

16 A. It says that all employees are supposed  
17 to be paid overtime over 40 hours a week.

18 Q. Anything else that you can remember?

19 A. Just contact -- no. That was just the  
20 one clear thing on it. It's the first sentence.

21 Q. Do you remember when you or anyone at  
22 Alpha posted that poster?

23 A. We post them every year.

24 Q. So is there a new poster that you post  
25 every year?

1 A. Yes.

2 Q. Was the poster posted anywhere on the  
3 surgery level?

4 A. Yes. On the third floor, bottom level.

5 Q. I want to make sure we're not talking  
6 apples and oranges.

7 Are you referring to the third floor as  
8 the top floor or the bottom floor?

9 A. The bottom floor.

10 Q. So it's your testimony that that poster  
11 was posted on the second floor and the third floor,  
12 which was the bottom floor; correct?

13 A. Correct.

14 Q. And we might have already talked about  
15 this, but I think it got confused in the record.

16 When you had said that the poster was  
17 posted in the administrative office, were you --

18 A. On the second floor.

19 Q. That was the second floor.

20 A. Correct.

21 Q. And on the third floor, you said it  
22 was --

23 A. The bottom floor, to make it clear. It's  
24 as you walk out.

25 Q. Were there any other posters near that

1 poster?

2 A. No.

3 Q. Do you have a poster relating to the  
4 Employee Polygraph Protection Act down there?

5 A. Yes.

6 Q. Where was that?

7 A. Same place.

8 Q. I asked you literally a minute ago were  
9 there any other posters, and you said no.

10 A. Well, that's the same --

11 Q. So the Employee Polygraph --

12 A. It's inclusive.

13 Q. -- Polygraph Protection Act poster was --

14 A. Part of those posters. It's three actual  
15 posters, if I remember correctly.

16 Q. Do you remember what the third one is?

17 A. I can't recall. I just know that I had  
18 the first -- I know that it was posted about the  
19 40-hour week. That's been there forever because  
20 it's just part of the -- I think it's even law you  
21 have to have it -- have those posters up when you  
22 get inspected by OSHA and everybody.

23 Q. Did you post it yourself?

24 A. Uh-huh. Well, with help, yeah.

25 Q. I'm sorry?



1 A. With help of course.

2 Q. Who helped you post it?

3 A. I can't recall.

4 Q. How long ago do you remember posting it?

5 A. Well, we lost everything in the fire, so  
6 that was probably three months -- two months, three  
7 months ago it was put back up. It was put up every  
8 January before that.

9 Q. And to be clear, the fire was on the top  
10 floor; right?

11 A. Pardon?

12 Q. The fire was --

13 A. Yes.

14 Q. -- on the top floor.

15 A. But there was damage all the way down.

16 Q. So the fire affected the third floor?

17 A. Water damage all the way down and some  
18 smoke damage.

19 Q. So did the fire affect that poster?

20 A. Yes.

21 Q. What happened to it?

22 A. It was just smoke and fire, water  
23 damaged.

24 Q. What about the Occupational Safety and  
25 Health Act poster? Do you have that posted

1 anywhere?

2 A. I think that's part of the whole process.  
3 In other words, OSHA comes in, so does the State,  
4 every year and make sure you have all your posters  
5 up and everything like that.

6 Q. I think that was nonresponsive.  
7 I'm asking, do you have that poster  
8 posted?

9 A. Yes.

10 Q. Where?

11 A. Same place.

12 Q. Second floor and third floor?

13 A. Yes.

14 Q. Where is it located on those floors? Is  
15 it next to the other two we've talked about?

16 A. Yes.

17 Q. What about the equal employment  
18 opportunity poster? Do you have that up?

19 A. I don't recall that for sure.

20 Q. Do you know if you're required to have  
21 that up?

22 A. No, I do not.

23 (Whereupon a document was identified as  
24 Plaintiffs' Exhibit 9.)

25 Q. (By Mr. Weiner) Dr. McBrayer, I'm

1 handing you Plaintiffs' Exhibit 9 which I will tell  
2 you is a document that you have produced to us, but  
3 I will acknowledge to you that this is not the full  
4 document.

5 What we've given you is the cover page  
6 and then a single page of the document. The  
7 document's the Handy Reference Guide to the Fair  
8 Labor Standards Act.

9 I don't want there to be any  
10 misunderstanding. This is not the entire document,  
11 and I'm not not giving you the entire document to  
12 trick you.

13 Have you seen this packet before?

14 A. Yes.

15 Q. Where did you see it?

16 A. I don't recall. I think it's part of my  
17 documents.

18 Q. Alpha produced it to us, so it is part of  
19 your documents.

20 Do you know if the fuller document that  
21 this represents is kept in Alpha's office?

22 A. I think this is part of the documentation  
23 I was talking about that's posted.

24 Q. I'll represent to you that the bigger  
25 document here is several pages long, so I don't

1 believe this is a poster. If you believe it might  
2 be, just tell me, but I believe this is not a  
3 poster.

4 A. No. I think that this is part of the  
5 statement on the poster that's in the office.

6 Q. Whether it's part of the statement or not  
7 is a different story.

8 A. Yeah. I'm almost positive about this.

9 Q. This handy reference guide itself, do you  
10 know is it kept in Alpha's office?

11 A. I don't know.

12 Q. Who would know?

13 A. Angela Buckner.

14 Q. Have you ever yourself reviewed the Handy  
15 Reference Guide to the Fair Labor Standards Act?

16 A. I've either seen this before -- I'm  
17 almost positive this is on one of our posters also  
18 that's on the wall. The basic -- I can't -- I'm  
19 sorry. Rephrase your question.

20 MR. WEINER: Could you please read back  
21 the question.

22 (The record was read by the reporter.)

23 A. I know that I've seen this before.

24 Q. (By Mr. Weiner) When did you see it?

25 A. Many times.

1 Q. Where were you when you saw it?

2 A. In my office.

3 Q. What were the reasons you were looking at  
4 it?

5 A. Just to make sure that I was treating the  
6 office employees fairly.

7 Q. When was the last time you remember  
8 seeing it?

9 A. Probably a summary of this a week ago.

10 Q. Why were you looking at it a week ago?

11 A. Just to reassure myself that nothing new  
12 had been added.

13 Q. Now, on the second page of what I've  
14 given you which is Plaintiffs' Exhibit 9, at the end  
15 of the first paragraph, it says, Nonexempt workers  
16 must be paid overtime pay at a rate of not less than  
17 one and one-half times their regular rates of pay  
18 after 40 hours of work in a workweek.

19 A. Correct.

20 Q. Did I read that correctly?

21 A. Yes, you did.

22 Q. Is that consistent with what your  
23 understanding of the law is?

24 A. Yes.

25 Q. Is that consistent with your

1 understanding of how Alpha operated in terms of  
2 paying its employees?

3 A. Yes.

4 Q. Did any of Alpha's employees work more  
5 than 40 -- hourly employees work more than 40 hours  
6 in a workweek?

7 A. They weren't supposed to without me  
8 knowing or being signed off by a supervisor, but the  
9 answer would be yes.

10 Q. Do you know if any of Alpha's employees  
11 other than yourself have ever reviewed the Handy  
12 Reference Guide to the Fair Labor Standards Act?

13 A. I know that Angela has.

14 Q. Anyone else?

15 A. Not to my knowledge.

16 Q. Who created Alpha's policies with respect  
17 to overtime compensation of employees?

18 A. Margaret Sampson and I.

19 Q. I'm sorry? Margaret Sampson and I?

20 A. And the federal government.

21 Q. Did anybody else help?

22 A. Not to my knowledge.

23 (Whereupon a document was identified as  
24 Plaintiffs' Exhibit 10.)

25 Q. (By Mr. Weiner) Dr. McBrayer, I'm

1 handing you Plaintiffs' Exhibit 10. I'll represent  
2 to you that Plaintiffs' Exhibit 10 is the entire PDF  
3 that Defendants produced to us, and it was titled  
4 "Policies on OT."

5 I'd like to ask you some questions once  
6 you've had a minute to review it.

7 (Discussion ensued off the record.)

8 A. All right.

9 Q. (By Mr. Weiner) Let's start with the  
10 first page of Plaintiffs' Exhibit 10. It's a  
11 document that's dated September 7, 2006, and the  
12 pseudo-title is "Work Hours for Staff."

13 A. Uh-huh.

14 Q. The first sentence is, The office policy  
15 continues to be that no staff is to work overtime  
16 without permission of or by request of a supervisor  
17 or doctor.

18 Did I read that correctly?

19 A. Yes.

20 Q. Is that Alpha's current policy?

21 A. Yes.

22 Q. Was that Alpha's policy as of  
23 August 2012?

24 A. Yes.

25 Q. And does that policy apply to all hourly

1 employees?

2 A. Yes.

3 Q. And has that policy been Alpha's policy  
4 since September 7th, 2006?

5 A. It's been the policy for years and years  
6 and years, yes.

7 Q. You testified earlier that you and  
8 Margaret came up with the policies; right?

9 A. Yes, so I could keep up with overtime.

10 Q. So did you and Margaret come up with that  
11 policy?

12 A. Yes.

13 Q. Did you review the Fair Labor Standards  
14 Act or any other legal materials in coming up with  
15 that policy?

16 A. That was to keep up with the Fair Labor  
17 Act so I could make sure that they got their  
18 overtime if they worked over 40 hours.

19 MR. WEINER: Would you please read back  
20 the question.

21 (The record was read by the reporter.)

22 A. Yes.

23 Q. (By Mr. Weiner) What do you remember  
24 reviewing?

25 A. That you had a 40-hour week, and it was



1 time and a half over 40 hours per week.

2 Q. Was there a document that you reviewed?

3 A. Yeah. It was on the wall. It was  
4 posted. Again, we have the Fair Labor Act on the  
5 wall and several other posters. It's required by  
6 OSHA.

7 Q. What is required by OSHA?

8 A. That you have those policies up.

9 Q. So --

10 A. That's part of the medical environment.

11 Q. -- to make sure I'm clear, it's your  
12 understanding that OSHA requires that you have a  
13 poster up relating to the Fair Labor Standards Act?

14 A. Yes.

15 Q. Is it also your understanding that the  
16 Fair Labor Standards Act says in sum or substance  
17 that no hourly employees can work overtime without  
18 permission of or at the request of a supervisor?

19 A. No. The 40 hours a week is simply so  
20 that I can keep up with if anyone has overtime.

21 Q. So that sentence was something that was  
22 not required by the Fair Labor Standards Act, but  
23 it's something you added; is that right?

24 A. So that I could make sure that if they  
25 had over 40 hours, they were adequately compensated

1 for their time.

2 Q. So is the answer to my question yes?

3 A. No. I don't know what you're trying to  
4 ask me. Ask your question again.

5 Q. Does the Fair Labor Standards Act, to  
6 your knowledge, contain a provision that says that  
7 no staff can work overtime without permission of or  
8 at the request of a supervisor?

9 A. No.

10 Q. So that's something that you added to the  
11 policy; right?

12 A. So that I could make sure that the policy  
13 was guaranteed.

14 Q. So that's a yes; right?

15 A. Yes. But I also said that -- so that  
16 they could be guaranteed that they got their  
17 overtime.

18 Q. Whatever your reason is is fine. The  
19 answer I'm understanding is yes. Tell me if I'm  
20 wrong.

21 A. Yes, again, with the fact that -- so I  
22 could keep up with their overtime so they could get  
23 paid overtime if they had over 40 hours.

24 Q. And there's another sentence in this  
25 document, in Plaintiffs' Exhibit 10, that says, An

1 employee will not be paid for more than an eight  
2 hour day.

3 Did I read that right?

4 A. Yes, you did. That's with the  
5 understanding, though, that they're not supposed to  
6 do that unless they have permission for the  
7 eight-hour day, and then they will be paid their  
8 time and a half if they have their eight-hour day  
9 and they've signed off on it. They'll be paid no  
10 matter what for their overtime.

11 Q. Well, help me understand that.

12 If an employee does not have permission  
13 and works more than eight hours, does that employee  
14 get paid for those hours over eight?

15 A. Yes, they do.

16 Q. So the sentence, An employee will not be  
17 paid for more than an eight hour day, does that  
18 apply to all hourly employees?

19 A. It applies in the sense that they are  
20 supposed to come to me so that I can pay them -- so  
21 that we can pay them if they work over a 40-hour  
22 week. It's just strongly stated there so that they  
23 understand they've got to get permission for their  
24 overtime so they'll get paid for it.

25 Q. My specific question is: Does this

1 particular sentence apply to all hourly employees?

2 A. No. Not in the sense of if they've  
3 worked over a 40-hour week. Then they're going to  
4 get paid for their over-40-hour week.

5 Q. So what does --

6 A. It's just taken -- it's taken out of  
7 context, the whole order in the office. The context  
8 is that if you work over a 40-hour week, I am  
9 supposed to be notified, or a supervisor, so you can  
10 get your overtime pay. That's the context.

11 Q. Would you agree with me that the sentence  
12 would be clearer if you had added that context in?

13 A. I agree.

14 Q. And Plaintiffs' Exhibit 10, this first  
15 page, September 7th, 2006, does this accurately  
16 reflect Alpha's policy throughout 2011, 2012?

17 A. I've already stated it doesn't -- it's  
18 taken out of context in the same sense that  
19 everyone's over-40-hour week will be paid for.

20 Q. Does Alpha have a different written  
21 policy that reflects --

22 A. It's posted up on the board. Again, if  
23 you have over a 40-hour week, you'll be paid  
24 overtime.

25 Q. So it's posted up on the board.

1           So is it your testimony that Alpha's  
2 policy as it relates to overtime is simply what it  
3 says on that poster?

4           A.     Yes.

5           Q.     And that applies to all hourly employees?

6           A.     Absolutely.  If you have over a 40-hour  
7 week, you'll be paid for your overtime.

8           Q.     Have you ever had a situation where an  
9 employee's worked over hours in a workweek and  
10 hasn't been paid for the overtime?

11          A.     Not to my knowledge.

12          Q.     Would it surprise you if it happened?

13          A.     It would shock me.

14          Q.     What would you do if you found out that  
15 an employee had worked over 40 hours in a workweek  
16 and didn't get paid for that time over 40?

17          A.     I would severely reprimand the  
18 supervisor, and I'd also ask the employee why they  
19 didn't come to me.

20          Q.     But to your knowledge, that hasn't  
21 happened; right?

22          A.     Not to my knowledge.

23          Q.     The third line on this September 7th,  
24 2006 memo says that any employee who works more than  
25 six hours and does not subtract 30 minutes for lunch

1 will have that time subtracted by the supervisor.

2 Did I read that correctly?

3 A. Yes.

4 Q. Does that accurately reflect Alpha's  
5 current policy?

6 A. That policy, again, is to insist that the  
7 employee gets a 30-minute lunch hour -- 30 minutes  
8 for lunch because it's just the -- a needed part of  
9 their daily activities. I consider that very  
10 important for people's health.

11 Q. Does Alpha or anyone at Alpha  
12 automatically subtract 30 minutes for lunch if they  
13 work more than six hours?

14 A. Not to my knowledge. That's to emphasize  
15 the simple fact that they need to take their  
16 30 minutes for lunch for health issues.

17 Q. This first page of Plaintiffs'  
18 Exhibit 10, the September 7th, 2006 memo, is this  
19 intended to cover all hourly employees?

20 A. Yes, with the simple fact that, again,  
21 you've got to take it with the context that every --  
22 every employee who works more than 40 hours will be  
23 paid for that more-than-40-hour week at time and a  
24 half.

25 Q. And was this document superceded by any

1 other policies as they relate to overtime aside from  
2 the poster that you're telling me is posted on the  
3 wall?

4 A. We've always had an office policy of  
5 paying time and a half and for overtime, for over a  
6 40-hour week. That's always been my policy.

7 Q. My question is: After September 7th,  
8 2006, aside from the poster that's on the wall, does  
9 Alpha maintain any other written policies as they  
10 relate to overtime compensation?

11 A. You'd have to speak to Angela Buckner for  
12 that.

13 Q. So is it fair to say you don't know?

14 A. I don't know.

15 Q. If you could please turn to the third  
16 page of Plaintiffs' Exhibit 10, it's a  
17 February 24th, 2005 -- it says, Office meeting with  
18 corporate attorney, Susan Chiapetta. All staff  
19 present except Ana, Eileen, and Carmen.

20 Do you see the document?

21 A. Yes, I do.

22 Q. If you look at paragraph 6, it says,  
23 Staff overtime, that is, over 8 hours, must be  
24 approved by the doctor or Margaret in order to be  
25 paid.

1 Do you see that?

2 A. Yes, I do. That doesn't contradict what  
3 I've already said that they'll be paid for.

4 Q. Who determined that staff overtime is  
5 over eight hours, as that sentence says?

6 A. What do you --

7 Q. Is it your understanding that overtime is  
8 eight hours?

9 A. No. It's 40 hours a week.

10 Q. So who wrote, Staff overtime, that is,  
11 over 8 hours?

12 A. That would have probably been done by  
13 Margaret. It's just common knowledge it's 40 hours  
14 a week. That's just on a daily basis.

15 Q. Have you ever seen this document before,  
16 this February 24th, 2005 meeting minutes I guess?

17 A. I don't recall.

18 Q. If you look at the bottom right corner,  
19 there's a little arrow.

20 Do you see that?

21 A. Yes, I do.

22 Q. Do you have any idea why there's an  
23 arrow?

24 A. No.

25 Q. Do you think there could be another page



1 to this document?

2 A. I don't know.

3 Q. Now, paragraph 6 says, Staff overtime,  
4 that is, over 8 hours, must be approved...in order  
5 to be paid.

6 I note again there's nothing in that  
7 sentence that talks about staff being paid for work  
8 over 40 hours in a workweek.

9 Is it your testimony that what it says  
10 here, Staff overtime, that is, over 8 hours, is not  
11 accurate?

12 A. Well, this is taken out of context again.  
13 The 40-hour week is how everything is based.

14 Q. So now we have two policies that have  
15 been taken out of context; right?

16 A. Yes. Because it's well known. I mean,  
17 it's just a known fact that a 40-hour week is a  
18 40-hour week, and anything over 40 hours is  
19 overtime. I don't know anybody that doesn't know  
20 that.

21 Q. If you turn to the -- it's about the  
22 fourth-to-last page of Plaintiffs' Exhibit 10, it's  
23 a staff meeting dated March 20th, 2003.

24 Do you see that?

25 A. Yes.

1 Q. The first sentence says, No one to work  
2 overtime, Dr. McBrayer must sign card if any thing  
3 other than 8 hours.

4 Do you see that?

5 A. Yes, I do.

6 Q. Is that taken out of context as well?

7 A. Yes.

8 Q. So is it your testimony as you sit here  
9 today that Alpha doesn't consider overtime to be  
10 anything over eight hours?

11 A. Overtime is 40 hours -- over 40 hours in  
12 the office.

13 Q. So is it your testimony that Alpha  
14 doesn't pay employees based on whether they worked  
15 eight or more hours in a day?

16 A. It's 40 hours a week.

17 Q. Does eight hours have anything to do with  
18 compensation for hourly employees?

19 A. Accordingly here if they're working over  
20 hours, I have to sign their card.

21 Q. It also says no one to work overtime;  
22 right?

23 A. Without permission. That's the context.

24 Q. Does Alpha maintain an employee handbook?

25 A. Yes.

1 Q. Does it update its employee handbook  
2 every certain period of time?

3 A. You'd have to speak with Angela Buckner  
4 regarding that.

5 Q. Have you ever seen the employee handbook?

6 A. Yes.

7 Q. When was the last time you saw the  
8 employee handbook?

9 A. I don't recall.

10 Q. I should ask you, what did you do to  
11 prepare for today's deposition?

12 A. Just speak with Keith for 30 minutes.

13 Q. When did that conversation occur?

14 A. Approximately a week ago.

15 Q. Was it in person, or was it on the  
16 telephone?

17 A. It was in person.

18 Q. Was anyone else present?

19 A. Yes.

20 Q. Who?

21 A. Sheila Bynum was present, and Angela  
22 Buckner was present.

23 Q. Can you spell Sheila's last name.

24 A. B-y-h-a-m [sic].

25 Q. Who is Sheila Bynum?

1 THE WITNESS: Bynum was your -- is she  
2 your associate?

3 MR. LOGUE: Uh-huh.

4 THE WITNESS: How do you refer to her?

5 MR. LOGUE: Paralegal.

6 A. His paralegal.

7 Q. (By Mr. Weiner) Did you review any  
8 documents when you met with --

9 A. No.

10 Q. -- all these folks about a week ago?

11 A. No.

12 Q. Had you ever met Sheila -- I'm going to  
13 mess up her last name.

14 A. Sheila Bynum.

15 Q. Bynum?

16 A. Bynum.

17 MR. LOGUE: Bynum.

18 Q. (By Mr. Weiner) Had you ever met  
19 Ms. Bynum before last week?

20 A. Yes.

21 Q. When did you first meet her?

22 A. Approximately three months ago when this  
23 case began.

24 Q. What is Ms. Bynum's race?

25 A. I don't know.

1 Q. Is she Caucasian?

2 A. She's Caucasian. She's brown.

3 Q. Could she be African-American? That's  
4 all I'm asking.

5 A. I don't even know. Could be.

6 Q. Where did you first meet her?

7 A. I met her at the office.

8 Q. Do you know if she's an attorney?

9 A. Pardon?

10 Q. Do you know if she's an attorney?

11 A. I know she's not an attorney.

12 (Whereupon a document was identified as  
13 Plaintiffs' Exhibit 11.)

14 Q. (By Mr. Weiner) Dr. McBrayer, I'm  
15 handing you Plaintiffs' Exhibit 11 which I'll  
16 represent to you is a set of documents that comprise  
17 a single PDF that Defendants produced to us called  
18 employment handbook.

19 I'll tell you that as you flip through  
20 it, there appear to be a number of different,  
21 quote-unquote, handbooks in this document.

22 Could you tell me which one was  
23 applicable at the point in time when Mr. Diniz and  
24 Mr. Thomas -- their employment was terminated in  
25 August of 2012.

1           A.     I'd have to refer you to my office  
2 manager for that information.

3           Q.     Does Alpha have a policy that when an  
4 employee begins employment, they have to sign a copy  
5 of the handbook?

6           A.     Yes.  That's part of our --

7           Q.     So you'll see on the very first page,  
8 there's a number of signatures; right?

9           A.     Yes.

10          Q.     Is it your understanding that these  
11 signatures generally represent an employee's  
12 acknowledgment that they've seen or received a copy  
13 of the handbook?

14          A.     Pardon me?  Repeat your question.

15                   MR. WEINER:  Read it back.

16                   (The record was read by the reporter.)

17          A.     Yes.

18          Q.     (By Mr. Weiner)  If you look at the very  
19 first page of Plaintiffs' Exhibit 11, there's a  
20 number of signatures, and some are 2000, some are  
21 2004, and there's even one for 2005.

22                   Do you see that?

23          A.     Where are we speaking, now?

24          Q.     The very first page.

25          A.     The very first page, yes.

1 Q. And then if you turn towards the back of  
2 the document, it's probably the sixth-to-last page  
3 or fifth-to-last page, that just is a page full of  
4 signatures.

5 Do you see that?

6 A. Yes.

7 Q. And those signatures range from 2001 all  
8 the way up until 2010, I believe.

9 Do you see that?

10 A. Yes.

11 Q. Do you have any idea why some people  
12 signed one employee handbook and others signed a  
13 different employee handbook?

14 A. We had three different offices, and I had  
15 an employee handbook at each office.

16 Q. So if you look at the page full of  
17 signatures, people on that page who signed it are  
18 people such as Kensey Griffith, Leslie Summerour,  
19 Ramona Thomas.

20 They work/worked at the Powers Ferry  
21 location; right?

22 A. Yes.

23 Q. And that's where Mr. Thomas and Mr. Diniz  
24 worked; right?

25 A. Yes.

1 Q. And so would it be fair to say that the  
2 employee handbook that Ms. Thomas, Ms. Summerour,  
3 Ms. Griffith signed would be the employee handbook  
4 that would be applicable to Mr. Thomas and Mr. Diniz  
5 throughout each of their employment?

6 A. They could have signed another book also.  
7 Yes, though.

8 Q. Now let's talk about the very first  
9 employee handbook contained in Plaintiffs'  
10 Exhibit 11.

11 If you turn to page 4, under a section  
12 called pay period and payday under pay and benefits,  
13 it says, Pay day for work performed during the pay  
14 period from the 16th through the end of the month is  
15 on the first of the next month, and pay day for work  
16 performed from the first day of the month through  
17 the 15th day of the month is on the 16th of the  
18 month.

19 Do you see that?

20 A. Yes.

21 Q. Was that consistent with Alpha's policies  
22 for all hourly employees?

23 A. Along with the fact that they had a  
24 40-hour week.

25 Q. So the answer is yes?



1 A. Yes.

2 Q. The next section says work week. It  
3 says, Full time staff will be paid for a 40 hour  
4 work week. Exceptions to this stipulation, that is  
5 overtime, must be cleared and/or approved by  
6 supervisors.

7 Two sentences later it says, Unless early  
8 arrival or late hours are approved by supervisors  
9 because of need, they are not paid as overtime.

10 Did I read all of that correctly?

11 A. It's out of context for the simple fact  
12 again the 40-hour week always is appropriate.

13 Q. So here we have another context issue?

14 A. Uh-huh.

15 Q. Do you know who wrote this?

16 A. No, I do not.

17 Q. Did you write it?

18 A. No. Staff who work on Saturday mornings  
19 compensate by having --

20 Q. There's no question pending.

21 Where it says, Exceptions to this  
22 stipulation, that is overtime, must be cleared  
23 and/or approved by supervisors, what if a supervisor  
24 doesn't clear it or approve it? Does it get paid?

25 A. Then they shouldn't work it. But if they

1 do work it, they're going to get paid.

2 Q. So the last sentence where it says,  
3 Unless early arrival or late hours are approved by  
4 supervisors because of need, they are not paid as  
5 overtime, is it your testimony that that's  
6 incorrect?

7 A. That's incorrect.

8 Q. Please turn about four, maybe five pages  
9 later. You'll see sections titled "Non  
10 Discriminatory Employment Policy" and  
11 "Anti-Harassment Policy."

12 Do you see that?

13 THE WITNESS: Help me find that.

14 A. Where is it?

15 Q. (By Mr. Weiner) It's about nine pages  
16 into the document maybe.

17 A. Nine pages?

18 Q. Non Discriminatory Employment Policy and  
19 Anti-Harassment Policy. It's actually eight pages  
20 in.

21 A. I have it now.

22 Q. Are you familiar with these two policies?

23 A. Yes.

24 Q. Did you write these policies?

25 A. No.

1 Q. And are these policies accurately stated  
2 as they reflect Alpha's policy as of today?

3 A. You would have to speak with Angela  
4 Buckner for our policy today.

5 Q. Does Alpha maintain a nondiscriminatory  
6 employment policy as of today?

7 A. I'm sure we do.

8 Q. I'm sorry. Did you say I'm sure we do or  
9 we did?

10 A. We do. I'm not connected to it at this  
11 time.

12 Q. Does Alpha maintain an antiharassment  
13 policy as of today?

14 A. Yes.

15 Q. Does Alpha maintain any kind of policy  
16 about retaliation?

17 A. Retaliation? What do you mean by  
18 "retaliation"?

19 Q. Does Alpha have any policy that prohibits  
20 retaliation for employees' complaints about  
21 protected activities?

22 A. I am not aware.

23 Q. Who would know?

24 A. Angela Buckner would know.

25 Q. And just flipping through this document,

1 which I see you're doing right now, do you see an  
2 antiretaliation policy anywhere?

3 A. No, I do not. That doesn't mean we don't  
4 have one. I have a personal problem with  
5 retaliation in the sense that I -- every individual  
6 every -- individual aspect of retaliation -- you  
7 have to tell me what you mean by "retaliation" also.  
8 I mean, you can retaliate for saying, What do you  
9 mean by that?

10 Q. You can finish your answer.

11 A. I mean, that's a form of retaliation,  
12 What do you mean by that.

13 Q. If an employee --

14 A. That's retaliation.

15 Q. If an employee engages in some kind of  
16 protected activity, making complaints about their  
17 compensation --

18 A. Oh, we had a retaliation --

19 Q. Let me finish, please.

20 A. Sure.

21 Q. We need to make sure the record is clear.

22 A. Okay.

23 Q. If an employee makes a complaint about a  
24 protected activity, such as a complaint about  
25 overtime or a complaint about, I was discriminated

1 against, or something of that sort, I don't see any  
2 written policy on no retaliation for those  
3 complaints.

4 Does Alpha have a written policy on that?

5 A. Not that I'm aware of. But I did have --

6 Q. Do you have a personal policy on that?

7 A. I had -- personally I had a box upstairs  
8 for anyone's comments regarding any action or  
9 activity in the office where they could make any  
10 comment, drop it into the box where it was -- any  
11 activity in the office they had any problems with.

12 Q. Where was that box located?

13 A. It was located in the reception area.

14 Q. Which is on which floor?

15 A. The second floor.

16 Q. Did you check the box yourself to see if  
17 there were ever any notes in there?

18 A. Yes.

19 Q. Were there?

20 A. No.

21 Q. Never?

22 A. Never.

23 Q. Did you ever tell employees that, Hey, if  
24 you have a complaint, put the note in the box?

25 A. Yes.

1 Q. When did you tell them that?

2 A. Many times.

3 Q. But nobody ever followed up on that;  
4 right?

5 A. No one did.

6 Q. If you could look at the page which is  
7 two pages after the one we were just looking at in  
8 Plaintiffs' Exhibit 11, it's the pay and benefits  
9 paragraph.

10 A. We have an antiharassment which would be  
11 the same thing to me. But go ahead. I'm sorry.

12 Q. So it's your belief that antiharassment  
13 is the same thing as antiretaliation?

14 A. It's within the same category, yeah.

15 Q. Do you see the pay and benefits  
16 paragraph?

17 A. That's where, now?

18 Q. It's two pages --

19 A. I have it.

20 Q. The second portion of that paragraph  
21 says, Employers are required by law to withhold from  
22 the employee's pay specified amounts for the  
23 purposes of Federal Income Tax, State Income Tax,  
24 and the employee's portion of the Social Security  
25 contribution to his or her retirement account.

1 Do you see that?

2 A. Yes.

3 Q. Is that consistent with what your  
4 understanding of the law is as it relates to  
5 employees' compensation?

6 A. I have no idea regarding this. You would  
7 need to refer to my office manager for that.

8 Q. Anybody else at Alpha who would know the  
9 answer to that question?

10 A. No one else that I know of.

11 Q. If you turn several more pages, there's a  
12 document titled "Employees' Handbook Alpha OB/GYN,  
13 P.C., October 2001." It's the one that appears to  
14 be in a slightly different font.

15 Tell me when you get to that.

16 A. Is this what you're referring to  
17 (indicating)?

18 Q. No. It's this one (indicating).

19 A. Okay. I'm there.

20 Q. Have you ever seen this document before?

21 A. Yes.

22 Q. Do you know if this employee handbook is  
23 the employee handbook that was in place when  
24 Mr. Diniz and Mr. Thomas's employments were  
25 terminated in August of 2012?

1 A. No, I do not.

2 Q. And if you turn to the fifth-to-last page  
3 with all those signatures on it --

4 A. Yes.

5 Q. -- those signatures, like we talked about  
6 before, range from 2001 all the way through 2010.

7 A. Yes.

8 Q. So is it fair to say that this employee  
9 handbook was in place for all hourly employees  
10 through at least 2010?

11 A. Yes. I would say so.

12 Q. Now, if you can take your left hand and  
13 just go to the second page, do you see there's a  
14 section titled "Overtime"?

15 A. Uh-huh.

16 Q. This is actually page 1 of the document.  
17 It says page 1 on the bottom.

18 At the bottom, under the overtime  
19 section, it says, Approval to work overtime must be  
20 obtained in advance from a supervisor or the Office  
21 Manager. Overtime shown on time cards which is not  
22 approved in advance -- and "in advance" is bolded --  
23 will not be paid. Abuse of this policy subjects the  
24 employee to disciplinary action, up to and including  
25 termination.



1 Did I read that correctly?

2 A. Yes, you did. But it's out of context  
3 again on the overtime issue.

4 Q. So overtime shown on timecards which is  
5 not approved in advance will not be paid, is it your  
6 testimony today that that is not Alpha's policy?

7 A. It is not Alpha's policy.

8 Q. Are you surprised to see that sentence  
9 there?

10 A. Well, it's to emphasize to not -- it's in  
11 here to emphasize to an employee not to work  
12 overtime unless it's been approved. It's just very  
13 simple in the sense of that's the context that it  
14 was written in.

15 The issue, again, is that anyone who  
16 worked overtime would have been paid for it, over  
17 40 hours. It's established here about 40 hours a  
18 week. And, again, that's actually bringing -- to  
19 highlight again that it's a 40-hour week on which we  
20 base things, not an eight-hour day.

21 Q. Well, to be clear, it's not my documents  
22 that show overtime is an eight-hour day.

23 It's Alpha's; right?

24 A. No. It's also stated here it's a 40-hour  
25 week.

1 MR. WEINER: Can you please read that  
2 back.

3 A. I'm saying that it's a 40-hour week.  
4 Here it is again. Regarding your eight-hour --

5 Q. (By Mr. Weiner) I'm sorry. I've asked  
6 the court reporter to read it back.

7 (The record was read by the reporter.)

8 A. And I said here it is again. It says  
9 eight hours is also trumped by the 40-hour week  
10 here.

11 Q. (By Mr. Weiner) I think the answer to  
12 the question is yes or no.

13 Is it Alpha's documents that show that  
14 overtime is an eight-hour day?

15 THE WITNESS: Is there a law that says  
16 I've got to say yes or no?

17 MR. LOGUE: Answer him to the best of  
18 your knowledge.

19 A. To the best of my knowledge.

20 Q. (By Mr. Weiner) To the best of your  
21 knowledge, yes or --

22 A. Yes.

23 Q. -- no?

24 Are you going to go back to your office  
25 and say to someone, This is -- this sentence,

1 Overtime show on time cards which is not approved in  
2 advance will not be paid, is inaccurate, so we need  
3 to take it out?

4 A. Yes, I will. I will contact -- I'll put  
5 it in context, though.

6 Q. Is this employment handbook that we're  
7 talking about, the one that's dated October 2001,  
8 applicable to all hourly employees?

9 A. Yes, to my knowledge.

10 (Whereupon a document was identified as  
11 Plaintiffs' Exhibit 12.)

12 Q. (By Mr. Weiner) Dr. McBrayer, I've  
13 handed you Plaintiffs' Exhibit 12. Can you tell me  
14 when you've had a minute to review it.

15 A. Yes.

16 Q. Plaintiffs' Exhibit 12 is titled "Memo,"  
17 and the second sentence says, If you clock in before  
18 your scheduled time and without Dr. McBrayer's  
19 permission you will not be paid.

20 Do you see that?

21 A. Yes.

22 Q. Is that Alpha's policy?

23 A. No, this is not Alpha's policy. The  
24 office doesn't open before 6:00, so there's no even  
25 issue for this anymore.

1 Q. So if Angela --

2 A. The office doesn't open before 6:00.

3 Q. Would you agree with me that Angela  
4 Buckner signed this document on February 24th, 2012,  
5 as evidenced by her signature in the middle of the  
6 page?

7 A. That's not her signature as far as I  
8 know.

9 Q. Do you have any idea whose signature that  
10 is?

11 A. No, I do not.

12 Q. Would you agree with me that somebody  
13 signed the document on February 24th, 2012?

14 A. Yes.

15 Q. So on at least February 24th, 2012, if  
16 someone clocked in before their scheduled time and  
17 without your permission, would they be paid for that  
18 time?

19 A. This is out of context again to the  
20 40-hour week. This is all regarding a 40-hour week  
21 span.

22 MR. WEINER: Can you please read back the  
23 question.

24 (The record was read by the reporter.)

25 A. They would be paid according to the way I

1 do things, yes.

2 Q. (By Mr. Weiner) Is it your testimony  
3 today that this memo is incorrect?

4 A. This memo is not signed by me.

5 Q. So you disagree with this memo?

6 A. Yes. And I would have paid anyone who  
7 had over a 40-hour week.

8 Q. Do you have any idea who wrote this memo?

9 A. No.

10 Q. Who, based on your experience, would have  
11 written a memo like this?

12 A. I don't know.

13 Q. Would Angela Buckner be authorized to  
14 write a memo like this?

15 A. No.

16 Q. Would Pamela Combs be --

17 A. No.

18 Q. -- authorized to write a memo like this?

19 A. No.

20 Q. Would any employee be authorized to write  
21 a memo like this?

22 A. No.

23 Q. It sounds to me like a lot of Alpha's  
24 employees are doing things that they don't have  
25 authority to do.

1 Am I misunderstanding you?

2 A. According to this they are. I haven't  
3 seen this before. Everything has to be put in  
4 context with the 40-hour week.

5 Q. Does it upset you that these employees  
6 are doing things that they're not authorized to do?

7 A. Yes. They're not putting it in context.

8 Q. Now that you've found out that these  
9 employees are doing things that they're not  
10 authorized to do, are you going to take action  
11 against them?

12 MR. LOGUE: I just object.

13 A. I'm going to make sure that everything is  
14 put in context in the sense of the office  
15 management. And they have to -- office policy has  
16 got to be approved by me or my lawyer.

17 Q. (By Mr. Weiner) Are you going to  
18 discipline them?

19 MR. LOGUE: I object again.

20 Q. (By Mr. Weiner) You can answer.

21 A. I'm going to have a conversation with  
22 them.

23 Q. Are you going to write them up?

24 MR. LOGUE: Objection concerning any --

25 Q. (By Mr. Weiner) I don't want to know any

1 privileged information.

2 MR. LOGUE: -- discipline that he may  
3 enact.

4 Q. (By Mr. Weiner) You can still answer.

5 A. I'm going to have a conversation with my  
6 office staff.

7 Q. Are you planning to write them up?

8 A. I'm planning on correcting their action.  
9 I plan on correcting their action.

10 Q. How are you planning on correcting their  
11 action?

12 A. By a proper memo putting everything in  
13 proper perspective, having them put out a proper  
14 memo. But all time has to do with a 40-hour week.  
15 It's really simple. It's not a complex situation.

16 Q. By taking actions that they're not  
17 authorized to take, do you view that as not  
18 performing their duties?

19 A. Yes, I do.

20 Q. Are you planning on terminating anyone  
21 because they've taken actions that they're not  
22 authorized to take?

23 A. No.

24 Q. Does Alpha have a policy as to  
25 progressive discipline, how it disciplines employees

1 for not performing their duties?

2 A. There should be one. It may not be --  
3 there is one.

4 Q. To the best of your knowledge, does Alpha  
5 have one?

6 A. Yes.

7 Q. Do you know what I mean when I say a  
8 "progressive discipline policy"?

9 A. I think I do.

10 Q. To be clear, I'm talking about a  
11 step-by-step discipline policy.

12 A. Yeah, where you're warned and you're  
13 warned again and then perhaps terminated if the  
14 action is not -- if the action keeps happening.

15 Q. Exactly.

16 Does --

17 A. Of course physical violence is also --  
18 anyone that has physical violence in the office,  
19 they're automatically terminated.

20 Q. Is Ms. Buckner the supervisor for all  
21 hourly employees?

22 A. Yes.

23 Q. So would it be fair to say that all  
24 hourly employees perceive Ms. Buckner as having  
25 authority over them?



1 A. Yes.

2 Q. So if Ms. Buckner issues a policy or  
3 makes some kind of policy statement, is it fair to  
4 say that employees probably believe that that is the  
5 policy?

6 A. No. All employees understand also that  
7 if they have any problem, they're -- that they can  
8 come to me with a complaint. That is just a  
9 well-known office -- and contrary to what has been  
10 stated in here (indicating), the employees still  
11 come to me if they have problems.

12 Q. So employees have come to you with  
13 problems before?

14 A. Yes.

15 Q. Relating to compensation?

16 A. Pardon?

17 Q. Relating to compensation?

18 A. You've already asked me that. I've  
19 already said no.

20 Q. Any employees come to you and say, Hey, I  
21 believe I was retaliated against?

22 A. No.

23 Q. Anyone ever come to you and say, Hey, I  
24 believe I was discriminated against?

25 A. No.

1 Q. Anyone ever come to you and say, Hey, I  
2 believe I was harassed?

3 A. No.

4 Q. Anyone ever come to you and say, Hey,  
5 this other employee was disrespectful towards me?

6 A. I think I've had a complaint regarding  
7 that. But I don't recall the exact nature of it.  
8 Because I asked them to write it up. It was never  
9 written up, to my --

10 Q. Do you personally have a standard  
11 procedure as to what you do when you get a complaint  
12 or if you get a complaint?

13 A. My standard procedure is to ask them to  
14 write it up. If they have strong enough feelings  
15 about it, they can write it up, and it will be acted  
16 upon.

17 Q. And how do you act upon it? What would  
18 you do?

19 A. You'd have to give me an example of what  
20 you're talking about.

21 Q. If some employee came to you and said, I  
22 believe I was being disrespected in the office by --

23 A. That's not --

24 Q. -- Jane Smith, employee --

25 A. -- good enough. I can already tell you

1 that's not good enough. Saying I'm disrespected  
2 just doesn't have enough weight to it. I can  
3 disrespect you by -- and I have disrespected you --  
4 I apologize for that -- by interrupting you. That's  
5 not nice.

6 I wouldn't -- the bottom line would be  
7 that's disrespect, and I apologize for that, by the  
8 way.

9 Q. No offense taken.

10 So if an employee came to you and said, I  
11 was disrespected by Jane Doe, employee, what would  
12 you do with that?

13 A. I'd say, What do you mean by that?

14 Q. And if an employee said, This person made  
15 this comment to me, and I was offended by it, what  
16 would you do?

17 A. I would have to know the exact wording  
18 and complaint. The weight of everything has to do  
19 with that. But if I felt like it had enough  
20 weight -- if I felt like the complaint had enough  
21 weight, I would actually take them together and say,  
22 Let's see if we can't work this out. What's  
23 happened here? How have you been disrespected?  
24 What do you mean by that? Do you want to apologize  
25 for this? How do you guys want to work this out in

1 the office as far as you're concerned?

2 Q. So you would investigate in that  
3 situation?

4 A. Yes.

5 Q. And would the investigation include  
6 talking with the employee who's being accused of  
7 being disrespectful?

8 A. Absolutely.

9 Q. Would you do that talking with that  
10 employee personally?

11 A. Yes, I would. That's happened.

12 Q. Would you --

13 A. No one has ever -- I'll be honest -- I'm  
14 sorry. I interrupted you.

15 Q. Go ahead.

16 A. If someone were to come to me, again, I  
17 would -- most of the time I ask for them to write it  
18 down. If it has any weight, they can write it down.  
19 And occasionally even without them writing it down,  
20 I would just say, Well, this is something we just  
21 need to talk about with each other.

22 I've never had a situation where the  
23 conflict was not resolved.

24 Q. If an employee came to you with a  
25 complaint and said, I was disrespected, and gave you

1 a specific example, would you ever take employment  
2 action against the employee who was doing the  
3 disrespecting without first talking to that employee  
4 to find out what actually happened?

5 A. No.

6 Q. What if an employee came to you and said,  
7 Jane Doe, employee, is making me feel uncomfortable  
8 to work here?

9 What would you do with that kind of  
10 complaint?

11 A. I'd say exactly -- again, I would ask her  
12 what she meant by that. And if she had strong  
13 enough feelings to write it down -- like I said,  
14 again, sometimes if -- if I felt like it was just  
15 something that could be worked out in the office, I  
16 would take them together and say, Here I am. Let's  
17 work this out.

18 Q. What if it was something you didn't feel  
19 could be worked out in the office? Would you still  
20 talk to the employee who was doing the  
21 disrespecting?

22 A. Again, I would look at the weight of what  
23 was going on, and, yes, I would talk to them.  
24 Basically I try to not -- I get into noninterference  
25 as long as someone is not willing to write something

1 down.

2 Q. Does Angela Buckner -- do you expect her  
3 to abide by the same policies that you've just  
4 described when --

5 A. Yes.

6 Q. -- complaints come in?

7 A. Yes.

8 Q. Do you know whether Angela's ever had a  
9 situation where she's received a complaint and she's  
10 talked with the person making the complaint and the  
11 person being accused?

12 A. I don't recall any.

13 Q. Do you know if there's ever been a  
14 situation where Ms. Buckner has received a complaint  
15 about someone being disrespected or someone making a  
16 comment about working in the office, and Ms. Buckner  
17 has not spoken with the person being accused?

18 A. I'm not aware of anything.

19 Q. Do you think it would be justified to  
20 receive a complaint like that and not speak with the  
21 person being accused and instead terminate that  
22 person's employment because of the accusation?

23 A. State that again. You're saying without  
24 finding out what the other person had to say about  
25 it?

1 Q. Correct.

2 A. Just terminate someone without  
3 investigating?

4 Q. Correct.

5 A. No.

6 Q. No, that wouldn't be proper?

7 A. Acceptable, yeah.

8 Q. Do you believe that hourly employees  
9 think that Ms. Buckner has authority to set policies  
10 related to compensation?

11 A. No. Not without me.

12 Q. So as you sit here today, it's your  
13 belief that employees believe that the only word  
14 that's relevant on compensation is your word?

15 A. No. I wouldn't say that either.

16 Q. So if Ms. Buckner made some kind of  
17 policy on compensation or overtime and she told  
18 employees what that policy was, do you think  
19 employees would be -- it would be proper for  
20 employees to believe that she had the authority to  
21 set that policy?

22 A. As long as it didn't contradict the  
23 40-hour week.

24 Q. But if it didn't contradict the 40-hour  
25 week, then, yes, it would be appropriate for them to

1 believe that she had that authority; is that right?

2 A. As long as it doesn't contradict the  
3 40-hour week.

4 Q. So that's a yes, with that caveat?

5 A. Yes. Again, every employee has the right  
6 to come to me and talk to me still, because I  
7 believe in an open air policy in the sense of  
8 talking to me.

9 All these memos that you can't talk to me  
10 are because -- these memos I've seen are because I  
11 will sit down and talk to people if they have a  
12 complaint.

13 Q. Did Mr. Diniz ever work more than  
14 40 hours in a workweek during his employment at  
15 Alpha?

16 A. He did after the fire.

17 Q. Any other times that you remember?

18 A. No.

19 Q. Is that no, I don't remember, or is that  
20 no, he did not?

21 A. I don't remember.

22 Q. What about Mr. Thomas? Did he ever work  
23 more than 40 hours in a workweek while he was  
24 employed at Alpha?

25 A. I think he did after the fire also.



1 Q. Any other time that you can remember?

2 A. No. He was only after the fire.

3 Q. Let's talk about Mr. Diniz for a second  
4 and that one time that you remember after the fire.

5 Was Mr. Diniz paid time and a half for  
6 all hours over 40 in that workweek?

7 A. I asked him specifically, and he said yes  
8 when I gave him the check.

9 Q. Help me understand what you mean by that.

10 A. He came to the office and said he hadn't  
11 been paid time and a half for some of his time over  
12 the fire, and I said, "Let's take care of it."

13 I took him and paid him for the time --  
14 for the overtime.

15 Q. Do you remember when that happened?

16 A. No. Not specifically.

17 Q. Do you remember if it happened when that  
18 workweek had just finished, or was it some point  
19 later in time?

20 A. It was some point later in time, because  
21 I was gone.

22 Q. If I said to you August 3rd was the date  
23 the check was written for that time, would you have  
24 any reason to dispute that?

25 A. No. Because I don't recall.

1 Q. So is it your testimony that at some  
2 point after the pay periods in which Mr. Diniz had  
3 told you that he worked over 40 hours in that  
4 workweek that Alpha compensated him at time and a  
5 half for all those extra hours over 40?

6 A. He came to me -- again -- are you just  
7 rephrasing what you've already said?

8 Q. I'm trying to clarify.

9 A. Again, I've already said that he was  
10 paid -- he came to me and said he needed to be paid  
11 and that he had worked overtime, and I paid him.

12 Q. And the fire was at the end of May in  
13 2012; is that right?

14 A. Correct.

15 Q. Do you remember if Mr. Diniz was paid  
16 that overtime before or after he filed his Complaint  
17 in this lawsuit?

18 A. I have no idea when he filed this  
19 Complaint.

20 Q. So what caused you to pay him that  
21 overtime? Did he physically --

22 A. He came to me and asked me and told me  
23 that we owed him overtime.

24 Q. Where were you when he came to you and  
25 asked you?

1           A.     I was downstairs. Best I can recall, I  
2 was downstairs working.

3           Q.     To the best of your memory, what did he  
4 say?

5           A.     To be quite frank, I don't recall except  
6 that the summary of it all was that, I'm owed some  
7 overtime for after the fire.

8           Q.     What did you do with that information?

9           A.     I just asked him where the proof was, and  
10 he said, "I don't have any proof."

11                    It was just -- because we didn't have a  
12 time clock.

13           Q.     He didn't say, Look at my timesheets?

14           A.     No. I asked for the timesheets. The  
15 bottom line was those are -- I just never got them.  
16 I said, "Just tell me what I owe you, and I'll pay  
17 you."

18           Q.     So did he tell you how much he thought  
19 you owed him?

20           A.     Uh-huh.

21           Q.     And what did you do with that  
22 information?

23           A.     What?

24           Q.     What did you do with that information?

25           A.     What did I do with it? I paid him.

1 Q. Did you sit down and write a check in  
2 your checkbook?

3 A. Yes.

4 Q. Did you give that information to Angela?

5 A. Yes. She was there also.

6 Q. So did you write the check, or did Angela  
7 write the check?

8 A. I don't even recall.

9 Q. Did you just take him at his word for how  
10 many hours he had worked?

11 A. Yes, I did.

12 Q. And Mr. Thomas, you testified earlier  
13 that the time you can remember him working over  
14 40 hours in a workweek was related to the fire also;  
15 right?

16 A. I don't -- again, I don't know what he  
17 worked. But he came to me also and said he had  
18 worked overtime.

19 Q. Do you remember when he came to you and  
20 said that?

21 A. No.

22 Q. We've talked about the fire being in late  
23 May.

24 Do you think it was shortly after the  
25 fire, or was it approximately the same time that

1 Mr. Diniz came to you?

2 A. I'm sure it was about the same time.

3 Well, I'm not sure. I don't recall. I think it was  
4 around the same time. I think it was in the same  
5 time frame, yes.

6 Q. And where were you when Mr. Thomas came  
7 to you?

8 A. I was downstairs, third floor.

9 Q. Was anyone else there when he came to  
10 you?

11 A. I don't recall.

12 Q. Do you remember what Mr. Thomas said to  
13 you?

14 A. No.

15 Q. Did you ask him how many hours of  
16 overtime does he think he's owed?

17 A. It was the same basic conversation, and I  
18 paid him.

19 Q. To the best of your memory, did you pay  
20 him for all the hours that he said he was owed?

21 A. Yes. He said this was it. I said, "I  
22 want to make sure."

23 I did make sure with Cris and him that it  
24 was their overtime.

25 Q. So if Mr. Thomas testified that he wasn't

1 paid for all of the hours that he was owed, would  
2 that surprise you?

3 A. Absolutely.

4 Q. Did you ask Mr. Thomas for his  
5 timesheets?

6 A. No.

7 Q. Do you know if Angela asked Mr. Thomas  
8 for his timesheets?

9 A. I do not know. I just paid him what he  
10 said was his overtime.

11 Q. Let me just make sure I understand.  
12 He comes to you and says, "I am owed this  
13 overtime."

14 A. Right.

15 Q. You say, "I want to make sure that you  
16 get paid what you're supposed to be paid"; right?

17 A. (Witness nods head affirmatively.)  
18 And he tells me the hours. He gives  
19 me -- I think he gave me a sheet. He and Cris both  
20 did. And I paid them.

21 Q. And the sheet that they gave you or  
22 whatever they said to you -- they said, I believe  
23 I'm owed X number of hours; right?

24 A. And that's what I did. I paid them.

25 Q. And was it right at the same time or

1 right afterwards that either you or Angela Buckner  
2 broke out the checkbook and wrote them the check for  
3 those hours?

4 A. It was around the same time frame.

5 Q. Did you calculate taxes that they had had  
6 taken out?

7 A. No, I didn't calculate taxes. I did not  
8 do that.

9 Q. So maybe you overpaid him; right?

10 A. I'm sure I did, thinking about that.

11 Q. And you didn't withhold the required  
12 government holdings; right?

13 A. I did not.

14 Q. Do you know what a bona fide meal break  
15 is as it relates to the Fair Labor Standards Act?

16 A. To be quite frank, no.

17 Q. Do you know what the law is as it relates  
18 to meal breaks under the Fair Labor Standards Act?

19 A. No, I do not.

20 Q. Do you rely on someone to tell you what  
21 that is?

22 A. Yes.

23 Q. Who?

24 A. Angela Buckner.

25 Q. Anyone else?

1           A.     No. I would suppose that's why we said  
2 you had to take your lunch hour -- your lunch break.

3           Q.     I'm sorry? Can you repeat that.

4           A.     I would suppose that's why we insist that  
5 they take their lunch break.

6           Q.     Do you or anyone at Alpha, to your  
7 knowledge, train or inform employees as to what  
8 constitutes a bona fide meal break under the Fair  
9 Labor Standards Act?

10          A.     No.

11          Q.     Did you provide any training to  
12 Ms. Buckner?

13          A.     No. She said she had office experience  
14 with Dr. Reed.

15          Q.     Is there somebody at Alpha who's  
16 responsible for ensuring that employees take a full  
17 30-minute lunch?

18          A.     Not to my -- Angela Buckner is  
19 responsible for the office management.

20          Q.     Is she responsible for ensuring employees  
21 take a full 30-minute lunch?

22          A.     Yes.

23          Q.     Anybody else?

24          A.     No.

25          Q.     Do you know what she does to monitor



1 employees?

2 A. No, I don't.

3 Q. Have you or Alpha ever automatically  
4 deducted 30 minutes for a meal period from hourly  
5 employees' compensable time?

6 A. If they've worked -- I've never done it.  
7 I don't know of anyone doing it. I don't know.

8 Q. And Ms. Buckner would know; is that  
9 right?

10 A. Correct.

11 Q. Anyone else?

12 A. Not to my knowledge.

13 Q. Do you know if Mr. Diniz ever had  
14 30 minutes automatically deducted from his  
15 compensable time on days when he worked more than  
16 six hours?

17 A. No.

18 Q. No, you don't know, or no, he didn't?

19 A. I don't know.

20 Q. What about Mr. Thomas?

21 A. I don't know.

22 Q. Do you know where Mr. Diniz usually ate  
23 his lunch?

24 A. No.

25 Q. Would it surprise you if I told you that

1 he typically ate his lunch in the recovery room?

2 A. Yes.

3 Q. It would surprise you?

4 A. Yeah. Because there's designated places  
5 to eat.

6 Q. Would it surprise you that Mr. Diniz  
7 typically ate his lunch with a patient in the room  
8 with him?

9 A. Yes.

10 Q. If you saw him doing that, would you have  
11 stopped him from doing it?

12 A. Yes.

13 Q. Why?

14 A. Because it's not proper etiquette. He's  
15 not supposed to be eating in front of a patient.

16 Q. Were there other Alpha employees who  
17 could have taken over for Mr. Diniz when lunch  
18 started?

19 A. Yes.

20 Q. Who?

21 A. You have a list of employees. We rotate.  
22 Everybody is supposed to be rotated and trained.

23 Q. You can't leave a patient alone there --  
24 right -- in the recovery room?

25 A. Correct.

1 Q. Somebody has to watch that patient.

2 A. Absolutely.

3 Q. You know that Mr. Diniz filed a Complaint  
4 that essentially initiated this lawsuit; is that  
5 right?

6 A. Yes.

7 Q. Do you know when he filed it?

8 A. No.

9 Q. Would it surprise you if I told you that  
10 he filed it on July 27th of 2012?

11 A. No.

12 Q. And you know that Mr. Thomas joined the  
13 lawsuit by filing his opt-in consent form; right?

14 A. Yes.

15 Q. Do you know when he filed that?

16 A. No.

17 Q. Would it surprise you if I told you that  
18 was July 31st, 2012?

19 A. No.

20 Q. Were you present when a process server  
21 attempted to serve the Summons and Complaint on  
22 Alpha and yourself?

23 A. Yes.

24 Q. Tell me what happened when that process  
25 server arrived.

1           A.     Cris came to me and said, "I want them to  
2     leave. I don't want to do this."

3                     He essentially went upstairs, from what I  
4     understood, and told the person to leave.

5           Q.     Did you have any conversations with  
6     Ms. Buckner about that process server on that day?

7           A.     I don't recall. I'm sure I did.

8           Q.     Do you know if Ms. Buckner had any  
9     conversations with Mr. Diniz on that day?

10          A.     I don't know. I'm sure she did.

11          Q.     Why?

12          A.     Because in just mentioning things, she  
13     was talking about how he was talking to her about  
14     not wanting to file the lawsuit.

15          Q.     Anything else?

16          A.     That's all I recall.

17          Q.     Did she tell you if she had told Cris  
18     that he has to withdraw the lawsuit?

19          A.     No.

20          Q.     Why is that funny?

21          A.     Because it's absurd.

22          Q.     Could that have happened?

23          A.     It's absurd.

24          Q.     Why are we laughing? Why is it absurd?

25          A.     Because no one has command of another

1 human being that old.

2 Q. Any other reason?

3 A. That's enough. It's just asinine.

4 Q. You'd be offended if someone accused you  
5 or Angela of doing that; right?

6 A. Yes. It's just so asinine.

7 Q. You'd be pissed off at that person;  
8 right?

9 A. No, I wouldn't. It's just asinine. It's  
10 not even worth -- it's almost not even worth a  
11 comment.

12 Q. So after the process server left that  
13 day, everything okay between you and Cris?

14 A. Yes.

15 Q. Did you say anything to him about the  
16 lawsuit?

17 A. I said, "It's your decision, whatever you  
18 decide. This is your stuff."

19 Q. Were you --

20 A. Of course I don't want to be sued.

21 Q. Were you present for any conversations  
22 that day between Cris and Angela?

23 A. No. Not really.

24 Q. Were you present that day for any  
25 conversations between Cris and the process server?

1 A. No.

2 Q. So in reality, is it fair to say that you  
3 don't know what Angela told Cris that day?

4 A. Correct.

5 Q. And you also don't know what Cris told  
6 the process server that day; right?

7 A. Correct.

8 Q. Do you know if anyone other than Cris,  
9 Angela, and the process server know what was said  
10 that day relating to the lawsuit between those  
11 three?

12 A. There could have been because it was  
13 right outside the -- I'll be honest with you. I  
14 don't know. My answer is I don't know. There might  
15 have been somebody else present.

16 Q. But you don't know?

17 A. I don't know.

18 Q. Did you have a one-on-one conversation  
19 with Cris on the morning of August 6th about the  
20 lawsuit and overtime, to the best of your memory?

21 A. Never one on one.

22 Q. Did you have a conversation with more  
23 people than just Cris on the morning of August 6th?

24 A. I think I had -- he wanted to talk or  
25 something, and so I had someone present with me.

1 Q. Who was that person?

2 A. I think Sheila was present.

3 Q. Prior to that conversation with Sheila,  
4 did you have a conversation with Cris?

5 A. No. Not that I recall.

6 Q. Did you ever ask Cris who he was back in  
7 2003?

8 A. Did I do what?

9 Q. Ever ask Cris who he was back in 2003?

10 A. No.

11 Q. Did you ever tell Cris that you hired him  
12 because he was starving to death?

13 A. No.

14 Q. Did you ever receive a letter from my law  
15 firm in relation to retaliation against Mr. Diniz  
16 and Mr. Thomas?

17 A. Retaliation?

18 Q. Yes.

19 A. No. I don't think I did. Maybe I did.  
20 I don't recall.

21 (Whereupon a document was identified as  
22 Plaintiffs' Exhibit 13.)

23 Q. (By Mr. Weiner) Dr. McBrayer, I'm  
24 handing you Plaintiffs' Exhibit 13. Take a minute  
25 to review it and let me know when you're finished.

1 A. I didn't do any -- well --

2 Q. Just let me know when you're finished,  
3 please.

4 A. This is so --

5 MR. LOGUE: Just look at it. Don't  
6 comment.

7 THE WITNESS: I'm sorry.

8 A. Okay.

9 Q. (By Mr. Weiner) You've reviewed it?

10 A. Yes.

11 Q. I'll note that while you were reviewing  
12 it, you were having a good time and laughing it  
13 seemed; right?

14 A. Yes.

15 Q. Why is it so funny?

16 A. Because it's just so absurd.

17 Q. What part of it's absurd?

18 A. All of it.

19 Q. All of it?

20 A. Yeah.

21 Q. Can you point me to something in  
22 particular?

23 A. All of it except for your sincerity was  
24 appreciated. But his representation of the facts he  
25 presented to you is just absolutely incredulous.



1 Q. Is today the first time you've seen this  
2 letter?

3 A. No.

4 Q. When did you see it?

5 A. I saw it when it came in.

6 Q. And for the record, it's dated  
7 August 7th, 2012.

8 A. Right. I saw it.

9 Q. You saw it shortly thereafter; is that  
10 accurate?

11 A. Right.

12 Q. And in the letter, in the second  
13 paragraph, the middle sentence says, As you also  
14 know, Antonio Thomas has filed his opt-in consent  
15 form to be part of Mr. Diniz's lawsuit.

16 Do you see that?

17 A. Yes.

18 Q. And so is it fair to say that you knew  
19 Mr. Thomas was part of this lawsuit no later than  
20 the time you received this letter?

21 A. Yes.

22 Q. Do you know when Mr. Thomas was fired?

23 A. Pardon?

24 Q. Do you know when Mr. Thomas was fired?

25 A. No. I don't recall.

1 Q. Would it surprise you to learn that he  
2 was fired two days after this letter was written?

3 A. No, it wouldn't surprise me. I thought  
4 it was beforehand, to be quite frank. I don't know  
5 that I got this letter on that day, though. So I  
6 don't know I specifically got this letter on  
7 August 7th.

8 Q. To be clear for the record, I'm not  
9 saying you received it on August 7th. That's the  
10 date of the letter.

11 A. Right. I'm just saying that I don't  
12 think I had received this letter before I fired  
13 Mr. -- Antonio, Mr. Thomas.

14 Q. If you look at the last paragraph of the  
15 letter, it says, generally speaking, all documents  
16 and whatnot must be preserved.

17 Do you see that?

18 A. Yes, I do.

19 Q. Do you and Alpha preserve all documents  
20 once you receive notice of a lawsuit?

21 A. To my knowledge.

22 Q. What did you personally do to preserve  
23 documents?

24 A. I just told Angela if there's anything  
25 regarding this, she needed to keep it.

1 Q. Anything else?

2 A. That's it.

3 Q. Did you tell anyone else to do the same  
4 thing?

5 A. She's the office manager.

6 Q. So is that a no?

7 A. Correct.

8 Q. Do you have an office at the Powers Ferry  
9 location?

10 A. Yes.

11 Q. Do you keep documents in that office?

12 A. No.

13 Q. So if a document wasn't kept that should  
14 have been kept -- and I'm not saying there was.

15 But if a document was not kept that  
16 should have been kept, you would say that was Angela  
17 Buckner's responsibility?

18 A. Yes.

19 Do you really want to know the truth  
20 about all this, though?

21 MR. LOGUE: Just let him ask questions.

22 Q. (By Mr. Weiner) I'd like to know the  
23 truth about all of this, yes. I'm hoping you're  
24 telling me the truth the whole day today.

25 A. The fact that he said that I said all

1 these things to him is just absolutely not true,  
2 absolutely not true.

3 Q. Which things in particular are not true?

4 A. Almost all of them. I mean, I don't see  
5 anything that had any truth in it, to be quite  
6 frank.

7 Q. On August 3rd, 2012, the process server  
8 attempted to serve you with a Summons and Complaint.

9 Is that true or false?

10 A. He never got to me.

11 Q. Did he come to your office?

12 A. Yes.

13 Q. You purposely avoided service, and you or  
14 individuals in your office threatened Mr. Diniz.

15 True or false?

16 A. I did not avoid being served. I did not  
17 threaten Mr. Diniz.

18 Q. Individuals in your office threatened  
19 Mr. Diniz.

20 True or false?

21 A. I can't say that. I hope not.

22 Q. You and/or individuals in your office  
23 told Mr. Diniz that he will be fired if he does not  
24 tell the process server that he had fired my law  
25 firm and withdrawn the Complaint.

1 True or false?

2 A. That "you" is me. No, I did not tell him  
3 he'd be fired.

4 Q. What about individuals in your office?

5 A. I have no -- I would say no.

6 Q. You would say no.

7 But do you know is the question.

8 A. No, I do not. Remember, we already went  
9 over that. I've already told you I wouldn't know.

10 Q. An individual in your office also told  
11 Mr. Diniz that he would be fired if he did not call  
12 me and tell me that he wanted to withdraw his  
13 complaint.

14 True or false?

15 A. See, I can't comment to --

16 Q. So you don't know?

17 A. Don't know.

18 Q. On August 6th, 2012, you and your counsel  
19 interrogated Mr. Diniz.

20 True or false?

21 A. I didn't interrogate him. False.

22 Q. How about on August 6th, 2012, you and  
23 Sheila questioned Mr. Diniz about his overtime  
24 claims?

25 A. I didn't question him.

1 Q. Did Sheila do so?

2 A. No. She didn't question. We just sat  
3 there and told him that he had to do what he had to  
4 do, and this was his life. We didn't question it.

5 Q. Did Mr. Diniz make a request to have a  
6 witness in the room with him?

7 A. No. There was a witness, though.

8 Q. Who?

9 A. Steve Hardman.

10 Q. Did Mr. Diniz ask to have Mr. Thomas in  
11 the room with him?

12 A. No.

13 Q. Did you or Sheila tell Mr. Diniz that he  
14 was being disloyal?

15 A. No. I can't speak for Sheila.

16 Q. When you had that meeting on August 6th,  
17 you knew that a Complaint had been filed in this  
18 lawsuit; right?

19 A. Yes.

20 Q. And you knew that Mr. Diniz was  
21 represented by an attorney; right?

22 A. Well, he told me he had dismissed the  
23 whole case.

24 Q. So on August 9th --

25 A. Whenever this happened, he had told me he

1 had dismissed you.

2 Q. On August 9th, 2012, did you ask  
3 Mr. Diniz if he was moving forward with his lawsuit?

4 A. I don't recall that. August 9th?

5 Q. Let me back up.

6 A. You'll need to give me some history.

7 Q. You were eventually served with the  
8 Summons and Complaint; right?

9 A. Yes.

10 Q. Do you remember when that was?

11 A. No.

12 Q. After you were served with the Summons  
13 and Complaint, did you go to Mr. Diniz and ask him  
14 if he was truly moving forward with his lawsuit?

15 A. I don't recall.

16 Q. Could it have happened?

17 A. Dubious. I got served. I know I've been  
18 served. That means he's moving forward. That would  
19 be kind of redundant.

20 Q. Do you remember when Mr. Thomas's  
21 employment was terminated?

22 A. No. I don't remember exactly.

23 Q. Do you remember the circumstances  
24 surrounding his termination of employment?

25 A. No.

1 Q. Did you do it?

2 A. Yes.

3 Q. So tell me what happened when you  
4 terminated his employment.

5 A. He started yelling and screaming that he  
6 had a right to a reason to his termination. I said,  
7 "Not according to what I understand."

8 Q. Well, I want to talk about what happened  
9 before that.

10 What led to the termination of his  
11 employment?

12 A. Just simply the fact that I needed  
13 another MA in the office, someone with medical  
14 experience.

15 Q. Any other reason?

16 A. No. It was just his inability to really  
17 perform functions in the office --

18 Q. Anything else?

19 A. -- on a medical basis.

20 Q. Anything else?

21 A. No.

22 Q. Was there a lack of work for him?

23 A. No.

24 Q. So there was plenty of work for him to  
25 have done; you just needed somebody else; is that



1 right?

2 A. Yes.

3 Q. When did you decide that, that you needed  
4 somebody else?

5 A. Just in the preceding weeks or months. I  
6 had already told him from the -- I had told him from  
7 the beginning that his employment there is temporary  
8 until I could find someone, you know, to replace  
9 him.

10 Q. You just testified that you told him in  
11 the preceding weeks, and I think you slipped in "or  
12 months."

13 Do you remember when you made the  
14 decision to terminate his employment?

15 A. I told him from the beginning that he  
16 wouldn't be there for long.

17 Q. Very specific question. I understand  
18 that you told him from the beginning that it was  
19 temporary.

20 A. Whenever his employment date was, I told  
21 him from the get-go.

22 Q. Please listen to my question.

23 When did you make the decision that  
24 August 9th was going to be his last day of  
25 employment?

1           A.     The preceding week and days. I've  
2 already told you --

3           Q.     Did you make the decision yourself?

4           A.     Along with my office secretary --

5           Q.     Who's that?

6           A.     -- I mean my office manager.

7           Q.     Ms. Buckner?

8           A.     Yes. His specialty is IT. I mean, he  
9 was just simply not needed there anymore.

10           MR. WEINER: I'm sorry. I didn't hear  
11 that.

12           (The record was read by the reporter.)

13           Q.     (By Mr. Weiner) But he was doing more  
14 things than just IT; right?

15           A.     Yes.

16           (Whereupon a document was identified as  
17 Plaintiffs' Exhibit 14.)

18           Q.     (By Mr. Weiner) Dr. McBrayer, I'm  
19 handing you a document labeled Plaintiffs'  
20 Exhibit 14. It's a separation notice for Antonio  
21 Thomas.

22           Have you seen this document before?

23           A.     No. If I have, I don't recall.

24           Q.     So when Mr. Thomas's employment was being  
25 terminated, who told him that his employment was

1 being terminated?

2 A. I did. I told you that already.

3 Q. What did you say to him?

4 A. I told him, "You're no longer employed  
5 here."

6 Q. And what did he say?

7 A. He starting yelling and screaming that I  
8 had to give him a reason, and I said, again, "I  
9 don't have to give you a reason."

10 Q. What did he say?

11 A. "You have to give me a reason."

12 I said, "No, I don't have to give you a  
13 reason."

14 "You have to give me a reason."

15 "No, I don't have to give you a reason."

16 Q. And after the conversation went beyond  
17 the stalemate of you not wanting to give him a  
18 reason and him wanting a reason, was there anything  
19 else said about the termination?

20 A. No.

21 Q. Do you know who drafted the separation  
22 notice?

23 A. No.

24 Q. If you look on Plaintiffs' Exhibit 14  
25 sort of on the lower left-hand corner under notice

1 to employer, it says, At the time of separation, you  
2 were required by the Employment Security Law, OCGA  
3 Section 34-8-190(c), to provide the employee with  
4 this document, properly executed, giving the reasons  
5 for separation.

6 Do you see that?

7 A. Uh-huh.

8 Q. But it's your position that you don't  
9 have to give a reason; is that right?

10 A. I was told I didn't have to give a  
11 reason.

12 Q. Who told you that?

13 A. My office manager.

14 Q. Anyone else tell you that?

15 A. No.

16 Q. Now that you see this, do you think  
17 Ms. Buckner was wrong?

18 A. I still don't know. I thought there was  
19 a 90-day or 16 weeks that you didn't have to give a  
20 reason.

21 Q. To be clear, after those 90 days or  
22 16 weeks, whatever time period you believe it is, is  
23 it your understanding that you have to give a  
24 reason?

25 A. After that, I thought you didn't have to

1 give a reason.

2 Q. So as you sit here today, it's your  
3 belief that --

4 A. I'm a little confused by the whole  
5 matter. Like I said again, that's why I have an  
6 office manager.

7 Q. So as you sit here today, it's your  
8 belief, whether right or wrong, that you can wait  
9 some specified period of time, and you don't have to  
10 give an employee a reason after that period of time  
11 for the termination of their employment; is that  
12 right?

13 A. Right.

14 Q. Now, you'll see on Plaintiffs' Exhibit 14  
15 that Ms. Combs is the one who signed it; right?

16 A. Yeah. I see that.

17 Q. Were you the one who told Ms. Combs to  
18 give Mr. Thomas the separation notice?

19 A. I didn't know that I had to do this, to  
20 be quite frank. I didn't give her permission, no.

21 Q. You didn't give her permission to give  
22 him this form?

23 A. Right. I've never seen the form before.

24 Q. So as you sit here today, is it your  
25 testimony that Ms. Combs --

1 A. Didn't show --

2 Q. -- did this on her own?

3 A. Yes.

4 Q. But to be clear, you were the one who  
5 made the decision to terminate Mr. Thomas's  
6 employment.

7 A. Correct, along with my office manager.  
8 I've already told you that too.

9 Q. And on the top, it says period of last  
10 employment, and it says 5/24/12 to 8/9/12, and the  
11 date completed and released to employee in the lower  
12 right-hand corner is 8/9/12.

13 Do you see both of those?

14 A. Yes.

15 Q. Why did you pick that day to terminate  
16 his employment?

17 A. You've already asked me that.

18 Q. I'd like an answer again, though.

19 A. I'll refer back to your previous  
20 question.

21 Q. I can sit here all day.

22 A. I can too.

23 Q. I'd like an answer.

24 A. I've already answered it.

25 MR. WEINER: Keith, I'd ask you to have

1 your client answer the question.

2 MR. LOGUE: Has the question been asked  
3 before and answered?

4 THE WITNESS: Yes.

5 MR. WEINER: If you'd like to go back  
6 through the transcript --

7 MR. LOGUE: Sure. We can do that.

8 MR. WEINER: Will you please mark --  
9 let's mark down the time that this is --

10 THE WITNESS: Let him pay for the time  
11 because he's already asked me that.

12 Q. (By Mr. Weiner) No, actually,  
13 Dr. McBrayer. You will be paying for the time.

14 MR. LOGUE: We'll see.

15 A. I doubt it. You've already asked me the  
16 question.

17 Q. (By Mr. Weiner) Why don't we save the  
18 court reporter some effort here. It's a simple  
19 question. Why don't you just answer it one more  
20 time.

21 A. I've already answered it. It's your  
22 memory now that's not --

23 MR. LOGUE: Reask him the question.

24 Q. (By Mr. Weiner) Why did you pick  
25 August 9th, 2012 as the date that you were

1 terminating Mr. Thomas's --

2 A. I told you I had already --

3 Q. -- employment --

4 A. -- been thinking about it for weeks.

5 Q. Excuse me. Now you're interrupting me.

6 A. I'm sorry.

7 Q. Why did you pick August 9th, 2012 as the  
8 date you were terminating Mr. Thomas's employment  
9 when you testified earlier that you had already made  
10 the decision a week, even more than a week before  
11 August 9th?

12 A. I've already told you, again, that I made  
13 that decision that very day. God knows why. I'd  
14 already been thinking about it and knew I needed  
15 somebody else in the office. His -- even his  
16 expertise was in IT. His expertise was not being a  
17 med tech.

18 Q. I understand that. You've testified a  
19 couple of times now that you decided you needed  
20 someone else in the office.

21 A. Right.

22 Q. And you've testified that you decided  
23 that a week, if not more, before August 9th, 2012.

24 A. I've already told you also --

25 Q. What would -- excuse me.



1                   What was magical about August 9, 2012  
2 that caused that to be the day that Mr. Thomas's  
3 employment was --

4                   MR. LOGUE: He just answered that. He  
5 said --

6                   MR. WEINER: He has not answered.

7                   MR. LOGUE: Yes, he did. He said, God  
8 knows why I picked that day.

9                   That's what he said. And you want to  
10 dispute what the record says. That's what he  
11 said. Now, you may not like that response --

12                   MR. WEINER: Enough of the speaking  
13 objections.

14                   MR. LOGUE: -- but that was his response.

15 Q.               (By Mr. Weiner) Dr. McBrayer --

16                   MR. LOGUE: I will object --

17 Q.               (By Mr. Weiner) -- does anyone other than  
18 God --

19                   MR. LOGUE: -- as many times as necessary  
20 to object.

21 Q.               (By Mr. Weiner) Does anyone other than  
22 God know why you picked August 9th?

23 A.               Just it was time for him to go. I needed  
24 someone else in the office. Like I said, I told him  
25 from the beginning his time there was going to be

1 limited.

2 Q. Why didn't you pick August 8th?

3 A. I told you. God only knows.

4 Pardon me one second.

5 (Brief interruption.)

6 Q. (By Mr. Weiner) Why didn't you terminate  
7 his employment when you came to that conclusion,  
8 that you needed someone else in the office?

9 A. That had been ongoing. It was just one  
10 of those things as far as usefulness and enjoying --  
11 and basically I'll be quite frank with you. I kind  
12 of hired him as -- because of Cris. Cris loved him.  
13 I was trying to do Cris a favor. You know, he was  
14 unemployed.

15 Q. So was it a coincidence that you learned  
16 that Mr. Thomas had joined the lawsuit --

17 A. I did not even know --

18 Q. Excuse me. Let me finish the question.

19 Was it a coincidence that you learned  
20 that Mr. Thomas had joined the lawsuit, Mr. Diniz  
21 was continuing the lawsuit, and that Mr. Thomas's  
22 employment was terminated within a day or two of  
23 learning all that?

24 A. It was completely coincidence.

25 Q. Do you know how Mr. Diniz got to work?

1 A. No.

2 Q. Do you know if Mr. Thomas drove him to  
3 work?

4 A. No. I was told that he had been driving  
5 him to work -- I do know that -- after he starting  
6 having seizures.

7 Q. So you do know that as of August of 2012,  
8 Mr. Thomas had been driving Mr. Diniz to work?

9 A. I don't know that. I was told that.  
10 There's a difference. I did not physically see him  
11 being driven there.

12 Q. No matter how you learned of it, in  
13 August of 2012, you knew somehow that Mr. Thomas  
14 drove Mr. Diniz to work; right?

15 A. I was told that.

16 Q. And when you handed --

17 A. I didn't keep him from driving.

18 MR. WEINER: Let me strike that.

19 MR. LOGUE: Let him ask the question.

20 THE WITNESS: Okay.

21 Q. (By Mr. Weiner) Did you tell Mr. Diniz  
22 on August 9th, when he told you he was moving  
23 forward with this lawsuit, that he would need to  
24 find a new ride home?

25 A. No.

1 Q. Since the lawsuit was filed and you were  
2 served with a Summons and Complaint, have any other  
3 employees come to you and asked about compensation  
4 for lunch breaks or overtime compensation?

5 A. No.

6 Q. Mr. Diniz's employment was terminated on  
7 August 29th; right?

8 A. I don't recall exactly.

9 Q. Would it surprise you if his employment  
10 was terminated on August 29th?

11 A. No.

12 Q. Why did you fire Mr. Diniz?

13 A. There was multiple reasons. He did  
14 not -- the number one reason is he did not bring  
15 back a work excuse from his doctor saying he could  
16 return to work with a seizure disorder.

17 And I had asked him numerous times to  
18 come to the office with something as far as being  
19 able to return to work, because he had tuberculosis  
20 and seizures.

21 Q. You said "multiple reasons."

22 What else?

23 A. He had also been making negative comments  
24 in the office as far as the office was concerned,  
25 saying that we ran a -- more or less we ran a

1 garbage disposal; don't come here because it's a  
2 slaughter house.

3 Q. Anything else?

4 A. That's all I recall right now. He'd also  
5 been going to other members in the office and asking  
6 them to join the lawsuit.

7 Q. Did that piss you off?

8 A. No.

9 Q. Anything else?

10 A. I don't recall anything else right now.

11 Q. We'll come back to that question. Okay?  
12 Maybe you'll remember a little bit later.

13 So did not bring a return-to-work excuse  
14 from the doctor, tell me about that situation.

15 A. He was having seizures. So anyone --  
16 he's in a medical office. If he has a seizure, I  
17 have to take care of him instead of taking care of  
18 my other people.

19 Q. And you told him that he needed a  
20 return-to-work excuse?

21 A. Yes. Numerous times.

22 Q. Did you tell him that he would be  
23 terminated if he didn't bring you one?

24 A. Yes, I did.

25 Q. Was that in writing or --

1 A. It was verbally.

2 Q. -- or verbal?

3 A. Verbally.

4 Q. Did you tell him more than once?

5 A. Yes.

6 Q. Where were you when you told him?

7 A. I don't recall.

8 Q. Was anyone else present?

9 A. I don't recall.

10 Q. Do you remember anything else about the  
11 conversations where you told him that --

12 A. I think --

13 Q. Let me finish.

14 A. I'm sorry.

15 Q. -- where you told him that he needed a  
16 return-to-work --

17 A. Pardon?

18 Q. Do you remember anything else about the  
19 conversations where you supposedly told him that he  
20 needed a return-to-work excuse or else he'd be  
21 fired?

22 A. I don't recall anything else. That was  
23 enough after he didn't do it the first few times.

24 MR. WEINER: I'm sorry. Can you read  
25 that last phrase back.

1 (The record was read by the reporter.)

2 Q. (By Mr. Weiner) After he didn't do what  
3 the first few times?

4 A. Bring in the may return to work.

5 Q. How long did you give him to bring in a  
6 note?

7 A. I gave him three weeks, two or three  
8 weeks.

9 Q. Did he ever bring in a note?

10 A. No.

11 Q. And that was one of the reasons you  
12 terminated his employment?

13 A. Yes.

14 Q. Now, you mentioned negative comments  
15 regarding the office. One comment that you  
16 mentioned was Alpha ran a garbage disposal. Another  
17 one was that he was supposedly saying, Don't come  
18 here because it's a slaughter house.

19 Any other negative comments regarding the  
20 office that you can remember?

21 A. I don't recall right now.

22 Q. Did he say those comments -- those two  
23 that I mentioned to you?

24 A. No.

25 Q. Who did he say those to?

1           A.     I've forgotten the name of the girl he  
2     made that to. She wrote it up also for us.

3           Q.     An hourly employee?

4           A.     Yes.

5           Q.     Do you remember her position?

6           A.     No. She was just an MA downstairs.

7           Q.     Now, we've talked about two comments, the  
8     garbage disposal supposed comment and slaughter  
9     house supposed comment.

10                   Is it your understanding that Cris  
11     supposedly made those two comments to the same  
12     person?

13           A.     I don't recall that it was the garbage  
14     house. The slaughter house was the one that I  
15     really recall. I can't recall the girl's name right  
16     now. You have it in your -- you should have it in  
17     your exhibits.

18           Q.     I guess what I'm asking is, did one  
19     person tell you that Cris had made these comments,  
20     or was it multiple people told you?

21           A.     My recollection is more than one.

22                   MR. LOGUE: Do you need to take a break?

23                   THE WITNESS: Yeah. I think it's time.

24                   MR. LOGUE: You want a break?

25                   THE WITNESS: No. I think it's just time



1 for the day.

2 MR. WEINER: Well, I've got a lot more,  
3 but we can take a break if you need a break.

4 THE WITNESS: I don't -- what time is it?

5 MR. LOGUE: 6:00.

6 THE WITNESS: It's time for the day.

7 MR. WEINER: We'll take a break, but  
8 we're coming back.

9 THE WITNESS: No. I'm not coming back  
10 today. It's time. We'll come back another  
11 day.

12 MR. LOGUE: How about another hour? That  
13 will give you five hours.

14 MR. WEINER: I don't think so. You guys  
15 were the ones who wanted to start at 1:30. I  
16 accommodated that.

17 THE WITNESS: I'll come back. I have no  
18 problem coming back.

19 MR. WEINER: I'm not coming back another  
20 day. I'm here to do this now.

21 THE WITNESS: I'm sorry. What does the  
22 law prescribe for this?

23 MR. LOGUE: The law prescribes -- I think  
24 under the Federal rules, you have five hours.

25 MR. WEINER: No. The law prescribes that

1           you have seven hours.

2           MR. LOGUE: Seven hours.

3           THE WITNESS: That I have to stay here or  
4 that we can divide up?

5           MR. LOGUE: No. He can depose you for  
6 seven hours.

7           THE WITNESS: I know. But, I mean, we'll  
8 give him another day. I'm just tired now.

9           MR. WEINER: Let's take a break now.  
10 Go off the record, please.

11           (Deposition in recess, 6:01 p.m. to  
12 6:09 p.m.)

13           Q. (By Mr. Weiner) Dr. McBrayer, you just  
14 mentioned health issues. I want to make sure.

15           Are you okay to continue with the  
16 deposition now?

17           A. I'll try my best to finish up with you.

18           Q. If there's some issue with your health  
19 that causes you not to be okay, please let me know.

20           Okay?

21           A. It's just that I can't -- I'll let you  
22 know if I feel like I'm just getting too --

23           Q. That's all I ask.

24           When we broke, we were talking about some  
25 negative comments around the office that supposedly

1 Cris had made, and you said that you think it might  
2 have been more than one person who told you or  
3 someone at Alpha about those comments.

4 Do you remember anyone's name who told  
5 you personally that Mr. Diniz had been making  
6 negative comments around the office?

7 A. I can't swear to anyone else at this  
8 time.

9 Q. But do you remember if someone came to  
10 you personally and told you, or did Angela or  
11 someone else tell you that Cris had made a comment?

12 A. They went to Angela first and then came  
13 to me.

14 Q. Did anyone come to you directly and say,  
15 Cris made this comment to me?

16 A. No. Except with the signed -- they  
17 brought the signed document to me.

18 Q. So if I were to ask Angela what comments  
19 were made and who made those comments, she would be  
20 the one who would know all of the comments that  
21 supposedly form the basis -- or one of the bases of  
22 Cris's termination; is that right?

23 A. Yes. Correct.

24 Q. And when you heard about these two, maybe  
25 more, comments, what did you do with them?

1           A.     I just -- I had them write them down to  
2     make sure that they had actually transpired and  
3     listened to the comments themselves from the person  
4     that they were making -- just to make sure it was  
5     truthful sounding, and then put that into my  
6     equation.

7                     I wanted more than anything to continue  
8     my relationship with Cris, because this was just  
9     different behavior.

10           Q.     So after the person or persons put the  
11     comments in writing, did you go to Cris and say,  
12     Cris, did you say these things?

13           A.     No.

14           Q.     Why not?

15           A.     Because, I mean, there was no question in  
16     my mind that he had done it from all the other  
17     things that were going on in the office.

18           Q.     Did Angela go to Cris and say, Cris, have  
19     you said these things?

20           A.     I don't know.

21           Q.     Did she ever tell you that she asked Cris  
22     whether he said those things or not?

23           A.     No.

24           Q.     Did anyone ever tell you that they had  
25     talked to Cris about whether Cris -- and asked him

1 whether he had said those things or not?

2 A. It is my recollection that he said this  
3 in front of two or three people. And I can't recall  
4 their names right now.

5 Q. Did you do any investigation as to  
6 whether these comments were said other than just  
7 getting written statements from those couple of  
8 hourly employees?

9 A. No.

10 Q. And those comments, those two, if not  
11 more, those were reasons for termination; right?

12 A. Plus the fact that he did not bring in  
13 his return to work.

14 Q. Those went into the equation; right?

15 A. Yes.

16 Q. You also said that one of the reasons for  
17 Cris's termination was he had been going to others  
18 and asking if they wanted to join the lawsuit.

19 A. Correct.

20 Q. Who told you that?

21 A. Heidi Loner. And I don't recall the  
22 other -- I think one other person told me that too.

23 Q. Was it another hourly employee?

24 A. Yes.

25 Q. Do you remember his or her position?

1 A. No.

2 Q. Did you have --

3 A. I do recall. Ana Diaz.

4 Q. Anyone else?

5 A. No.

6 Q. Did you have Ms. Loner or Ms. Diaz write  
7 out in a statement that Mr. Diniz had approached  
8 them about joining the lawsuit?

9 A. No.

10 Q. Why not?

11 A. I just didn't see it as pertinent -- I  
12 mean I did not see it as important at that time.

13 Q. But it was a reason you terminated him;  
14 right? It was part of the equation?

15 A. Part of the equation, yes.

16 Q. Did you ever go to Mr. Diniz and say,  
17 Hey, did you make these comments or ask these people  
18 to join the lawsuit?

19 A. No.

20 Q. To be clear, did Ms. Loner or Ms. Diaz  
21 come to you directly and say he made those comments  
22 to them?

23 A. No. It was -- we asked -- I asked them.  
24 I went to them and asked them if he had been  
25 making -- in other words, I went on a -- I did try

1 to find out what was going on in the office.

2 Q. What did you do to try to find out what  
3 was going on in the office?

4 A. I wanted to -- after it was reported --  
5 all this was reported to Angela. The rumor mill was  
6 going, and I just wanted to make sure if this was  
7 really true. I wanted to hear it myself.

8 Q. When did you do that?

9 A. I don't recall.

10 Q. When you say, I wanted to try to find out  
11 what was going on in the office --

12 A. It was before I terminated him.

13 Q. Understood.

14 -- you talked to Heidi Loner as part of  
15 that effort to find out what was going on in the  
16 office?

17 A. Yes.

18 Q. You talked to Ana Diaz?

19 A. Yes.

20 Q. I assume you talked to Angela Buckner.

21 A. Yes.

22 Q. Did you talk to anybody else?

23 A. No. Not that I recall right now.

24 Q. When you approached Ms. Loner, what did  
25 you say to her?

1 A. I don't recall.

2 Q. Had you heard a complaint that Cris had  
3 been asking others to join the lawsuit before you  
4 approached Ms. Loner?

5 A. Yes.

6 Q. Who did you hear that from?

7 A. From Angela Buckner.

8 Q. And did you hear a complaint that Cris  
9 had approached Ana Diaz before you spoke with Ana  
10 Diaz?

11 A. Yes.

12 Q. From Angela Buckner as well?

13 A. Yes.

14 Q. And what did Ms. Loner say to you when  
15 you approached her?

16 A. She said that Cris had approached her and  
17 asked her about joining the lawsuit.

18 Q. Anything else?

19 A. No. I didn't ask anything else.

20 Q. So is it fair to say that you were asking  
21 her to confirm what Angela Buckner had told you  
22 about Cris's comments?

23 A. Correct.

24 Q. And is it the same scenario with Ana  
25 Diaz? You were asking her to confirm what Angela



1 Buckner had told you about Cris's comments?

2 A. The way I recall it, yes. I can't swear  
3 to any of this in the sense of an absolute  
4 certainty.

5 Q. And what did --

6 A. It's kind of foggy.

7 Q. Understood.

8 Are you finished?

9 A. Yes.

10 Q. Once you finished talking to Ms. Loner  
11 and Ms. Diaz, what did you do with that information?

12 A. I digested it along with the other  
13 information.

14 Q. Did you go to Mr. Diniz and tell him what  
15 you had heard?

16 A. No.

17 Q. Did you go to Mr. Diniz and ask him, Did  
18 you really say these things?

19 A. No. I'd already received this letter  
20 from you, so -- all of this -- confirming that he  
21 was not speaking the truth in multiple layers.

22 Q. So after you received the letter which  
23 has been marked --

24 A. I'm just saying, this is telling me that  
25 Cris was not speaking the truth on multiple layers.

1 So why would I ask someone who I knew was not  
2 telling the truth for the truth? He's telling his  
3 lawyer these kind of things.

4 Q. Is it fair to say that Plaintiffs'  
5 Exhibit 13, which is the letter that you are  
6 referring to --

7 A. Yeah. I knew --

8 Q. -- contains some of Cris's allegations  
9 relating to Alpha's supposed failure to pay him  
10 overtime?

11 A. This is regarding -- this letter is  
12 regarding the fact that I had taken retaliatory  
13 actions toward him, is my way of seeing it.

14 Q. So after you received this letter, you  
15 knew that Cris was making complaints about not  
16 having been paid all the compensation that he was  
17 due, including overtime; right?

18 A. I knew that he was speaking things that  
19 weren't true.

20 MR. WEINER: Can you please read back my  
21 question.

22 (The record was read by the reporter.)

23 A. Yes. Yes. I'll say yes.

24 Q. (By Mr. Weiner) And you also believe  
25 that he was telling his lawyer false statements to

1 put in this letter; right?

2 A. Absolutely.

3 Q. So then when you heard that Cris was  
4 supposedly making negative comments and asking  
5 others to join the lawsuit, you believed that it was  
6 appropriate to not ask Cris if those things were  
7 said because he had already attempted to assert his  
8 rights, and you believed that he was making false  
9 allegations; right?

10 MR. LOGUE: Compound question. Rephrase.

11 Q. (By Mr. Weiner) You can answer.

12 A. I've already answered that Cris told  
13 multiple things that weren't -- said multiple things  
14 that weren't true in this Exhibit 13, so there was  
15 no reason for me to believe anything that Cris was  
16 saying from this point in time on.

17 So there was no reason for me to speak  
18 with him. I already knew he was an untruthful  
19 person. There was no reason for me to have any kind  
20 of interrogatories with him in the sense of what was  
21 true or not true.

22 Q. So you didn't believe that Cris deserved  
23 an investigation into these allegations because he  
24 had already made these allegations and false  
25 statements against you and against Alpha; is that

1 right?

2 A. It was also just not a part of the whole  
3 formula. The whole formula, again, was multiple  
4 issues, multiple things.

5 Q. Okay.

6 A. The number one reason I fired him was  
7 because he didn't -- he, again, made those  
8 statements, he went to people in the office  
9 regarding the -- joining the lawsuit, and he did not  
10 bring me his work -- may-return-to-work form.

11 Q. So those three items, for lack of a  
12 better term, those were the number one reasons --

13 A. Absolutely.

14 Q. -- right?

15 And you told me before there's no other  
16 reasons; right?

17 A. No other reasons.

18 MR. WEINER: Can I ask you to read back  
19 the question that I was about to --

20 (The record was read by the reporter.)

21 A. It was all -- everything combined that I  
22 just went over. Yes to that and everything else I  
23 just said.

24 Q. (By Mr. Weiner) Help me out. I'm not  
25 understanding.

1 A. I said yes to your question.

2 (Whereupon a document was identified as  
3 Plaintiffs' Exhibit 15.)

4 Q. (By Mr. Weiner) Dr. McBrayer, I've  
5 handed you Plaintiffs' Exhibit 15, which is an  
6 August 29th, 2012 letter with the re line  
7 Termination of Cristiano Diniz's Employment With  
8 Alpha Gyn Group, P.C.

9 Can you review it and let me know when  
10 you've had a minute to do so.

11 Have you reviewed it?

12 A. Yes.

13 Q. Have you ever seen this document before?

14 A. Yes.

15 Q. Did you write it?

16 A. Yes.

17 Q. This is Mr. Diniz's termination letter;  
18 right?

19 A. Yes.

20 Q. And it says in the second sentence, Your  
21 employment is terminated effective immediately for  
22 the following reasons, and there are four reasons  
23 given; right?

24 A. Right.

25 Q. Reason one is insubordination for failure

1 to sign Alpha Group's policies and procedures on  
2 drugs and alcohol and computer usage of Internet and  
3 e-mail.

4 Did I read that correctly?

5 A. Correct.

6 Q. That's not one of the reasons you told me  
7 a minute ago.

8 A. I told you I couldn't remember  
9 everything.

10 Q. No. I think I asked you is there  
11 anything else, and --

12 A. I told you I couldn't remember. I've  
13 already told you I don't feel well.

14 Q. Can you continue with this deposition?

15 A. I've already told you I don't want to.

16 Q. Well, I'm asking --

17 A. I don't feel well. I wouldn't want to  
18 terminate it if I didn't feel well.

19 Q. I'm going to continue the deposition with  
20 the understanding that you can proceed. If you  
21 can't, you need to tell me.

22 A. I'm telling you, I can't proceed.

23 Q. Okay. Now that we have a new reason that  
24 you --

25 A. I've already told you I --

1 MR. LOGUE: He just said he can't  
2 proceed. He doesn't feel well.

3 MR. WEINER: Oh, he did? I'm sorry. I'm  
4 sorry. Then we will break and continue --

5 (Discussion ensued off the record.)

6 MR. WEINER: We are suspending the  
7 deposition at this time because Dr. McBrayer is  
8 unable to continue today because he's not  
9 feeling well.

10 We are continuing with Angela Buckner's  
11 deposition on Tuesday, the 22nd of January.  
12 We've decided that we are going to continue  
13 Dr. McBrayer's deposition on Friday, the 25th  
14 of January, and that we will move Kensey  
15 Griffith's deposition from the 25th to another  
16 date, but there will be no objection to taking  
17 her deposition whether it's in the current  
18 discovery period or an extended discovery  
19 period.

20 Have I said that accurately?

21 MR. LOGUE: That is correct.

22 (Deposition concluded at 6:30 p.m.)  
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E R R A T A S H E E T

Pursuant to Rule 30(7)(e) of the Federal Rules of Civil Procedure and/or Georgia Code Annotated 81A-130(B)(6)(e), any changes in form or substance which you desire to make to your deposition testimony shall be entered upon the deposition with a statement of the reasons given for making them.

To assist you in making any such corrections, please use the form below. If supplemental or additional pages are necessary, please furnish same and attach them to this errata sheet.

- - -

I, the undersigned, DANIEL E. MCBRAYER, SR., do hereby certify that I have read the foregoing deposition and that to the best of my knowledge said deposition is true and accurate (with the exception of the following corrections listed below).



1 Page \_\_\_\_ Line \_\_\_\_ should read: \_\_\_\_\_

2 Reason for change: \_\_\_\_\_

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4 Page \_\_\_\_ Line \_\_\_\_ should read: \_\_\_\_\_

5 Reason for change: \_\_\_\_\_

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7 Page \_\_\_\_ Line \_\_\_\_ should read: \_\_\_\_\_

8 Reason for change: \_\_\_\_\_

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10 Page \_\_\_\_ Line \_\_\_\_ should read: \_\_\_\_\_

11 Reason for change: \_\_\_\_\_

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13 Page \_\_\_\_ Line \_\_\_\_ should read: \_\_\_\_\_

14 Reason for change: \_\_\_\_\_

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16 Page \_\_\_\_ Line \_\_\_\_ should read: \_\_\_\_\_

17 Reason for change: \_\_\_\_\_

18

19

20 Signature \_\_\_\_\_

21 Sworn to and subscribed before me

22 \_\_\_\_\_, Notary Public.

23 This \_\_\_\_ day of \_\_\_\_\_, 2013.

24 My Commission Expires:

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C E R T I F I C A T E

G E O R G I A :  
COBB COUNTY:

I hereby certify that the foregoing deposition was reported, as stated in the caption, and the questions and answers thereto were reduced to the written page under my direction; that the foregoing pages 1 through 191 represent a true and correct transcript of the evidence given. I further certify that I am not in any way financially interested in the result of said case.

Pursuant to Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia, I make the following disclosure:

I am a Georgia Certified Court Reporter. I am here as an independent contractor for Huseby, Inc.

I was contacted by the offices of Huseby, Inc. to provide court reporting services for

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this deposition. I will not be taking this deposition under any contract that is prohibited by O.C.G.A. 15-14-7 (a) or (b).

I have no written contract to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. I will charge my usual and customary rates to all parties in the case.

This, the 1st day of February, 2013.

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JENNIFER D. HAMON, CCR-B-2287  
My Commission Expires  
January 27th, 2014.

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\_\_\_\_\_, 2013

To: Keith Logue, Esq.

Case Name: Diniz Et Al v. Alpha OB GYN Group PC

Veritext Reference Number: 1595001

Witness: Daniel E. McBrayer, Sr. MD                      Deposition Date:  
1/21/2013

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature at the bottom of the sheet notarized and forward errata sheet back to us at the address shown above.

If the jurat is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,

Production Department

Encl.

Cc: Andrew Weiner, Esq.

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