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1-4-2023

**Alexander S. Glover, et. al. v. Georgia Mining Ventures, LLC, Order  
on Plaintiff's Motion to Compel and Motion for Contempt**

Kelly Lee Ellerbe

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**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

ALEXANDER S. GLOVER, JR., )  
individually and in his capacity as )  
Successor Co-Trustee of the Glover ) Civil Action  
Family Inter Vivos Trust, LYNN ) File No. 2021CV345083  
GLOVER HOLLOWAY, )  
individually and in her capacity as )  
Successor Co-Trustee of The Glover )  
Family Irrevocable Inter Vivos Trust, )  
and SAMUEL GLOVER, )  
)  
Plaintiffs, )  
)  
v. )  
)  
GEORGIA MINING VENTURES, )  
LLC, RONALD REESER, MASON )  
DRAKE, PATRICK MAHER, )  
NATURAL RESOURCE )  
MANAGEMENT, LLC, VENTURE )  
GOLD, INC., VENTURE )  
RESOURCES, INC., E&M )  
INDUSTRIES, LLC, STONE )  
KINGDOM, LLC EAGLE )  
RECLAMATION LLC, PDM )  
GOLD, LLC, SWEETWATER, INC. )  
BALD EAGLE PARTNERS, LLC, )  
THE EAGLE GROUP LLC and )  
RAILROAD VALLEY MINING )  
COMPANY, LLC, )  
)  
Defendants.

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**ORDER ON PLAINTIFFS' MOTION TO COMPEL DEFENDANTS TO  
RESPOND TO DISCOVERY AND MOTION FOR CONTEMPT**

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This matter comes before the Court on Plaintiffs’ Motion to Compel Defendants to Respond to Discovery and Motion for Contempt, filed September 15, 2022 (“Motion”). Having reviewed the record including the Response and Opposition to Plaintiffs’ Motion to Compel Directed to Defendants Natural Resource Management, LLC (“NRM”), Venture Gold, Inc. (“Venture Gold”), Venture Resources, Inc. (“Venture Resources”), E&M Industries LLC (“E&M”), Stone Kingdom LLC (“Stone Kingdom”), Eagle Reclamation LLC (“Eagle Reclamation”), PDM Gold LLC (“PDM”), Sweetwater Inc. (“Sweetwater”), Railroad Valley Mining Company, LLC (“RVMC”), Patrick Maher (“Maher”), and Mason Drake (“Drake”) to Respond to Discovery, filed October 3, 2022 (“Response”) and the Reply in Support of Plaintiffs’ Motion to Compel Defendants to Respond to Discovery, filed October 13, 2022 (“Reply”), the Court enters the following order.<sup>1</sup>

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<sup>1</sup> For ease of reference, the Court provides the following index of certain Motion exhibits, sorted by Defendant, reflecting the discovery served by Plaintiffs, the responses provided, Plaintiffs’ corresponding Rule 6.4 letters, and, where applicable, responses to Rule 6.4 letters.

***Transfer Defendants***

NRM – Discovery lodged (Ex. 3 ), discovery responses (Ex. 11), Rule 6.4 letter (Ex. 19).  
Venture Gold – Discovery lodged (Ex. 4), discovery responses (Ex. 12), and Rule 6.4 letter (Ex.20).  
Venture Resources – Discovery lodged (Ex. 5), discovery responses (Ex. 13), and Rule 6.4 letter (Ex. 21).  
E&M - Discovery lodged (Ex. 6), discovery responses (Ex. 14), and Rule 6.4 letter (Ex. 22).  
Stone Kingdom - Discovery lodged (Ex. 7), discovery responses (Ex.15), and Rule 6.4 letter (Ex. 23).  
Eagle Reclamation - Discovery lodged (Ex. 8), discovery responses (Ex. 16), and Rule 6.4 letter (Ex. 24).  
PDM - Discovery lodged (Ex. 9), discovery responses (Ex. 17), and Rule 6.4 letter (Ex. 25).  
Sweetwater - Discovery lodged (Ex. 10), discovery responses (Ex. 18), and Rule 6.4 letter (Ex. 26).  
RVMC - Discovery lodged (Ex. 30), discovery responses (Ex. 31), Rule 6.4 letter (Ex. 32), and response to Rule 6.4 letter (Ex. 33).

***Individual Defendants***

Drake – Second request for production of documents (Ex. 1) and Rule 6.4 letter (Ex. 2). Drake’s reply to the Rule 6.4 letter and discovery response is Ex. 7 to the Reply.  
Maher – Second request for production of documents (Ex. 27), discovery responses (Ex. 28), and Rule 6.4 letter (Ex. 29).

## 1. BACKGROUND

### 1.1. Early History of Litigation

The present litigation commenced on September 28, 2018 when the initial group of Plaintiffs filed suit against Georgia Mining Ventures, LLC (“GMV”), Ronald Reeser, Drake, and Maher in the State Court of Fulton County, Civil Action File No. 18EV004732.<sup>2</sup> See n. 4, infra. Initially, the same counsel represented GMV, Drake, and Maher (collectively the “GMV Defendants”). (Ans. filed Nov. 30, 2018.) Consistently throughout the litigation, Reeser has maintained separate counsel.<sup>3</sup> The action became entangled in a long-pending discovery motion filed by Plaintiffs due to “lingering deficiencies in the GMV Defendants’ document production and discovery responses.” (Ord. Gr. Pls.’ Mot. to Compel GMV Defs. to Resp. to Disc. ¶ 1.5.) The matter was formally transferred to the Metro Atlanta Business Case Division on February 2, 2021, and the Court entered a Case Management Order on February 25, 2021. With regard to discovery disputes generally, that Case Management Order provided, “should a party wish to file a formal motion seeking resolution of a discovery dispute, any such motion shall be filed **within 90 days** from the date of the response or event (e.g., deposition) that is the subject of the motion . . . (emphasis in original).” (CMO § 8.B.)

Thereafter, on March 15, 2021, the Court entered an order resolving the discovery motion pending at the time of transfer. (Ord. Gr. Pls.’ Mot. to Compel GMV Defs. to Resp.

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<sup>2</sup> Many of the key allegations underlying this dispute have been outlined in the Order on Plaintiffs’ Motion to Dismiss Counterclaim of Defendant Railroad Valley Mining Company, LLC, entered May 24, 2022.

<sup>3</sup> As counsel for Drake and Maher have admitted their Response, “Reeser, Drake and Maher are not on good terms.” (Resp. 5.)

to Disc.) In considering whether sanctions were appropriate, the Court referenced a related action Plaintiffs pursued in Colorado where the GMV Defendants were sanctioned as a result of “multiple discovery violations.” (Id. ¶ 1.4.) In granting Plaintiffs’ December 10, 2019 Motion to Compel, the Court reasoned,

[a]s the Colorado court recognized, GMV Defendants engaged in ‘gamesmanship’ to subvert legitimate discovery. Here, GMV Defendants refused to answer legitimate interrogatories, failed to fully respond to requests for admission, failed or delayed in the production of documents, did not respond to the pending Motion and made a very belated and limited attempt at supplementation after the Motion had been pending for many months . . .

GMV Defendants have exhibited a blatant disregard of their discovery obligations, and the Court finds their deliberate obstruction of the discovery process was intended to and did result in delaying the forward progress of this action.

(Id. ¶¶ 4.1-4.2.)

## 1.2 The Addition of Numerous Defendants and Entry of Amended Case Management Order

On July 14, 2021, shortly after the period for fact discovery ended according to the Court’s initial Case Management Order, Plaintiffs filed an Amended Complaint and Motion to Add Parties.<sup>4</sup> Based upon information learned in discovery, the Amended Complaint offered new allegations and lodged additional claims, asserting the initial Defendants fraudulently conveyed funds to their related or affiliated entities to avoid paying monies owed to the Plaintiffs. (See generally Am. Compl. ¶¶ 137-138, 212; Mot.

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<sup>4</sup> The Amended Complaint re-formulated the named Plaintiffs to include Alexander S. Glover, Jr., (“Alex”) individually and in his capacity as Successor Co-Trustee of the Glover Family Irrevocable Inter Vivos Trust (the “Trust”), Lynn Glover Holloway (“Lynn”), individually and in her capacity as Successor Co-Trustee of the Trust, and Samuel Glover (“Sam”). The Plaintiffs in the original Complaint included Alex, Lynn, Sam, and the Trust proceeding as separately named parties.

to Add Parties 2-7.) Plaintiffs sought to add twelve new Defendants, all entities allegedly affiliated with or controlled by the initial Defendants. (Mot. to Add Parties 3, 6.) On August 5, 2021, the Court granted the motion.

Among the newly added Defendants were certain entities represented by the same counsel now representing the GMV Defendants including: NRM, Venture Gold, Venture Resources, E&M, Stone Kingdom, Eagle Reclamation, PDM, Sweetwater, and RVMC (collectively the “Transfer Defendants”). As detailed below, the dispute at issue concerns: (1) written discovery the Plaintiffs propounded against each of the Transfer Defendants and (2) requests to produce documents Plaintiffs propounded upon individual Defendants Drake and Maher.

After conducting a conference with all the parties, including the newly added Defendants, the Court issued an Amended Case Management Order on December 14, 2021. It set a May 31, 2022 deadline for written discovery and a June 15, 2022 deadline for deposition discovery of lay witnesses. (Am. CMO § 8.E.) It contained the same 90-day deadline for parties to file formal motions seeking the resolution of discovery disputes found in the initial Case Management Order. (Id. § 8.A.)

On April 27, 2022, Plaintiffs served interrogatories, requests to produce documents, and requests for admissions on all of the Transfer Defendants. (Mot. 3, 8.) Plaintiffs indicate that the Transfer Defendants were able to timely respond to their respective requests for admissions on or before May 31, 2022, and, pursuant to an agreed upon extension, timely responded to their respective interrogatories and document requests on

June 10, 2022. (Id. 4, 8-9.) However, at that time, the Transfer Defendants did not produce responsive documents. (Id. 9.) Further, Plaintiffs claim the Transfer Defendants’ written discovery responses were deficient. (Id.)

### 1.3 Entry of the Second Amended Case Management Order

On June 15, 2022 counsel for the GMV Defendants and the Transfer Defendants requested that all of the case deadlines be extended. (Req. for Ext. of Deadlines.) No other parties opposed the request. (Id. 7.) The Court granted the request, entering a Second Amended Case Management Order on June 17, 2022 which extended the deadline for written discovery to August 15, 2022, and the deadline for deposition discovery of lay witnesses to September 15, 2022. (2<sup>nd</sup> Am. CMO, § 8.E.) The Second Amended CMO also maintained the 90-day deadline for filing motions concerning discovery disputes found in the prior two case management orders. (Id. § 8.A.) The Second Amended Case Management Order also stated,

**[b]ased upon the age of this case and the extensions previously granted, it is exceedingly unlikely that any future discovery extensions will be granted, and the parties should govern their actions accordingly (emphasis in original.)**

(Id. § 8.B.)

### 1.4 Plaintiffs Attempt to Resolve the Discovery Dispute with the Transfer Defendants

Plaintiffs claim counsel for the Transfer Defendants “made an initial partial document production on behalf of several defendants on June 17, 2022, and subsequently supplemented it, while indicating that his clients were continuing to search for additional

documents.” (Mot. 9.) However, Plaintiffs contend the deficiencies in the written discovery responses remained and certain documents were never produced. (Id.) Plaintiffs forwarded a Rule 6.4 letter to RVMC on August 12, 2022 and forwarded Rule 6.4 letters to the remaining Transfer Defendants on August 22, 2022. According to Plaintiffs, RVMC was the only Transfer Defendant to respond to their Rule 6.4 letters. (Id. 9-10.) That September 12, 2022 letter from RVMC’s counsel contained “proposed responses” to discovery that were awaiting client approval. (Id. Ex. 33.)

The Motion contains a detailed timeline of the discovery dispute that reflects numerous unfulfilled promises from counsel for the Transfer Defendants regarding when his clients would complete their discovery obligations which were made both before and after the Rule 6.4 letters. (Id. 3-7.)

1.5 Requests for Production of Documents Served upon Individual Defendants Drake and Maher

On July 12, 2022, Plaintiffs served identical second documents requests on Defendants Drake and Maher.

Maher provided a timely response to the discovery request directed towards him but did not produce documents. (Id. 9.) On September 2, 2022, Plaintiffs sent Maher a Rule 6.4 letter, but, at the time the Motion was filed on September 15, 2022, they had received no response. (Id.) Counsel for Maher claims he “has no record of receipt of such” Rule 6.4 letter although it appears it was attached to a September 2, 2022 email from Plaintiffs’ counsel received by Maher’s counsel. (Resp. 5; compare Reply Ex. 6, 8.)



Drake did not timely respond to the request directed towards him. His counsel claims, through an unintentional oversight, he failed to respond to Drake's discovery but contends Drake's responses were identical to Maher's discovery responses which were timely provided to Plaintiffs. (Resp. 2; Reply Ex. 7.) On September 2, 2022, Plaintiffs sent Drake's counsel a Rule 6.4 letter. (Mot. Ex. 2.) At the time the Motion was filed, almost two weeks later, Drake had not responded to the Rule 6.4 letter. (Id. 8.)

1.6 The Parties Unsuccessfully Seek an Additional Discovery Extension and Plaintiffs file this Discovery Motion

Via email, on September 12, 2022, Plaintiffs sought an extension to discovery and corresponding deadlines established in the Second Amended Case Management Order. (Ord. on Disc. Issues 3, Ex. 4.) Plaintiffs sought the extension because they were awaiting discovery from the Transfer Defendants, Drake, and Maher and they wanted this discovery before taking certain depositions. (Id.) Counsel for Drake, Maher, and the Transfer Defendants agreed to the request. (Id.) Based on the warning it included in the Second Amended Case Management Order, the Court denied the requested extension. (Id. 4.)

Shortly thereafter, on September 15, 2022, Plaintiffs filed the instant Motion two weeks after the deadline for the completion of written discovery and on the final day of deposition discovery for lay witnesses. (2<sup>nd</sup> Am. CMO § 8.E.) Plaintiffs vaguely request the Court to "order the defendants identified herein to fully and promptly produce the requested discovery responses and documents without objection" and to also permit the Plaintiffs "to take the 30(b)(6) depositions of RVMC and NRM, which had been previously

noticed but postponed due to the failure of the Defendants to produce written discovery . . .” (Mot. 11-12.) Plaintiffs also request an award of attorney’s fees and litigation expenses. (Id. 12.)

1.8 The Transfer Defendants, Drake, and Maher Supplement Discovery Responses after the Motion was Filed

Since the Motion was filed, the Response indicates the Transfer Defendants supplemented certain written discovery responses and produced additional documents. (Resp. 7.) However, the Transfer Defendants acknowledge “issues of disagreement” about the scope of discovery remain. (Id.) In their subsequent Reply, Plaintiffs offer more detail about the discovery deficiencies they seek to have addressed. (Reply 9-18.)

On September 30, 2022, after the Motion was filed, Drake provided his belated response to the Plaintiffs’ second request for production of documents. (Resp. 2-3; Reply 4-5.)

**2. STANDARD OF REVIEW**

“[A] trial court has broad discretion to control all discovery matters.” Smith v. Northside Hosp., Inc., 347 Ga. App. 700, 703 (2018). Georgia law allows for wide-ranging discovery such that “parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery (punctuation and citation omitted).” Id.; see also O.C.G.A. § 9-11-26(b).

The Court's wide discovery to control discovery extends to "the imposition of sanctions." Day v. Mason, 357 Ga. App. 836, 842 (2020).

### 3. ANALYSIS

#### 3.1 Discovery Dispute Concerning the Transfer Defendants

Plaintiffs' argue that counsel for the Transfer Defendants,

has continuously assured Plaintiffs' counsel that he was working on addressing his clients' discovery deficiencies, including responses to requests for admission, interrogatories, and document production . . . Based on these multiple representations within the last several months that discovery would be forthcoming, up to and including today, this Motion to Compel is timely.

(Mot. 11.)

The Court disagrees. The directive found in § 8.A. of the Second Amended Case Management Order sets the 90-day deadline for filing a motion to compel as falling "90 days from the date of the response or event (e.g. deposition) that is the subject of the motion . . ." Here, as for any unsatisfactory responses to Plaintiffs' requests to admit, the 90-day clock commenced, depending upon the specific Transfer Defendant, on May 30 or May 31, 2022, the date the responses were provided to Plaintiffs. (Mot. 4.) As for any unsatisfactory responses to Plaintiffs' interrogatories or requests for document production, the 90-day clock commenced no later than June 10, 2022, the day the responses were provided to Plaintiffs in accordance with their stipulated extension. (Id.) Contrary to the Plaintiffs' argument, the 90-day clock does not start anew with every promise opposing counsel may make to address purported discovery deficiencies. If so, the deadline would be rendered meaningless. Indeed, Plaintiffs indicate counsel for the Transfer Defendants

were promising forthcoming responses up until the time this Motion was filed, months after the discovery was due, weeks after the end of written discovery, and on the very final day of fact discovery. (Id. 11; 2<sup>nd</sup> Am. CMO § 8.E.)

Accordingly, the Court finds the part of this discovery Motion directed to the Transfer Defendants is untimely, and all Plaintiffs' requests regarding the Transfer Defendants' written discovery responses and document production as well as the Plaintiffs' request to belatedly conduct the depositions of NRM and RVMC are **DENIED**.<sup>5</sup>

Additionally, USCR 5.1 provides, “[i]n order for a party to utilize the court’s compulsory process to compel discovery, any desired discovery procedures must be commenced promptly, pursued diligently and completed without unnecessary delay. . . .” Based upon Plaintiffs’ failure to complete the discovery at issue without unnecessary delay, the Court finds USCR 5.1 provides an alternate ground for its decision to deny the Motion as concerns the Transfer Defendants.

### 3.2 Discovery Dispute regarding Drake and Maher

By failing to timely respond to Plaintiffs’ Second Request for Production of Documents, served July 12, 2022, Drake waived his objections to the requested discovery. See generally Tompkins v. McMickle, 172 Ga. App. 62, 63 (1984) (objections waived by failure to timely respond to discovery); see also O.C.G.A. § 9-11-37(d)(1) and (2).

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<sup>5</sup> The Court is mindful that Plaintiffs’ counsel may have been displaying professional courtesy to the counsel for the Transfer Defendants in delaying the pursuit of this Motion. However, because of the prior discovery lapses and “gamesmanship” demonstrated by Drake, Maher, and their related entity GMV in this action as well as the Colorado action and the Court’s clear directive in the Second Amended Case Management Order, Plaintiffs should have been more cautious in their provision of professional courtesy and not waited months before seeking the Court’s intervention. (Ord. Gr. Pls.’ Mot. to Compel GMV Defs. to Respond to Disc. ¶ 1.5; see 2<sup>nd</sup> Am. CMO § 1.)

However, even if Drake had preserved any of his objections, the Court finds them to be without merit for the reasons outlined below.

Plaintiffs' Second Request for Production of Documents to Defendants Drake and Maher contained four requests. The Court will address each in turn.

**Request for Production No. 1** seeks, “[a]ll bank statements or statements from any financial institution for all accounts containing or formerly containing any of your assets from January 1, 2015 to the present.” Both Drake and Maher objected to this request as being,

overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeking documents that are not relevant to the claims or defenses in this Action and annoying, harassing oppressive and invasive of his personal privacy.

In the underlying suit, Plaintiffs allege Drake and Maher abused the corporate form and fraudulently transferred funds to themselves and/or entities they controlled in order to avoid paying debts owed to the Plaintiffs. (Am. Compl. ¶¶ 248-273.) Accordingly, their personal banking records could lead to the discovery of admissible evidence and are, thus, discoverable. Bailey v. Bruce, 132 Ga. App. 782, 786 (1974) (no error in trial court's decision to permit discovery of tax and banking records of party who was accused of abusing corporate form).

The final three requests all received the same response from Drake and Maher.

**Request for Production No. 2** seeks, “[a]ll documents and communications referring or relating to any loans or other debts between you and any Defendant.”

**Request for Production No. 3** seeks, “[a]ll documents and communications referring or relating to payments or other transfers of funds or other assets between you and any Defendant, including but not limited to copies of checks, canceled checks, deposit slips, bank statements, bills, invoices, and receipts.”

**Request for Production No. 4** seeks, “[a]ll documents and communications evidencing, reflecting, or referring to your receipt or transfer of any of the funds described in Paragraphs 126-138 of the Amended Complaint, whether such funds were received or transferred directly from the NRM trust account, or indirectly through other individuals and/or entities.”

Drake and Maher objected to each of these three requests as being,

[o]verly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence seeking documents that are not relevant to the claims or defenses in this Action. Subject to such objection, [Drake and Maher] respond[] that [they] believe[] that any such documents as may exist have been produced by other parties.

Based upon the reasoning outlined above, the Court finds all of these objections lack merit. Further, the Court finds the responses provided -- where Drake and Maher state their belief that other parties have produced the responsive documents -- are insufficient. Accordingly, Drake and Maher are directed to provide Plaintiffs with written verification that they have conducted a comprehensive search of records in their possession, custody **OR** control, have produced all responsive documents, and there are no additional responsive documents to produce.

### 3.3 Plaintiffs' Request for Attorney's Fees

Pursuant to O.C.G.A. § 9-11-37(a)(4)(C), if a motion to compel discovery “is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.” Based on the meritless objections lodged by Drake and Maher, which the Court finds were not asserted in good faith, the Court awards sanctions against these two Defendants for the reasonable fees and expenses the Plaintiffs incurred in obtaining the requested relief against Drake and Maher.

The Plaintiffs shall file an affidavit(s) detailing the fees and expenses they seek to recover **no later than two weeks after the entry of this order**. The Court will conduct an evidentiary hearing on the fee award at the same time it hears argument on the recently-filed motions for summary judgment.


#### **4. CONCLUSION**

In light of the foregoing, the Court **ORDERS** that Plaintiffs' Motion to Compel Defendants to Respond to Discovery and Motion for Contempt is **DENIED IN PART** and **GRANTED IN PART**. Specifically,

- (1) The Motion is **DENIED** as to all relief sought against any of the Transfer Defendants, and
- (2) The Motion is **GRANTED** as to all relief sought against Drake and Maher. Drake and Maher shall produce all documents responsive to the Plaintiffs' Second Request for Production of Documents and make written verifications that

all responsive documents within their possession, custody, or control have been produced **no later than two weeks after the entry of this order**. The Motion is further **GRANTED** in that Mason and Drake shall pay the Plaintiffs for the reasonable fees and expenses they incurred obtaining this relief in an amount yet to be determined.

SO ORDERED this 4<sup>th</sup> day of January, 2023.

  
KELLY LEE ELLERBE, Judge  
Superior Court of Fulton County  
Metro Atlanta Business Case Division

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