

**Georgia State University College of Law**  
**Reading Room**

---

Georgia Business Court Opinions


---

11-7-2017

# Souza et al., Order on Plaintiffs' Motion to Compel

Elizabeth E. Long  
*Fulton County Superior Court*

Follow this and additional works at: <https://readingroom.law.gsu.edu/businesscourt>

 Part of the [Business Law, Public Responsibility, and Ethics Commons](#), [Business Organizations Law Commons](#), and the [Contracts Commons](#)

---

## Institutional Repository Citation

Long, Elizabeth E., "Souza et al., Order on Plaintiffs' Motion to Compel" (2017). *Georgia Business Court Opinions*. 425.  
<https://readingroom.law.gsu.edu/businesscourt/425>

This Court Order is brought to you for free and open access by Reading Room. It has been accepted for inclusion in Georgia Business Court Opinions by an authorized administrator of Reading Room. For more information, please contact [mbutler@gsu.edu](mailto:mbutler@gsu.edu).

IN THE SUPERIOR COURT OF FULTON COUNTY  
BUSINESS CASE DIVISION  
STATE OF GEORGIA

JOHN SOUZA and PARADISE MEDIA )  
VENTURES, LLC )  
 )  
Plaintiffs, )  
 )  
v. ) Civil Action File No. 2016CV275265  
 )  
DR. JEFFREY GALLUPS and MILTON )  
HALL SURGICAL CENTER, LLC d/b/a/ )  
ENT INSTITUTE )  
 )  
Defendants. )  
 )

---

**ORDER ON PLAINTIFFS' MOTION TO COMPEL**

The above styled matter is before this Court on Plaintiffs' Motion to Compel and for Attorney's Fees ("Motion"). With respect to the general scope of discovery, O.C.G.A. §9-11-26(b)(1) provides:

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 or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence...

(Emphasis added). See also Bowden v. The Med. Ctr., Inc., 297 Ga. 285, 291 (2015) (citing Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351, 98 S.Ct. 2380, 57 L.Ed.2d 253 (1978) ("The key phrase in this definition—'relevant to the subject matter involved in the pending

action’—has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case”).

Here, insofar as the Court has dismissed Plaintiffs’ breach of contract claim, the only remaining substantive claim is for unjust enrichment. Plaintiffs allege Defendants benefited from and were unjustly enriched by Plaintiff Souza’s services, including the “introduc[tion] [of] Gallups to Berberian for the purpose of creating a profitable business relationship for all involved.”<sup>1</sup> In the instant Motion, Plaintiffs seek to compel answers to various interrogatories and requests for the production of documents which they claim seek information relevant to the remaining unjust enrichment claim. See Zampatti v. Tradebank Int’l Franchising Corp., 235 Ga. App. 333, 340 (1998) (“The theory of unjust enrichment applies when as a matter of fact there is no legal contract..., but where the party sought to be charged has been conferred a benefit by the party contending an unjust enrichment which the benefited party equitably ought to return or compensate for... The measure of damages under quantum meruit or unjust enrichment is based upon the benefit conferred upon the defendant and not upon the cost to render the service or cost of the goods”) (citations omitted). Each disputed discovery request is addressed below:

**Interrogatories Nos. 4-6**

These interrogatories generally seek information regarding the revenue and billing for ENT Institute, broken down by practice location and by billing code related to UAS’ services for 2012 through 2017. The Court finds these interrogatories are reasonably calculated to lead to the discovery of admissible evidence relevant to the value of the benefit Souza allegedly conferred to Defendants through his actions. Although Defendants’ allege the benefit of the UAS relationship, including revenue generated through its allergy testing and immunotherapy treatment, are too

---

<sup>1</sup> See generally Complaint for Breach of Contract, Unjust Enrichment, and Attorney’s Fees, ¶¶ 58-63. Plaintiffs also assert a derivative claim for attorney’s fees and expenses of litigation pursuant to O.C.G.A. §13-65-11.

remote from Souza's actions to be considered a "benefit", such considerations are improper on a discovery motion governed by the broad discovery standard permitted under the Civil Practice Act and O.C.G.A. §9-11-26.

Given the nature of the business relationships allegedly contemplated through the introduction by Souza of Gallups and Berberian (and UAS through Berberian), the nature of Defendants' business dealings with UAS and the financial benefit of that relationship are relevant and discoverable. However, the Court agrees these requests are temporally overbroad and unduly burdensome. Thus, as to Interrogatories 4 and 5, Defendants are ordered to respond for the period of 2012 through the filing of this action, May 16, 2016. As to Interrogatory No. 6, Defendant shall respond for the two years prior to execution of the agreement with UAS.

**Interrogatories Nos. 7 and 11**

These interrogatories seek information regarding meetings between ENT Institute's management, Berberian, and officers of WellcorpRX. Insofar as Plaintiffs allege Defendants enriched themselves from Souza's ideas and his introduction of and involvement in establishing the relationship between Defendants, Berberian and UAS, the Court finds these requests are reasonably calculated to lead to the discovery of admissible evidence. In their response brief Defendants assert they have agreed to supplement their responses to these interrogatories.<sup>2</sup> However, Plaintiffs counter that Defendants have only agreed to supplement their responses to identify the emails referenced in Defendants' responses. Thus, if they have not already done so, Defendants are ordered to respond fully to these interrogatories.

---

<sup>2</sup> Defendants' Response in Opposition to Plaintiffs' Motion to Compel and for Attorney's Fees, p. 9.

*Interrogatories Nos. 14-15*

These interrogatories seek information relating to the identity of Defendants' billing service providers and their insurance carriers, third party administrators and government programs through which they have received reimbursements related to UAS-related services. In their motion, Plaintiffs assert this information will allow them to "verify the information provided by the Defendants." The Court finds these interrogatories are unduly burdensome, particularly given more directly applicable information on Defendants' financial information has been sought and allowed and no showing has been made that "verification" of Defendants' information is warranted. Thus, the Court denies Plaintiffs' Motion as to these requests at this time. If during discovery Plaintiffs determine "verification" is necessary, Plaintiffs may renew their motion upon a proper showing of such need.

*Interrogatory No. 21*

This request asks Defendants to identify the reports received from UAS relating to its allergy testing services provided at ENT Institute practice locations. For the reasons stated above, the Court finds this interrogatory is reasonably calculated to lead to the discovery of admissible evidence relevant to the value of the benefit allegedly conferred by Souza to Defendants. Plaintiffs' Motion is granted with respect to this request and Defendants are ordered to respond.

*Interrogatory No.23*

This interrogatory asks Defendants to "[i]dentify the value of the UAS contract to [Defendants]." Although Plaintiffs urge this would be an appropriate and unobjectionable question at a deposition, the Court disagrees and finds the interrogatory is impossibly vague and ambiguous. The Motion is denied with respect to this request.

**Interrogatory No. 33**

This interrogatory seeks information regarding Defendants' computer systems, programs and applications used to maintain documents and to communicate with others. In their response brief Defendants appear to assert that they will supplement their response to this request but, nevertheless, argue "[i]t is unduly burdensome to retain a computer expert to attempt to provide detailed specifications of Defendants' computer system."<sup>3</sup> To the extent Defendants maintain an objection to this interrogatory, the Court finds this is a routine and relevant request unlikely to require the services of a computer expert. The Motion is granted with respect to Interrogatory No. 33.

**Requests to Produce Documents Nos. 1--8**

These requests seek communications between various individuals, including among the parties, Berberian, UAS officers and employees, Ngy Ea, Scott Kappler, Scott Hosier, Cliff Oxford and Mark McKenna. The Court finds these requests are reasonably calculated to lead to the discovery of admissible evidence as they are relevant to the value of the benefit allegedly conferred to Defendants through Souza's introduction (or "reintroduce[tion]" as apparently asserted by Defendants<sup>4</sup>) of Berberian/UAS and Gallups and their related entities.

As to Requests Nos. 1-3, Defendants are ordered to produce all communications in their possession responsive to these requests as the dates and frequency of the parties and UAS' communications are relevant to what, if any, and the value, if any, of the benefit conferred through Souza's introduction/reintroduction of Berbarian/UAS and Defendants. As to Requests Nos. 4-8, the Court finds the requests are temporally overbroad. Defendants are ordered to

---

<sup>3</sup> Defendants' Response in Opposition to Plaintiffs' Motion to Compel and for Attorney's Fees, pp. 9-10.

<sup>4</sup> Defendants' Responses to Plaintiffs' Amended Requests for Documents, Response to Request No. 3.



produce all communications in their possession relevant to these requests for the period of 2014 through the filing of this action.

To the extent Defendants contend they have already produced documents responsive to these requests and if they have not already done so, Defendants should supplement their responses and specifically identify (through Bates numbering or otherwise) which produced documents/communications are responsive to these requests. To the extent Defendants have searched for responsive communications and assert they are not in possession of any other responsive documents/communications, they should supplement their responses to so certify if they have not already done so. Finally, to the extent Defendants are withholding any such communications on the basis that they contain confidential information that cannot be adequately protected through a stipulated protective order and/or an appropriate confidential/attorneys-eyes only designation, the communications/documents withheld must be specifically identified on a privilege log to allow further briefing and consideration by the Court as appropriate.

**Requests to Produce Documents Nos. 9-11, 13-16, and 18**

These requests seek documents generally relating to financial, accounting, billing and other reports related to UAS' services and Defendants' financial documents. For the same reasons articulated above, the Court finds Requests Nos. 9-11 and 13-16 are reasonably calculated to lead to the discovery of admissible evidence relevant to the value of the benefit Souza allegedly conferred to Defendants Gallups and ENT Institute through his actions. As to these requests, Plaintiffs' Motion is granted and Defendants are ordered to produce responsive communications/documents in their possession dated through the filing of this action. As to Request No. 18, the Motion is denied for the reasons stated above with respect to Interrogatories Nos. 14 and 15.

Arguments Regarding the Form of Production

The Court is compelled to note that routine issues regarding the form of production are generally discussed and agreed to among counsel and should be amicably resolved in a form convenient to all parties. Thus, counsel are directed to re-confer in good faith regarding the form of their respective production.

**CONCLUSION**

For the reasons stated above, Plaintiffs' Motion is GRANTED IN PART and DENIED IN PART. Defendants are ordered to supplement their discovery responses, subject to the limitations articulated above, within fifteen (15) days of the entry of this order. The Court will reserve ruling on Plaintiffs' request for attorney's fees incurred in filing their Motion.

SO ORDERED this 7<sup>th</sup> day of November, 2017.



ELIZABETH E. LONG, SENIOR JUDGE  
Superior Court of Fulton County  
Business Case Division  
Atlanta Judicial Circuit

Copies to All Registered Users on eFileGA

| <b>Attorneys for Plaintiffs</b>  | <b>Attorneys for Defendants</b>   |
|--|---|
| <b>Ryan L. Isenberg</b><br>ISENBERG & HEWITT, P.C.<br>6600 Peachtree Dunwoody Rd.<br>600 Embassy Row, Suite 150<br>Atlanta, GA 30328<br>Tel: (770) 351-4400<br>Fax: (770) 828-0100<br><a href="mailto:ryan@isenberg-hewitt.com">ryan@isenberg-hewitt.com</a> | <b>Peter V. Hasbrouck</b><br><b>Chris J. Perniciaro</b><br>MARTENSON, HASBROUCK & SIMON, LLP<br>3379 Peachtree Road, NE<br>Suite 400<br>Atlanta, GA 30326<br>Tel: (404) 909-8100<br>Fax: (404) 909-8120<br><a href="mailto:pvasbrouck@martensonlaw.com">pvasbrouck@martensonlaw.com</a><br><a href="mailto:cperniciaro@martensonlaw.com">cperniciaro@martensonlaw.com</a> |