

**From:** [Maurice Ross](#)  
**To:** [Sartorius, Peter M.](#)  
**Cc:** [Randall L. Rasey](#); [Justin Cabanas](#); [Barak Bacharach](#); [Menell, Natasha G.](#); [Lodise, Taylor C.](#)  
**Subject:** Re: Go New York expert discovery responses  
**Date:** Thursday, June 1, 2023 3:31:48 PM  
**Attachments:** [image219208.png](#)

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Peter:

On reflection, I am probably going to withdraw the Sheffield expert report, subject to client approval. I will let you know promptly to avoid unnecessary motion practice. I will be consulting with my client today or tomorrow.

Maurice Ross

Sent from my iPhone

**Maurice Ross**

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On May 1, 2023, at 8:01 AM, Sartorius, Peter M. <[PSartorius@olshanlaw.com](mailto:PSartorius@olshanlaw.com)> wrote:

Randy - I need five minutes. Sorry for the late notice.

On Apr 28, 2023, at 5:31 PM, Randall L. Rasey <[rrasey@bartonesq.com](mailto:rrasey@bartonesq.com)> wrote:

Yes, thanks. We will circulate a conference dial-in.

**Randall L. Rasey**

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<[image001.png](#)>

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**From:** Sartorius, Peter M. <[PSartorius@olshanlaw.com](mailto:PSartorius@olshanlaw.com)>

**Sent:** Friday, April 28, 2023 5:30 PM

**To:** Randall L. Rasey <[rrasey@bartonesq.com](mailto:rrasey@bartonesq.com)>

**Cc:** Maurice Ross <[mross@bartonesq.com](mailto:mross@bartonesq.com)>; Justin Cabanas <[jcabanas@bartonesq.com](mailto:jcabanas@bartonesq.com)>; Barak Bacharach <[bbacharach@bartonesq.com](mailto:bbacharach@bartonesq.com)>; Menell, Natasha G. <[NMenell@olshanlaw.com](mailto:NMenell@olshanlaw.com)>; Lodise, Taylor C. <[TLodise@olshanlaw.com](mailto:TLodise@olshanlaw.com)>

**Subject:** Re: Go New York expert discovery responses

Yes. Can we pencil in 2pm?

On Apr 28, 2023, at 5:20 PM, Randall L. Rasey <[rrasey@bartonesq.com](mailto:rrasey@bartonesq.com)> wrote:

Peter, can we talk on Monday afternoon, between 2 and 4pm?

**Randall L. Rasey**

Partner

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**From:** Sartorius, Peter M. <[PSartorius@olshanlaw.com](mailto:PSartorius@olshanlaw.com)>

**Sent:** Friday, April 28, 2023 5:16 PM

**To:** Randall L. Rasey <[rrasey@bartonesq.com](mailto:rrasey@bartonesq.com)>

**Cc:** Maurice Ross <[mross@bartonesq.com](mailto:mross@bartonesq.com)>; Justin Cabanas <[jcabanas@bartonesq.com](mailto:jcabanas@bartonesq.com)>; Barak Bacharach <[bbacharach@bartonesq.com](mailto:bbacharach@bartonesq.com)>; Menell, Natasha G. <[NMenell@olshanlaw.com](mailto:NMenell@olshanlaw.com)>; Lodise, Taylor C. <[TLodise@olshanlaw.com](mailto:TLodise@olshanlaw.com)>

**Subject:** Re: Go New York expert discovery responses

Randy - I never heard back from you about my request for a meet and confer. Please advise.

**Peter M. Sartorius**

**OLSHAN**

OLSHAN FROME WOLOSKY LLP

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On Apr 26, 2023, at 3:55 PM, Sartorius, Peter M. <[PSartorius@olshanlaw.com](mailto:PSartorius@olshanlaw.com)> wrote:

Randy –

We write regarding your recent responses and objections to our First Notice of Discovery and Inspection to Counterclaim Plaintiff Go New York Tours, Inc. Concerning Expert Disclosure dated April 7, 2023. Please provide a time tomorrow or Friday for a meet and confer to discuss your responses and objections.

Below is a summary of our concerns (which may be supplemented as we continue to review your documents and objections provided to date).

1. **RANE data and charts in native (Requests 1-2):** In your written responses, you stated that you would produce what you have.
  1. We still have not received the review data relied upon by your expert in arriving at the opinions reflected in his report. When we spoke Monday, Maurice stated that your expert no longer has that data, but that you will provide to us “what he has”. The fact that your expert apparently no longer has the data that he reviewed and relied upon to arrive at his opinions is problematic and obviously prejudicial to us and our ability to rebut your expert’s opinion. As we stated on Monday, we reserve all rights, including the right to move to exclude Mr. Sheffield’s report on the basis that it is incomplete and non-compliant with the Commercial Division Rules.
  2. We also have not received any of the charts (in native format) included in your expert’s report. Please advise on status.
2. **Timeframe (Requests 4-12):** Go NY objects to producing sales data before 2017, or P&L statements before 2016, on the grounds that (1) the Gering report only goes back to 2018; (2) TopView re-branded in 2017; and (3) we’ve previously only sought discovery back to 2016.
  1. We note that the RANE expert reports purport to look as far back as 2013, and specifically seek to identify “astroturfing” between 2015 and 2017. It is not possible to understand Go New York’s “normal” level of sales before the alleged astroturfing. Regardless of whether TopView re-branded in 2017 as you previously represented to me,

Go New York nevertheless put an earlier time period into question by relying on the RANE reports, which compare post-astroturfing reviews to a supposedly “normal” volume pre-astroturfing.

3. **Sales data (Requests 5, 9):** You have produced the two attached documents (password “Tiger5”) that appear to contain sales data. But it also appears that these documents were created by your damages expert, or by your client for use by your damages expert, rather than being regular-course-of-business records. If that’s the case (that these documents were prepared for use in this litigation), please provide the underlying documents and data that was reviewed to create these two documents.
4. **Mobile versus website sales (Request 6):** Go NY objects to producing a breakdown of mobile versus website sales, as irrelevant and an undue burden. This may be relevant to our rebuttal, so I’d like to understand better your claim of burden. Your client utilizes sophisticated accounting software that should be able to easily prepare reports containing the requested information, broken down as requested.
5. **Commission rate data (Requests 8-10):** The sales data from the two attached spreadsheets provides contains commission data by day, but they have not produced the form of contract reflecting the commission rates. Again, the spreadsheet appears to be created for purposes of this litigation, is not a document prepared in the ordinary course of your client’s business, and so we’d like to see the data sources utilized in preparing the two spreadsheets. We reiterate our request for copies of the sales agents contracts utilized during this time period (to the extent they contain compensation and commission information), as well as commission schedules utilized by Go New York during this time period. This is highly relevant to your expert’s damages analysis, and so is also highly relevant to our rebuttal expert’s analysis.
6. **Gering Report native files (Request 13):** You produced one Excel spreadsheet, but the figures appear to be hardcoded. Does the expert have a version where the figures refer to other workbooks/worksheets?

Thank you,

Peter.

<GNY036395 HIGHLY CONFIDENTIAL OUTSIDE COUNSEL'S EYES ONLY  
INFORMATION.XLSX>  
<GNY036394 HIGHLY CONFIDENTIAL OUTSIDE COUNSEL'S EYES ONLY  
INFORMATION.XLSX>

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## EXHIBIT E

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