

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

TAXI TOURS INC.,	Plaintiff,	Index No. 653012/2019 I.A.S. Part 54 Hon. Jennifer G. Schecter, J.S.C.
	-against-	<u>AFFIRMATION OF PETER M. SARTORIUS IN SUPPORT OF COUNTERCLAIM-DEFENDANTS' MOTION TO PRECLUDE THE EXPERT REPORT AND TESTIMONY OF STEVEN M. SHEFFIELD</u>
GO NEW YORK TOURS, INC.,	Defendant.	
GO NEW YORK TOURS, INC.,	Counterclaim- Plaintiff,	
	-against-	
BIG BUS TOURS LIMITED, OPEN TOP SIGHTSEEING USA, INC., TAXI TOURS, INC., GO CITY LIMITED, GO CITY NORTH AMERICA, LLC, GO CITY, INC., GRAY LINE NEW YORK TOURS, INC., TWIN AMERICA, LLC, and SIGHTSEEING PASS LLC,		
	Counterclaim- Defendants.	

PETER M. SARTORIUS, an attorney duly admitted to practice before the courts of the State of New York, affirms under penalties of perjury as follows:

1. I am a partner at the law firm Olshan Frome Wolosky LLP, counsel for Counterclaim-Defendants Open Top Sightseeing USA, Inc., Taxi Tours, Inc., Go City North America, LLC, and Go City Inc. (collectively, "**Counterclaim-Defendants**") in this action. Unless otherwise stated, I make this affirmation on my own personal knowledge.

2. I respectfully submit this affirmation in support of Counterclaim-Defendants' motion for an order (a) excluding the expert report of Steven M. Sheffield dated April 27, 2023, proffered by counterclaim-plaintiff Go New York Tours, Inc. ("Go New York") and precluding Go New York from proffering testimony by Mr. Sheffield in connection with any substantive motions or at trial; and (b) granting all other relief to counterclaim-defendants as this Court deems just and proper.

3. Go New York's third counterclaim alleges, in part, that Counterclaim-Defendants engaged in deceptive business practices in violation of N.Y. General Business Law Section 349 by posting fake *positive* online reviews of its hop-on / hop-off tour bus service on TripAdvisor and other travel review aggregation websites, and by posting fake *negative* reviews of Go New York's competing tour bus service on those websites—conduct that Go New York terms "astroturfing." (Countercl.¹ ¶¶ 51-53, 79.) According to Go New York, Counterclaim-Defendants have directed the posting of fake consumer reviews on popular travel sites for the purpose of skewing its consumer ratings on those sites in its favor and to divert customers and sales from its competitors in the New York City hop-on, hop-off sightseeing tour bus market, including Go New York, to Big Bus.

(Countercl. ¶ 54.)

4. During fact discovery, Counterclaim-Defendants served discovery requests aimed at disclosure of the allegedly "fake" online reviews upon which Go New York bases its "astroturfing" claim. These discovery requests included requests for production of copies of the actual alleged "fake" reviews, as well as interrogatories requesting that Go New York identify the alleged "fake" reviews.

¹ Citations to "Countercl." refer to Go New York's Amended Verified Answer and Counterclaims dated May 28, 2021, and filed at NYSCEF Doc. No. [119](#).

5. To my knowledge, Go New York has not produced any alleged “fake” reviews among the 20,000-plus documents produced by Go New York in this action.

6. In response to Counterclaim-Defendants’ interrogatories requesting the identification of the alleged “fake” reviews, Go New York instead stated that this was a topic for expert discovery and referred us to two documents prepared in January and February 2020 by a consulting firm called Risk Assistance Network + Exchange (“**RANE**”) and produced to us by Go New York during discovery in April 2022 (the “**RANE Memos**”). I have attached a true copy of “Counterclaim Plaintiff Go New York Tours, Inc.’s Responses and Objections to Counterclaim Defendants’ Fourth Set of Interrogatories” dated August 3, 2022, to my affirmation as **Exhibit A**. The relevant interrogatories seeking the identification of the alleged “fake” reviews are Interrogatory Nos. 18 and 19 therein.

7. Pursuant to the Court’s Order dated February 22, 2023 [NYSCEF Doc. No. [276](#)], affirmative expert disclosures in this case were due on March 31, 2023. By email sent on that date, counsel for Go New York identified Steven M. Sheffield as its “expert” on the issue of “astroturfing,” but did not provide a written expert report signed by Mr. Sheffield, as required by Commercial Division Rule 13(c).

8. In response to my inquiry about the status of Mr. Sheffield’s required written expert report, the following day, April 1, 2023, counsel for Go New York confirmed that Mr. Sheffield would be adopting the RANE Memos as his “expert report.”

9. Nearly four weeks later, on April 27, 2023, Go New York finally provided a signed affidavit from Steven M. Sheffield formally adopting the two RANE documents as his “expert report” (collectively, the “**Sheffield Report**”). I have attached a true copy of the Sheffield Report to my affirmation as **Exhibit B**.

10. After Go New York's counsel initially disclosed Mr. Sheffield as its expert and advised that he would be adopting the RANE Memos as his written expert report, we requested that Go New York provide the data and information relied upon by Mr. Sheffield for the opinions and conclusions reflected in the RANE Memos. We requested these data and information both informally by numerous emails, as well as through formal document requests. I have attached a true copy of "Counterclaim-Defendants' First Notice of Discovery and Inspection to Counterclaim-Plaintiff Go New York Tours, Inc. Concerning Expert Disclosure" dated April 7, 2023, to my affirmation as **Exhibit C.**

11. Our requests were fruitless—each time, Go New York's counsel reported that Mr. Sheffield was still trying to locate the data and information underling the RANE Memos. During one telephone conversation with Go New York's counsel, they suggested that Counterclaim-Defendants were somehow responsible for Mr. Sheffield's missing materials.

12. On May 23, 2023, Go New York's counsel finally reported that "RANE has not been able to find the actual online reviews relied upon for the conclusions stated in the reports from early 2020." I have attached a true copy of the May 23, 2023, email from Randall Rasey to Peter Sartorius to my affirmation as **Exhibit D.**

13. Go New York's counsel has since advised that Mr. Sheffield has also been unable to locate the native spreadsheets and models utilized in creating the various charts and graphs reflected in the Sheffield Report. In fact, Go New York has not produced anything in response to our requests for additional information related the opinions reflected in the Sheffield Report.

14. On June 1, 2023, we held a conference with Mr. Rand to discuss Counterclaim-Defendants' request for permission to file a motion seeking to exclude the Sheffield Report and to preclude Go New York from proffering Mr. Sheffield as an expert witness in this case, given

Go New York's inability to provide the data and information upon which Mr. Sheffield's opinions are based, as required by Commercial Division Rule 13(c). During that conference, Mr. Rand granted permission for Counterclaim-Defendants to make this motion.

15. Within minutes of the June 1, 2023, conference with Mr. Rand, Go New York's counsel emailed me to advise that, in light of Mr. Rand's decision, he was "probably going to withdraw the Sheffield expert report, subject to client approval." I have attached a true copy of the June 1, 2023, email from Maurice Ross to Peter Sartorius to my affirmation as **Exhibit E**.

16. Go New York's counsel subsequently reported that he had changed his mind, and that he would not be withdrawing the Sheffield Report as previously suggested.

WHEREFORE, counterclaim-defendants Open Top Sightseeing USA, Inc., Taxi Tours, Inc., Go City North America, LLC, and Go City Inc. respectively request that the Court grant this motion and direct entry of an order (a) excluding the expert report of Steven M. Sheffield dated April 27, 2023, proffered by counterclaim-plaintiff Go New York Tours, Inc., and precluding counterclaim-plaintiff from proffering testimony by Mr. Sheffield in connection with any substantive motions or at trial; and (b) granting all other relief to counterclaim-defendants as this Court deems just and proper.

Dated: New York, New York
June 15, 2023

/s/ Peter M. Sartorius

PETER M. SARTORIUS

CERTIFICATION

I hereby certify that the word count of this document complies with the word limits of 22 New York Codes, Rules and Regulations § 202.8-b. According to the word-processing system used to prepare this document, the total word count for all printed text exclusive of the material omitted under the aforementioned rule is 1,203 words.

Dated: New York, New York
June 15, 2023

/s/ Peter M. Sartorius

PETER M. SARTORIUS