

## EXHIBIT D

RECEIVED NYSCEF: 06/15/2023

**From:** [Randall L. Rasey](#)  
**To:** [Sartorius, Peter M.](#); [Barak Bacharach](#)  
**Cc:** [Maurice Ross](#); [Justin Cabanas](#); [Menell, Natasha G.](#); [Lodise, Taylor C.](#)  
**Subject:** RE: Go New York v. Taxi Tours, et al.  
**Date:** Tuesday, May 23, 2023 12:18:44 PM  
**Attachments:** [image001.png](#)  
[GNY Response to 2nd Set of Expert Disclosure Demands 2023.05.23x.pdf](#)

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Peter, attached are Go New York's responses and objections to counterclaim defendants' second set of expert disclosure demands.

RANE has not been able to find the actual online reviews relied upon for the conclusions stated in the reports from early 2020.

Best regard,  
Randy

**Randall L. Rasey**  
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**From:** Sartorius, Peter M. <[PSartorius@olshanlaw.com](mailto:PSartorius@olshanlaw.com)>  
**Sent:** Tuesday, May 23, 2023 10:27 AM  
**To:** Barak Bacharach <[bbacharach@bartonesq.com](mailto:bbacharach@bartonesq.com)>  
**Cc:** Randall L. Rasey <[rrasey@bartonesq.com](mailto:rrasey@bartonesq.com)>; Maurice Ross <[mross@bartonesq.com](mailto:mross@bartonesq.com)>; Justin Cabanas <[jcabanas@bartonesq.com](mailto:jcabanas@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 v. Taxi Tours, et al.

Barak - Please confirm that you will be producing the remaining requested information (including the review data relied upon by Mr. Scheffield) today. Absent a satisfactory response, we will have no choice but to seek the court's intervention.

On May 12, 2023, at 4:49 PM, Barak Bacharach <[bbacharach@bartonesq.com](mailto:bbacharach@bartonesq.com)> wrote:

Hi Peter,

I didn't want to go into the weekend with you thinking we had forgotten about your queries. Unfortunately, we are still discussing the underlying reviews with RANE; however, I should have a more fulsome response to your timeline question as well as responses to your second expert disclosure requests by latest middle of next week.

## EXHIBIT D

As far as Mr. Scheffield's compensation, we have sent him an engagement agreement; as soon as he signs it and returns it to us, we will send it on to you.

Have a nice weekend.

Best,

**Barak Bacharach**

Associate

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<image001.png>

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

**Sent:** Tuesday, May 9, 2023 4:46 PM

**To:** Barak Bacharach <[bbacharach@bartonesq.com](mailto:bbacharach@bartonesq.com)>

**Cc:** Randall L. Rasey <[rrasey@bartonesq.com](mailto:rrasey@bartonesq.com)>; Maurice Ross <[mross@bartonesq.com](mailto:mross@bartonesq.com)>; Justin Cabanas <[jcabanas@bartonesq.com](mailto:jcabanas@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 v. Taxi Tours, et al.

Barak -

Thanks for getting back to me.

Do you have an updated timeline on when you anticipate being able to produce the underlying review data relied upon by Mr. Scheffield in his report (or when you anticipate determining that he no longer has it)? We're approaching the time for seeking relief from the Court on this issue, as the failure to provide this data (a) renders Mr. Scheffield's report non-compliant with the Commercial Division Rules, and (b) unfairly prejudices my rebuttal expert's ability to render a rebuttal report.

We are reviewing your responses and supplemental production and will revert with any issues.

Thanks,

Peter.

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**From:** Barak Bacharach [<mailto:bbacharach@bartonesq.com>]

**Sent:** Tuesday, May 9, 2023 11:56 AM

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

**Cc:** Randall L. Rasey <[rrasey@bartonesq.com](mailto:rrasey@bartonesq.com)>; Maurice Ross <[mross@bartonesq.com](mailto:mross@bartonesq.com)>; Justin

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RECEIVED NYSCEF: 06/15/2023

Cabanas <[jcabanas@bartonesq.com](mailto:jcabanas@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 v. Taxi Tours, et al.

Hi Peter,

Please see below, responses to the six points you raised in your email last week:

1. We have asked Mr. Sheffield for the native charts in his report and the records/manner of his compensation.
2. See response to number 1.
3. We have produced a limited set Go New York's financial information for 2016 at GNY031852. We are looking for Go New York financial information from 2014-2015 and for further information from 2016, if it exists.
4. There are no mobile app sales during the relevant time period, as the mobile app for purchasing was only introduced in the last year.
5. I have attached an independent contractor agreement with a commission schedule in use from 2018 to the present, Bates Stamp No. GNY036415-GNY036425, with only the independent contractor's home address redacted (as required by law). We are still searching for the one in use from 2016-2018, if it exists.
6. I'm sorry, but I don't understand this request, as we produced excel spreadsheets of the exhibits to the Gering report at GNY00036413. The first page (the summary of lost profits on street sales) is populated exclusively by formulas, there's no data hardcoded into it. The second through fourth pages (summary of street sales, summary of online sales, and summary of street ticket sales) are also mostly formulas, except where Mr. Gering inputted the raw data, which needs to be hard coded. We produced the source of this raw data in GONY036394, which is also an excel spreadsheet. The third tab has all the hard data Mr. Gehring inputted in his report.

We will circle back to you regarding your second request for expert disclosure.

Best,

**Barak Bacharach**

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**From:** Sartorius, Peter M. <[PSartorius@olshanlaw.com](mailto:PSartorius@olshanlaw.com)>  
**Sent:** Tuesday, May 9, 2023 11:35 AM  
**To:** Barak Bacharach <[bbacharach@bartonesq.com](mailto:bbacharach@bartonesq.com)>  
**Cc:** Randall L. Rasey <[rrasey@bartonesq.com](mailto:rrasey@bartonesq.com)>; Maurice Ross <[mross@bartonesq.com](mailto:mross@bartonesq.com)>; Justin Cabanas <[jcabanas@bartonesq.com](mailto:jcabanas@bartonesq.com)>; Menell, Natasha G. <[NMenell@olshanlaw.com](mailto:NMenell@olshanlaw.com)>; Lodise,

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RECEIVED NYSCEF: 06/15/2023

Taylor C. <[Tlodise@olshanlaw.com](mailto:Tlodise@olshanlaw.com)>

**Subject:** Re: Go New York v. Taxi Tours, et al.

Barak, Randy, et al.,

Please advise of the status in the following:

1. The documents / data requested in our first requests for expert disclosure (including the underlying review data from Mr. Scheffield as well as the documents and information discussed during last week's meet and confer).
2. Your responses and document production in response to our second request for expert disclosure, which was due Thursday, May 4.

Peter.

On May 3, 2023, at 10:10 AM, Barak Bacharach <[bbacharach@bartonesq.com](mailto:bbacharach@bartonesq.com)> wrote:

Hi Peter,

While Randy will be out of office for the next couple of days, we just wanted to let you know that our representations have not changed, and that Justin and I are working on getting you the data we stated we would produce ASAP.

Best,

**Barak Bacharach**

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

**Sent:** Wednesday, May 3, 2023 9:07 AM

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

**Cc:** 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:** Go New York v. Taxi Tours, et al.

Randy and Maurice –

I'm following up on our call from Monday (as I said I would), specifically with respect to the status of the review data that Mr. Scheffield relied upon for expert opinions reflected in his reports. Please let us know if, with the passage of a few days, you have an estimate of when you plan to produce that data.

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Separately, I write to memorialize the following results of Monday's meet-and-confer:

1. Native charts in Mr. Scheffield's Reports (Request No. 2) – You stated that these would be produced as soon as possible.
2. Mr. Scheffield's compensation – You stated that you would supplement Mr. Scheffield's Report to provide this information, which is required by the Commercial Division Rules.
3. Go New York financial information pre-2017 (Request Nos. 4-12) – You stated that you would produce the requested information for pre-2017 financial data, with the caveat that Go New York's record keeping for the earlier years may not be as detailed as in the later years. We'd also like the data on the number of buses in Go New York's fleet starting in 2014 (you have produced this information from January 2016 to February 2020).
4. Mobile vs. Website sales data (Request No. 6) – You stated that you would inquire of your client whether the "online" sales data previously produced can be broken down to reflect sales via Go New York's website (on the one hand), and sales via Go New York's mobile app (on the other hand).
5. Commission data (Request Nos. 8-10) – You stated that you would produce form independent contract agreements (with commission schedules) in use during the requested years. I stated that we would accept "attorneys' eyes only" designation for these, if requested.
6. Gering Report native files (Request No. 13) – You produce Excel worksheets for the exhibits attached to Gering's Report, but the files appear to be "hard-coded." As requested, we'd like the Excel worksheets for the Gering Report exhibits that include references to other worksheets intact. You stated that you would request these from Mr. Gering.

In the meantime, we reserve all rights.

Peter.

Peter M. Sartorius

**OLSHAN**

**EXHIBIT D**

RECEIVED NYSCEF: 06/15/2023

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