

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

TWIN AMERICA, LLC, et al.,

Defendants.

Case No. 12-cv-8989 (ALC) (GWG)

ECF Case

**ANSWER OF DEFENDANTS TWIN AMERICA, LLC,
CITYSIGHTS LLC, AND CITY SIGHTS TWIN, LLC**

Defendants Twin America, LLC, CitySights LLC, and City Sights Twin, LLC (collectively, “Twin America”), answer the Complaint (“Complaint”) of Plaintiffs United States of America and State of New York (collectively, the “Government”) as follows. The Government challenges the creation of Twin America, a 2009 joint venture that merged two double decker hop-on/hop-off tour operators in New York City, one of the world’s top tourist destinations, attracting over 50 million visitors each year. Twin America tours are merely one of the many ways in which these tens of millions of visitors tour the city to see its many attractions. Twin America’s tours attract less than 5% of the annual visitors to New York City. Contrary to the Government’s assertions, competition to provide tours is intense and includes not only other hop-on/hop-off bus tour companies in New York City, but a wide variety of additional tour services that visitors may purchase to see New York City’s attractions.

Even within the improperly plead and unduly narrow market the Government has attempted to allege, competition is robust. Other hop-on/hop-off bus tour companies that operate in the city or have publicized imminent entry include at least:

- Big Taxi;
- Circle Line’s Metro Sightseeing;
- New York Water Taxi;
- NY SKYRIDE’s Skyline Sightseeing; and
- Go New York Tours.

The ability of all of these companies to enter the business—as CitySights itself did from scratch in 2005—belies the Government’s allegations that there are significant barriers to entry. New entrants have demonstrated that they can obtain vehicles and can obtain bus stop authorizations for tours. Advertising revenue also helps offset the capital investments. A tour bus fleet, moreover, and its costs can scale with the growth of its ridership. The ability to succeed in the business depends on operating efficiently and providing first-rate service to compare favorably to the myriad other options available to New York City visitors.

In addition, the Government’s improperly pled and unduly narrow market allegations, fail even to include the most obvious guided transportation tour competitors, such as OnBoard Tours and On Location Tours, which market directly against Twin America’s tour services and have tour guides that accompany passengers to the attractions. Moreover, these types of competing transportation tours do not require any regulatory bus stop approval given the format of their service, and can load and unload passengers directly in front of any and all New York City attractions.

The combination of the Coach and CitySights bus tour operations into Twin America enabled the merged company to compete more effectively by achieving cost savings, improving its service offerings, and expanding bus tours. Twin America was formed in early 2009, when the economy in New York City (as well as across the U.S. and around the world) was staggering

from an unprecedented financial crisis that sent the economy into the worst tailspin since the Great Depression, coupled with fuel costs at or near historic highs. These unprecedented and unforeseeable events and corresponding contraction in the demand for leisure tours intensified pressure on companies like Coach and CitySights to contain expenses and improve services. The Twin America merger benefitted consumers by improving one of the options available for tourists to see the sights of New York City.

RESPONSE TO SPECIFIC ALLEGATIONS

1. This action challenges an illegal joint venture formed in 2009 by Coach and City Sights that eliminated competition between them and had the purpose and effect of creating a monopoly in “hop-on, hop-off” bus tours in New York City. Each year, over two million visitors to New York City spend more than \$100 million on these guided tours, which visit the city’s leading attractions, allowing passengers to “hop off” the bus at attractions that interest them and “hop on” another bus operated by the same provider when they are ready to resume the tour.

ANSWER: Twin America admits that Coach and CitySights formed the Twin America joint venture in 2009. Twin America admits that it has sold over two million tickets, including sales for all of its guided bus tours, each year since its formation, representing sales to less than 5% of reported annual New York City visitors. Twin America denies the remaining allegations in Paragraph 1.

2. Prior to the joint venture, Coach, the long-standing market leader through its Gray Line New York (“Gray Line”) brand, and City Sights, which commenced operations in 2005, operated hop-on, hop-off bus tours and engaged in vigorous head-to-head competition. This competition benefited consumers in the form of fare discounts, improved service, and novel ticket packages.

ANSWER: Twin America admits that prior to the formation of Twin America, both Coach (via Gray Line) and CitySights provided hop-on/hop-off bus tour services. Twin America further admits that CitySights commenced operations in 2005. Twin America admits that both Gray Line and CitySights provided consumers fare discounts, differing services, and various

ticket packages prior to the formation of Twin America. Twin America avers that it has continued discounting, has expanded tour options and services, and has improved the quality of its tours since its formation. Twin America denies the remaining allegations in Paragraph 2.

3. In late 2008, with City Sights steadily eating into Coach's market share and threatening its dominant position, Coach set out to eliminate the competition. It approached City Sights with the idea of combining the two companies' operations to create, in Coach's words, the "sole player" in the market. Coach planned to use the joint venture with City Sights to raise fares by 10 percent, something that each company could not do individually "due to competition" from the other.

ANSWER: Twin America admits that Coach approached CitySights in 2008 regarding the possibility of a joint venture between Coach and CitySights. Twin America denies the remaining allegations in Paragraph 3. Twin America further avers that contrary to the allegations in Paragraph 3, Coach, through the normal course of business, changed prices on certain of its tours in 2008 and 2009, prior to the formation of the Twin America joint venture, including through the use of fuel surcharges as well as adjustments to base fares.

4. In March 2009, Coach and City Sights formed the Twin America joint venture, the creation of which eliminated the intense head-to-head competition between Coach and City Sights, gave them a monopoly with an estimated 99 percent of the market, and enabled them to implement and sustain a price increase of approximately 10 percent.

ANSWER: Twin America admits that International Bus Services, Inc. ("IBS") and City Sights Twin, LLC formed Twin America pursuant to the joint venture agreement dated March 17, 2009. Twin America denies the remaining allegations in Paragraph 4. Twin America avers that Twin America bus tours are one of many options to see New York City attractions. Many if not most of these forms of transportation raised prices around the same time when the country was experiencing an unprecedented financial crisis and fuel prices were at the highest point in history. Twin America further avers that Coach had raised prices on certain of its tours

in 2008 and 2009, prior to Twin America's formation.

5. The Attorney General's Office of Plaintiff State of New York promptly sought to investigate the formation of the joint venture. But in a move the federal Surface Transportation Board ("STB") would later characterize as a potential "manipulat[ion]" of "the [STB's] processes," Defendants staved off the antitrust investigation by belatedly applying to the STB for approval of the Twin America transaction. Such approval, if granted, would confer antitrust immunity. After more than two years of proceedings, the STB rejected Defendants' application, finding that the formation of Twin America "created an entity that dominates the market in which it competes and has the ability to raise rates or reduce service without sufficient competitive restraints." Confronted with the adverse STB ruling, Defendants ceased operating the nominal interstate service that had formed the basis for the STB's jurisdiction.

ANSWER: Twin America admits that the Attorney General's Office of the State of New York ("NYSAG") investigated the Twin America joint venture. Twin America admits that Defendants applied to the Surface Transportation Board ("STB") for approval of the joint venture. Twin America admits that, after the STB's decision, the joint venture ceased operating interstate service pursuant to one of the options set forth in the STB's decision. Twin America denies the remaining allegations in Paragraph 5. Twin America avers that federal law required Twin America to file the application for approval with the STB and that Twin America began preparing its STB filing before learning of the investigation by the NYSAG. Twin America further avers that petitioning of a governmental entity cannot raise competition law concerns under the *Noerr-Pennington* doctrine, particularly when federal law compelled the petition.

6. As a result, Defendants continue to operate an illegal joint venture that has caused harm to consumers for more than three years. During this period, Defendants have sustained the anticompetitive price increase, and there has been insufficient entry or expansion to restore the competition lost by the joint venture's formation.

ANSWER: Denied. Twin America avers that at no time has it raised fare prices above competitive levels and at no time have there been any significant barriers to entry. The threat of entry by potential competitors, the threat of expansion by existing competitors, and actual entry

by new competitors have been ever-present, before and after the formation of Twin America.

Ease of entry is exemplified by CitySights, which itself started in 2005 with 8 upper-deck buses and grew its fleet to 62 buses by March 2009 (with a commitment to build 8 more by year-end).

Similar entry is occurring now with a number of new double-decker bus tour providers.

7. For the reasons discussed below, Defendants' formation and continuing operation of Twin America is likely to substantially lessen, and has actually lessened, competition in the market for hop-on, hop-off bus tours in New York City, in violation of Section 7 of the Clayton Act; unreasonably restrains trade and has unreasonably restrained trade in violation of Section 1 of the Sherman Act; violates the Donnelly Act, N.Y. Gen. Bus. Law § 340; and violates Section 63(12) of the New York Executive Law.

ANSWER: Denied.

8. Coach USA, Inc. is a Delaware corporation with its principal place of business in Paramus, New Jersey. Coach is a wholly-owned subsidiary of Stagecoach Group plc ("Stagecoach"), a leading international transportation company based in the United Kingdom and registered in Perth, Scotland. In turn, Coach controls numerous American motor passenger carriers. Coach operated hop-on, hop-off bus tours in New York City under the Gray Line brand, which the company licensed for use in New York City from Gray Line Worldwide, an entity not affiliated with Stagecoach.

ANSWER: Paragraph 8 is directed to another defendant. Twin America lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and on this basis denies those allegations.

9. International Bus Services, Inc. ("IBS") is a New York corporation with its principal place of business in Hoboken, New Jersey. The company is a wholly-owned subsidiary of Coach USA, Inc., and acts as one of its motor passenger carriers, with a focus on the New York/New Jersey area.

ANSWER: Upon information and belief, Twin America admits that IBS is a New York corporation and a wholly-owned subsidiary of Coach USA, Inc. Twin America admits that IBS provided motor passenger carrier service in the New York City area prior to the formation of

the Twin America joint venture. Twin America lacks knowledge or information sufficient to form a belief as to any remaining allegations in Paragraph 9 and on this basis denies those allegations.

10. CitySights LLC is a New York limited liability company with its principal place of business in New York, New York. CitySights LLC operated hop-on, hop-off bus tours in New York City under the “CitySights NY” brand.

ANSWER: Twin America admits the allegations in Paragraph 10.

11. City Sights Twin, LLC is a New York limited liability company with its principal place of business in New York, New York. The company was formed for the purpose of owning an interest in Twin America.

ANSWER: Twin America admits the allegations in Paragraph 11.

12. Twin America, LLC is a Delaware limited liability company with its principal place of business in New York, New York. Twin America was established pursuant to a joint venture agreement executed on March 17, 2009 between IBS and City Sights Twin, LLC (the “Transaction”). Pursuant to the Transaction, Coach (through IBS) and City Sights (through City Sights Twin, LLC) contributed all of their New York City hop-on, hop-off bus tour operations and assets to the joint venture; acquired a 60 percent and 40 percent membership interest in Twin America, respectively; and equally divided management control. The joint venture agreement includes a non-compete provision whereby Coach and City Sights agreed not to compete in the hop-on, hop-off bus tour business within 25 miles of New York City. Twin America operates hop-on, hop-off bus tours under both the Gray Line New York and CitySights NY brands.

ANSWER: Twin America admits that it is a Delaware limited liability company with its principal place of business in New York, New York. Twin America admits that it was established pursuant to a joint venture agreement executed on March 17, 2009 between IBS and City Sights Twin, LLC. Twin America admits that pursuant to the joint venture agreement: (1) Coach (through IBS) and CitySights (through City Sights Twin, LLC) contributed assets, including their New York City hop-on/hop-off bus tour operations under the Gray Line New

York and CitySights NY brands, respectively, to the joint venture; (2) Coach obtained a 60% economic interest in the joint venture, and CitySights obtained a 40% economic interest; (3) Coach and CitySights equally divided management power over Material Decisions (as defined in the joint venture agreement); and (4) Mark Marmurstein was appointed President of Twin America and given control over day to day operations. Twin America further admits that the joint venture agreement includes a clause prohibiting the parties from competing for the duration of the joint venture, or 5 years following a party's exit from the joint venture, in "the marketing, sale and conduct of a sightseeing 'hop-on/hop-off' tour or escorted group on a per capita basis business primarily by double-decker buses, trolleys and motor coaches" within twenty-five miles of New York City. Twin America denies the remaining allegations in Paragraph 12.

13. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, and Section 4 of the Sherman Act, 15 U.S.C. § 4, seeking injunctive and other equitable relief from Defendants' violations of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1.

ANSWER: Twin America admits that the United States purports to bring this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, and Section 4 of the Sherman Act, 15 U.S.C. § 4 and that the action seeks injunctive and other equitable relief from purported violations of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1. Twin America denies the remaining allegations in Paragraph 13. Twin America specifically denies that any factual or legal basis exists for any of the claims against Twin America in this action or that Plaintiffs are entitled to any relief whatsoever.

14. The State of New York, by and through its Attorney General, brings this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, seeking injunctive and other equitable relief from the Defendants' violations of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1; under Section 342 of the Donnelly Act, N.Y. Gen. Bus. Law §

342, seeking injunctive and other equitable relief from the Defendants' violation of Section 340 of the Donnelly Act; and under Section 63(12) of the New York Executive Law, seeking injunctive and other equitable relief predicated on the foregoing violations. The State of New York brings this action on behalf of the citizens, general welfare, and economy of the State of New York.

ANSWER: Twin America admits that the State of New York purports to bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26, that the action seeks injunctive and other equitable relief from purported violations of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1. Twin America admits that the State of New York purports to bring this action under Section 342 of the Donnelly Act, N.Y. Gen. Bus. Law § 342, and that the action seeks injunctive and other equitable relief from purported violations of Section 340 of the Donnelly Act. Twin America admits that the State of New York purports to bring this action under Section 63(12) of the New York Executive Law and that the action seeks injunctive relief and other equitable relief. Twin America admits that the State of New York purports to bring this action on behalf of the citizens, general welfare, and economy of the State of New York. Twin America denies the remaining allegations in Paragraph 14. Twin America specifically denies that any factual or legal basis exists for any of the claims against Twin America in this action or that Plaintiffs are entitled to any relief whatsoever.

15. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. Defendants market and sell their hop-on, hop-off bus tours nationally and internationally, make substantial Internet sales to customers residing in other states and countries, and have joint selling arrangements with tourism groups and other entities based in other states and countries. In addition, most customers who take hop-on, hop-off bus tours in New York City reside outside New York State. The Court has jurisdiction over this matter pursuant to 15 U.S.C. §4, 15 U.S.C. §§ 25 and 26, and 28 U.S.C. §§ 1331, 1337, and 1345. The Court has supplemental jurisdiction over the action and parties as to the State of New York's claims under the Donnelly Act and the New York Executive Law under 28 U.S.C. § 1367.

ANSWER: Twin America admits that it markets and sells hop-on/hop-off bus tours

nationally and internationally, makes Internet sales to customers residing in states other than New York and countries other than the United States, and engages in some of these sales and marketing activities through various commercial agreements with other entities. Twin America admits the Court has original subject matter jurisdiction and supplementary jurisdiction over the statutory claims the Government has alleged. Twin America denies the remaining allegations in Paragraph 15.

16. The Court has personal jurisdiction over each Defendant, and venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b) and (c). Defendants transact business and are found within the Southern District of New York.

ANSWER: Twin America admits that the Court has personal jurisdiction over Defendants Twin America, LLC, CitySights LLC, and City Sights Twin, LLC, and that venue is proper under one or more of the statutes listed in this paragraph, but specifically denies that any factual or legal basis exists for any of the claims against Twin America or that Plaintiffs are entitled to any relief whatsoever. Twin America admits that it transacts business within the Southern District of New York. Twin America denies the remaining allegations in Paragraph 16.

17. Hop-on, hop-off bus tours visit New York City's leading attractions while allowing customers to tailor their itineraries to the places that interest them. As the bus travels a fixed route, a professional tour guide provides information about the attractions and the city; customers may "hop off" the bus at any of the stops to further explore particular attractions and later "hop on" another bus to continue along the tour route using the same ticket. Tickets range from one to four days of validity.

ANSWER: Twin America admits that Twin America hop-on/hop-off bus tours travel on fixed routes while a professional tour guide (or audio guide) provides information about the attractions and the city. Twin America further admits that riders can "hop off" the bus at any of the stops to further explore particular attractions and later "hop on" another bus to continue along

the tour route using the same ticket. Twin America admits its tickets range in various days of validity. Twin America denies the remaining allegations in Paragraph 17. Twin America avers that there are many other options to see New York City attractions. *See* TripAdvisor, *New York City - Sightseeing Tours*, http://www.tripadvisor.com/Attractions-g60763-Activities-c42-New_York_City_New_York.html#TtD (last visited Feb. 11, 2013).

18. The routes offered by hop-on, hop-off bus tour providers stop at many of New York City's leading attractions, including Times Square, the Empire State Building, the World Trade Center site, Battery Park, Rockefeller Center, Central Park, and the United Nations, as well as popular neighborhoods such as Chinatown, Greenwich Village, Little Italy, SoHo, and the Upper East Side. Hop-on, hop-off bus tour providers typically operate separate "downtown" and "uptown" routes, but offer customers the ability to purchase an all-routes ticket that includes both.

ANSWER: Twin America admits that Twin America has bus stops at or near Times Square, the Empire State Building, the World Trade Center site, Battery Park, Rockefeller Center, Central Park, and the United Nations, as well as popular neighborhoods such as Chinatown, Greenwich Village, Little Italy, SoHo, and the Upper East Side. Twin America admits that it provides hop-on/hop-off bus tours around different routes (called "loops"), including an option to purchase an "all loops" ticket. Twin America denies the remaining allegations in Paragraph 18. Twin America avers that visitors have many other options for visiting these same attractions and areas of interest.

19. Hop-on, hop-off bus tour providers in New York City currently offer their tours on open-top double-decker buses. The open-air upper deck provides customers with the ability to observe New York City from an elevated vantage point and to enjoy unobstructed views that are not available through other means of ground transportation or on foot.

ANSWER: Twin America admits that certain hop-on/hop-off bus tour providers in New York City currently offer their tours on open-top, double-decker buses. Twin America

denies the remaining allegations in Paragraph 19.

20. Coach acquired the Gray Line New York hop-on, hop-off bus tour business in 1998. At that time, Coach and New York Apple Tours were the primary providers of hop-on, hop-off bus tours in New York City. A small, family-run company, Big Taxi Tours, entered in 1999, but it operated only a handful of buses and held (and continues to hold) approximately 1% of the market. In 2000, Coach acquired many of New York Apple Tours's assets and employees after New York Apple Tours was forced out of business due to safety and traffic violations, leaving Coach as the only significant operator and allowing it to earn substantial profits.

ANSWER: To the extent the allegations in Paragraph 20 are directed to another defendant, Twin America lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on this basis denies those allegations. Twin America denies the remaining allegations in Paragraph 20, and avers that the Government's allegations in Paragraph 20 fail to include or mention other hop-on/hop-off bus tour providers that have operated in New York City historically over the period referenced in Paragraph 20.

21. In 2005, Coach's market dominance came under attack with the entry of City Sights. City Sights was founded by an existing New York City tourism firm with years of experience primarily managing airport transportation businesses.

ANSWER: Twin America admits that CitySights commenced operations in 2005. Twin America admits CitySights was founded by Mark Marmurstein, who had substantial experience in the airport transportation business. Twin America avers that, prior to forming CitySights, Mr. Marmurstein had no experience operating sightseeing tours. Twin America denies the remaining allegations in Paragraph 21.

22. Before City Sights could begin operating its hop-on, hop-off bus tours, it had to obtain authorization from the New York City Department of Transportation ("NYCDOT") to pick up and drop off passengers at specified bus stops. Based on congestion and traffic patterns that prevailed at the time, NYCDOT granted City Sights more than 40 bus stops for its hop-on, hop-off bus tours. The approved stops covered New York City's top tourist attractions including

Times Square, the Empire State Building, the World Trade Center site, Battery Park, Rockefeller Center, and Central Park, as well as the city's most popular neighborhoods. City Sights's approved stops were typically located directly in front of the attractions and enabled City Sights to offer tour routes comparable to those offered by Coach.

ANSWER: Twin America admits that CitySights obtained approval in 2005 from NYCDOT for more than 40 hop-on/hop-off bus stops that included stops near Times Square, the Empire State Building, the World Trade Center site, Battery Park, Rockefeller Center, Central Park, and other attractions. Twin America denies the remaining allegations in Paragraph 22. Twin America avers that NYCDOT assigned CitySights significantly fewer bus stops than CitySights requested. These stops were located adjacent to or within the vicinity of the attractions, but not directly in front of those attractions. These facts did not limit CitySights' ability to operate a hop-on/hop-off bus tour in New York City. The location of CitySights stops at that time differed from Gray Line's stops, and CitySights formulated routes around the stops it received.

23. With key bus stops in hand, City Sights commenced operations and embarked upon a number of strategies to expand its business, establish brand recognition, and challenge Coach. City Sights competed on price, charging base fares at or slightly below Coach's rates, and its street sellers – the largest sales distribution channel for hop-on, hop-off bus tours – could request authorization from City Sights managers to offer on-the-spot discounts as conditions warranted. City Sights developed novel product offerings, such as packages that included boat tours offered by another company. Additionally, City Sights partnered with New York City's largest hotel concierge service, Continental Guest Services ("CGS"), to sell tickets in CGS's hotels and offer hotel guests special promotions. City Sights established an array of joint marketing arrangements similar to Coach's, enabling City Sights to sell its hop-on, hop-off bus tours along with other tourism products from third-party providers at a reduced combined ticket price.

ANSWER: Twin America admits that CitySights began operations in 2005 with eight double-decker buses and grew to 62 double-decker buses by March 2009. Twin America admits that CitySights started its business with prices at or near Coach's prices for similar tours. Twin America further admits that CitySights street ticket sellers, which were the largest distribution

channel for CitySights' bus tour sales (and remain the largest distribution channel for Twin America), could request, and still can request, authorization for discounts as conditions warrant. Twin America admits CitySights offered a bundled boat tour in conjunction with certain ticket packages, and still does, and that CitySights entered into agreements with other tour operators to offer bundled packages at reduced prices, as did Coach. Twin America continues to enter into agreements with other tour operators to offer bundled packages at reduced prices. Twin America denies the remaining allegations in Paragraph 23, and specifically denies that CitySights partnered with CGS when it started. Twin America avers that CGS did not sell CitySights tickets until 2007.

24. In the years following its entry, City Sights purchased more buses, increasing its capacity and decreasing customer wait times. City Sights's fleet grew from eight buses in May 2005, to approximately 34 buses in 2007, to more than 50 buses by the end of 2008, and to 62 buses by March 2009. This larger fleet gave City Sights the size and scale to rival Coach's fleet of over 70 double-decker buses.

ANSWER: Twin America admits that CitySights started with eight double-decker buses in 2005, and grew to 17 double-decker buses by the end of 2006. By the end of 2007, CitySights had expanded its fleet to 29 double-decker buses, and by the end of 2008, CitySights was operating 54 double-deckers. CitySights was operating 62 double-decker buses by the time of the joint venture. Twin America denies the remaining allegations in Paragraph 24. Twin America avers that CitySights expanded the size of its fleet as ridership expanded. Twin America avers that any bus tour provider can expand its fleet size as ridership increases, and that it can compete efficiently at any point in the development of its business, as CitySights did at all stages of its growth and history.

25. City Sights's steady growth did not go unnoticed at Coach, and as City Sights ate into its rival's market share, Coach's focus on City Sights intensified. Coach monitored City Sights's fleet size and product offerings, dispatched "secret shoppers" to ride City Sights buses to gather intelligence on City Sights's service and promotions, and stationed employees on New York City's sidewalks to track City Sights passenger volume. Coach also commissioned an independent market survey to "determine what impact our main competitor City Sights is having" and engaged a marketing firm to review City Sights's successful online advertising efforts and improve its own efforts in response.

ANSWER: Paragraph 25 is directed to another defendant. Twin America lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 and on this basis denies those allegations.

26. Coach's extensive monitoring of City Sights's expanding operations reached the highest levels of the company and its corporate parent, Stagecoach. Coach's President, Dale Moser, who oversees approximately two dozen Coach businesses operating across the United States, personally spent hours on New York City street corners tracking City Sights's activities, reporting directly to Stagecoach CEO Brian Souter on the frequency of City Sights buses, and conducting Internet search queries at Souter's request to determine the relative placement of the Coach and City Sights websites in response to term searches.

ANSWER: Paragraph 26 is directed to another defendant. Twin America lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 and on this basis denies those allegations.

27. Coach routinely responded to City Sights's promotions by matching deals or reconsidering its own offerings. For example, in February 2008, Coach matched a buy-one-get-one-free promotion initiated by City Sights. Coach also created a comparable water tour package in response to City Sights's inclusion of a free boat tour.

ANSWER: Twin America admits that, around February 2008, CitySights offered a buy-one-get-one-free promotion. The remaining allegations in Paragraph 27 are directed to another defendant. Twin America lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on this basis denies those allegations.

28. The intense head-to-head competition between City Sights and Coach led to numerous disputes. For example, in August 2007, City Sights threatened to sue Coach, alleging that Coach had “engaged in a concerted series of actions” to force City Sights to “sell or terminate [its] business.” In a draft litigation complaint City Sights transmitted to Coach, City Sights accused Coach of monopolization and other antitrust law violations, specifically alleging that Gray Line “maintain[ed] market power, monopoly power and otherwise dominate[d] the relevant market.” City Sights defined this relevant market as “the Double Decker, Hop-on, Hop-off Bus Tours Market” and identified Coach and City Sights as the only current competitors in the market. City Sights did not ultimately file the lawsuit, and City Sights and Coach continued their fierce head-to-head competition.

ANSWER: Twin America admits that attorneys for CitySights drafted and transmitted to Coach a draft complaint that includes the quotations selectively cited in Paragraph 28. Twin America admits that CitySights never authorized its lawyers to file this lawsuit. Twin America denies the remaining allegations in Paragraph 28.

29. By mid-2008, Coach was citing City Sights’s growth to help explain Gray Line’s diminished financial performance in regular reports produced for Stagecoach. Stagecoach CEO Brian Souter had grown tired of the relentless competition with City Sights, with the two companies matching each other’s every move. Souter no longer wanted to have City Sights as an “enemy” and instead sought to join forces. Accordingly, at the end of May 2008, Souter directed Coach’s management to initiate discussions with City Sights. Starting in June 2008, Souter traveled to New York City to meet with City Sights’s President, Mark Marmurstein.

ANSWER: Twin America admits that Mark Marmurstein, the President of CitySights, met with Brian Souter, the CEO of Stagecoach, in New York City in June 2008 to discuss a possible business collaboration. The remaining allegations in Paragraph 29 are directed to another defendant. Twin America lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on this basis denies those allegations.

30. With Marmurstein reluctant to exit his successful hop-on, hop-off bus tour business, Coach and City Sights began discussing the possibility of a joint venture. Coach explained to City Sights, in a proposal transmitted in September 2008, that the benefits of the combination would include “easier decision making as the sole player in [the] ‘double deck’ market,” and “flexibility regarding pricing.”

ANSWER: Twin America admits that in 2008 Coach and CitySights began discussing the possibility of a joint venture. Twin America further admits that Coach provided CitySights with a document that included quotations selectively cited in Paragraph 30. Twin America denies the remaining allegations in Paragraph 30. Twin America avers that the document containing the quotations selectively cited in Paragraph 30 also discussed efficiencies the joint venture would produce, allowing the combined company to better weather rising costs and to continue to efficiently compete in the face of new and threatened competition.

31. After approximately six months of negotiations, the parties agreed to a combination that would make Marmurstein president of the combined entity, evenly split management rights, and divide profits 60 percent to 40 percent in Coach's favor. The parties executed the Transaction forming Twin America on March 17, 2009.

ANSWER: Twin America admits that IBS and City Sights Twin, LLC executed a joint venture agreement on March 17, 2009. Twin America admits that pursuant to the joint venture agreement: (1) Coach (through IBS) and CitySights (through City Sights Twin, LLC) contributed assets, including their New York City hop-on/hop-off bus tour operations under the Gray Line New York and CitySights NY brands, respectively, to the joint venture; (2) Coach obtained a 60% economic interest in the joint venture, and CitySights obtained a 40% economic interest; (3) Coach and CitySights equally divided management power over Material Decisions (as defined in the joint venture agreement); and (4) Mark Marmurstein was appointed President of Twin America and given control over day-to-day operations. Twin America denies the remaining allegations in Paragraph 31. Twin America avers that the transaction was wholly uncertain prior to signing, in part because the core issue of control over the day-to-day operations was not resolved until near the time of signing.

32. From the start of its negotiations with City Sights, Coach recognized that the deal would enable the parties to raise prices. In a July 2008 presentation to Stagecoach CEO Brian Souter, Coach executives explained that one of the “City Sights Options” was to “[i]ntegrate with Gray Line and increase fares by 10% on combined business.” As negotiations with City Sights deepened in the fall of 2008, Coach incorporated a 10 percent fare increase into its internal projections of the value of the deal, and shared analyses with City Sights that highlighted the 10 percent fare increase assumptions. City Sights, for its part, developed its own internal projections of the millions of dollars the 10 percent fare increase would yield and shared and discussed its analyses with Coach.

ANSWER: Twin America admits that certain projections Coach provided to CitySights during negotiations contained information based on a 10% fare increase. Twin America admits CitySights prepared certain internal analyses based on Coach’s financial projections for purposes of negotiations with Coach. The remaining allegations in Paragraph 32 are directed to another defendant. Twin America lacks knowledge or information sufficient to form a belief as to the truth of those allegations and on this basis denies those allegations. Twin America avers that at the time the joint venture negotiations were occurring, the price of oil spiked at an all-time historic high of \$145.29 per barrel. N.Y. Times, *Oil and Gasoline* (Nov. 12, 2012), <http://topics.nytimes.com/top/news/business/energy-environment/oil-petroleum-and-gasoline/index.html>. These unprecedented fuel costs caused marketplace reactions by businesses impacted by these suddenly exponential cost spikes. New York City, for example, imposed a 20% surcharge on taxi cab fares, and the prices of tours and attractions across New York City increased beginning in 2009. For example, Circle Line, a boat tour provider, increased its rates on different tours by 12.9% and 21.1% between 2008 and 2010. New York Water Taxi increased fares by 25%. And the Harlem Gospel bus tour increased fares by 10%. Likewise, sightseeing attractions were raising rates at this time (*e.g.*, Museum of the City of New York (42%); Madame Tussauds (22%); UN Tour (18%)). Twin America further avers and specifically denies that the joint venture was in any way designed to increase prices. Coach in fact had already changed prices on certain Gray Line tours in 2008 and in February 2009, prior to the

Twin America transaction, through fuel surcharges and adjustments to certain listed fares.

33. By December 2008, the 10 percent price increase was firmly established as an essential driver of the deal. An internal summary of the joint venture's terms transmitted from Coach to Stagecoach, for example, explained that the "[o]verall strategy is to integrate both businesses[,] drive out synergies and implement a fare increase of approximately 10%." The price increase was also an integral part of Coach's February 2009 presentation to Stagecoach's board seeking approval for the Transaction. A Coach executive advised its board that one of the key "benefits of combining businesses" was "[i]mproved profitability," which was driven, in part, by "assum[ing] [a] 10% fare increase." The presentation explained that without the Transaction, there would be no fare increase "due to competition."

ANSWER: Twin America denies the allegations in Paragraph 33 that are directed to another defendant, on the basis that Twin America lacks knowledge or information sufficient to form a belief as to the truth of those allegations. Twin America denies any and all remaining allegations in Paragraph 33.

34. Consistent with these projections, in early 2009, over a period of approximately two months, Defendants implemented both the joint venture and the price increase. On February 5, 2009, at a time when Coach and City Sights were exchanging drafts of the joint venture agreement, Coach announced a fare increase of \$5 for its Gray Line tours — roughly 10 percent of the price of Gray Line's most popular tour, the All Loops Tour, which increased from \$49 to \$54. City Sights did not immediately match and the temporary fare disparity caused customers to flock to City Sights. Although Coach executives noted internally that the increase had resulted in "resistance to the higher price and customer shift to [City Sights]," the implications of this shift would be fleeting as the formation of Twin America would extend the price increase to City Sights and combine the two companies' profits. On March 17, 2009, Coach and City Sights executed the joint venture agreement. And on April 14, 2009, Twin America increased base fares for City Sights tickets by the same \$5 amount.

ANSWER: Twin America admits that Coach changed prices in 2008 and in February 2009 on certain tours. Twin America admits that it increased fares on certain CitySights tours in April 2009. Twin America denies the remaining allegations in Paragraph 34. Twin America avers that, at the time the joint venture negotiations were occurring, the price of oil spiked at an all-time high and that other tours and sightseeing attractions in New York City were raising their

rates. Twin America incorporates by reference its response to Paragraph 32 as though fully set forth herein.

35. Twin America has sustained the price increase for both Gray Line and City Sights tours in the more than three years since its implementation. The parties have continued to maintain both the Gray Line and CitySights NY brands in part because, as Coach explained to City Sights, “[p]olitically and competitively keeping both brands keeps the competition at bay as they continue to see two suppliers of tour services in the market and [the] City maintains the same understanding.”

ANSWER: Twin America admits that CitySights received a document from Coach containing the quotation selectively cited in Paragraph 35. Twin America denies the remaining allegations in Paragraph 35.

36. Under federal law, parties engaging in a transaction involving change in control of an interstate motor carrier must apply for approval from the STB prior to carrying out the transaction. If the STB concludes that the proposed transaction is consistent with the public interest, the transaction becomes exempt from the antitrust laws and thus immune from scrutiny by federal and state antitrust authorities.

ANSWER: Twin America submits that this paragraph contains legal conclusions that do not require a response, and on that basis denies these allegations. Twin America avers that it was required by law to file an application for approval of the joint venture with the STB.

37. On March 31, 2009, Coach and City Sights began operating Twin America without first seeking STB approval. In late July and early August 2009, the parties received subpoenas from the Antitrust Bureau of the New York State Attorney General’s Office seeking information concerning the formation and operation of Twin America. Almost immediately thereafter, Coach and City Sights sought STB approval for the joint venture, claiming that Twin America’s operations were interstate in nature and therefore subject to STB jurisdiction. Although the STB was “concerned that the [STB’s] processes may have been manipulated to avoid the [antitrust] inquiry,” the STB undertook to analyze the joint venture under its “public interest” standard to determine “whether the transaction is likely to have anticompetitive consequences that would negatively impact the public.”

ANSWER: Twin America admits that Coach and CitySights began operating Twin

America on March 31, 2009. Twin America admits that Twin America and CitySights each received a Subpoena Duces Tecum from the NYSAG on or about August 3, 2009, concerning the formation of Twin America. Twin America admits that it filed its STB application on August 19, 2009. Twin America admits that the STB's February 8, 2011 decision contained the quotations selectively cited in Paragraph 37. Twin America denies the remaining allegations in Paragraph 38. Twin America specifically denies that Twin America filed for STB approval because it had received subpoenas from the NYSAG or that its STB application was a manipulation of the STB process or an attempt to avoid the NYSAG's investigation of the merger. To the contrary, Twin America had begun preparing its STB application prior to learning of the NYSAG investigation.

38. In February 2011, the STB rejected the parties' application, concluding that the formation of Twin America yielded "a combined entity that possesses excessive market power and has the ability to raise rates without competitive restraint and otherwise conduct its operations to the detriment of consumers." The STB concluded, among other things, that "the relevant market in which the Applicants compete is double-decker, hop-on, hop-off bus tours in NYC"; that "[a]fter the transaction, Twin America was free to decide to raise its prices – a hallmark of unrestrained market power"; that the Board "ha[d] not seen the public benefits that Applicants argue are the result of the joint venture"; and that the parties "ha[d] not satisfied their burden of demonstrating that barriers to entry are sufficiently low to discipline Applicants' conduct." Accordingly, the STB ordered Coach and City Sights to either dissolve Twin America or cease the limited interstate service that the STB found to be the basis for its jurisdiction.

ANSWER: Twin America admits that on February 8, 2011, the STB denied Twin America's application. Twin America admits that the STB's February 8, 2011 decision contains the quotations selectively cited in Paragraph 38. Twin America admits that the STB ordered Coach and CitySights to either dissolve Twin America or cease the interstate service that the STB found to be the basis for its jurisdiction. Twin America denies the remaining allegations in Paragraph 38.

39. Coach and City Sights requested reconsideration of the STB's order. In January 2012, the STB denied reconsideration, affirming that "[a]fter unlawfully consummating a joint venture without the required approval, Applicants belatedly sought Board authorization for a transaction that created an entity that dominates the market in which it competes and has the ability to raise rates or reduce service without sufficient competitive restraints." Defendants then chose to terminate their limited interstate service and withdraw from STB jurisdiction rather than dissolve the Twin America joint venture.

ANSWER: Twin America admits that it requested reconsideration from the STB on the denial of its application on February 28, 2011. Twin America admits that the STB denied its petition for reconsideration on January 11, 2012, after granting an interim stay to reconsider the application. Twin America further admits the STB's January 11, 2012 decision contains the quotation selectively cited in Paragraph 38. Twin America admits that Twin America terminated its interstate charter services, which ended the STB's jurisdiction over the joint venture. Twin America denies the remaining allegations in Paragraph 39.

40. Twin America continues to operate today and provides approximately 99 percent of New York City's hop-on, hop-off bus tours.

ANSWER: Twin America admits that it continues to operate today. Twin America denies the remaining allegations in Paragraph 40.

41. Hop-on, hop-off bus tours constitute a relevant product market and line of commerce under Section 7 of the Clayton Act, Section 1 of the Sherman Act, and Section 340 of the Donnelly Act. Although a wide array of tourism offerings are available in New York City, a significant number of visitors specifically demand hop-on, hop-off bus tours and are unlikely to substitute other sightseeing experiences in response to a small but significant and non-transitory price increase. Indeed, Twin America has profitably imposed and sustained a price increase of approximately 10 percent for more than three years.

ANSWER: Denied.

42. No water, air, or other ground-based tourism product or service offers a reasonably interchangeable consumer experience to hop-on, hop-off bus tours. For example,

hop-on, hop-off water tours cannot provide access to many of New York City's leading attractions because they are inland. Bike and walking tours do not cover the same range of attractions or provide similar coverage in such a short period of time. Bus tours with a fixed itinerary and duration do not afford consumers the same flexibility to tailor their itineraries to the places that interest them.

ANSWER: Denied.

43. Prior to the formation of Twin America, Coach and City Sights viewed themselves as the only meaningful competitors in the market. They aggressively monitored and responded to changes in each other's prices and services, but did not similarly track and respond to the prices and service offerings of other types of tours. In numerous internal ordinary course-of-business documents and in statements filed in court, City Sights and Coach each identified the other as its "sole" or "main" competitor. City Sights even threatened to sue Coach for monopolization and other antitrust law violations based on a relevant market defined as "Double Decker, Hop-on, Hop-off Bus Tours" and identified City Sights and Coach as the only competitors in that relevant market.

ANSWER: Twin America admits that certain documents contain the words selectively quoted above out of context and that City Sights threatened to sue Coach. Twin America denies the remaining allegations in Paragraph 43. Twin America avers that other internal documents selectively omitted from the Complaint indicate that it competes with many other options for tourists to visit attractions in New York City.

44. Providers of water, air, and other types of ground tours do not view themselves to be in direct competition with hop-on, hop-off bus tours, and determine their prices and product offerings largely independently of the prices and product offerings of hop-on, hop-off bus tour providers. In fact, Coach and City Sights have long marketed many of the tours offered by these other providers in combination with their own hop-on, hop-off bus tours, indicating that Defendants do not view these products as close competitors to or substitutes for their hop-on, hop-off bus tours.

ANSWER: Twin America admits that it sells tour packages that include other tour services and attractions. Twin America denies the remaining allegations in Paragraph 44. Twin America further avers that many other services expressly advertise, market, and view themselves as competing directly against Twin America's hop-on/hop-off bus tour services. For example,

OnBoard Tours, a provider of guided shuttle tours, describes on its website the top reason to choose its tours over other New York City tours:

Hop On, Hop Off Tours are great - if you don't mind waiting in line for the next bus to come hoping there will be a seat available for you or that it doesn't start pouring rain. And what about navigating a new city? What happens when you get lost, or you really want to know the history behind that gorgeous old building with the fountain in the courtyard? OnBoard Tours give you peace of mind - not only are you assured a seat on one of our climate-controlled shuttles (we'll talk more about how great our shuttles are later) - but you're also guaranteed a guide who will be with you every step of the way. That's right! Our guides actually hop off with you to give you the real history of NYC. It's like two tours in one - a walking tour and a bus tour of the city that never sleeps.

See On Board Tours, [Top 5 Reasons To Choose On Board Tours](#),

<http://newyorktour.onboardtours.com/reports/top5reasons.pdf> (last visited Feb. 11, 2013).

On Location Tours, a provider of guided bus tours, also advertises its tours in direct competition with Twin America:

Our New York City tours provide a front row seat to the best NYC landmarks; from the Empire State Building to Times Square to Central Park to Grand Central Station. . .

We may not have Ducks or Double Deckers, but we do have Carrie Bradshaw, Tony Soprano, Blair Waldorf and we'll take you to where everybody knows your name!

See On Location Tours, <http://www.screentours.com> (last visited Feb. 11, 2013).

Real New York Tours, a top-rated provider of walking tours, advertises its tours as better than hop-on/hop-off bus tours:

Lets face it, New York tours are only as good as their tour guides. Real New York Tours gives people the opportunity to see the city through the eyes of real New Yorkers. Real New York Tours explores the history, the cracks and crevices, the side streets, and culture of real New York City neighborhoods. No double decker buses or sitting in a traffic jam. We'll ride the New York subway, pound the pavement, and meet the people who have become the fabric of this great city. Together we will feel the electricity that

drives everyday New Yorkers.

See Real New York Tours, <http://realnewyorktours.com> (last visited Feb. 11, 2013).

45. New York City is a relevant geographic market under Section 7 of the Clayton Act, Section 1 of the Sherman Act, and Section 340 of the Donnelly Act. All of the major attractions visited by hop-on, hop-off bus tours and demanded by visitors to New York City are located within New York City, and hop-on, hop-off bus tour providers must operate in New York City to vie for the patronage of the city's visitors.

ANSWER: Twin America admits that it operates its transportation tours within New York City. Twin America denies the remaining allegations in Paragraph 45.

46. The market for hop-on, hop-off bus tours in New York City is highly concentrated and has become even more concentrated as a result of Defendants' joint venture. The combination of the Coach and City Sights operations into Twin America is an effective merger to monopoly that has resulted in an entity with over 120 double-decker buses and approximately 99 percent of the relevant market. The market concentration creates a presumption that the joint venture substantially lessens competition.

ANSWER: Denied.

47. As articulated in the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission ("Guidelines"), the Herfindahl-Hirschman Index ("HHI") is a measure of market concentration.¹ Market concentration is often one useful indicator of the likely competitive effects of a merger. The more concentrated a market, and the more that a transaction would increase concentration in a market, the more likely it is that a transaction would result in harm to consumers. The Guidelines deem a market in which the HHI is above 2,500 points to be highly concentrated. Transactions that increase the HHI by more than 200 points in highly concentrated markets will be presumed likely to enhance market power.

FN1: See U.S. Dep't of Justice and Federal Trade Commission, *Horizontal Merger Guidelines* § 5.3 (2010), available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.html>. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases

both as the number of firms in the market decreases and as the disparity in size between those firms increases.

ANSWER: Twin America admits the Horizontal Merger Guidelines issued by Plaintiff United States of America refer to the Herfindahl-Hirschman Index as one means to measure market concentration. Twin America denies the remaining allegations in Paragraph 47.

48. In the year prior to Twin America's formation in March 2009, according to Coach's estimates, Coach held a market share of approximately 65 percent and City Sights held a share of approximately 34 percent. Big Taxi Tours held no more than a 1 percent share. Prior to the joint venture, the HHI for this market exceeded 5,000, and the formation of Twin America increased the market's HHI to approximately 9,800. The increase in HHI of over 4,000 points resulting from the joint venture is far greater than the 200 point change that renders a transaction presumptively anticompetitive under the Guidelines.

ANSWER: Denied.

49. The formation of Twin America eliminated the intense head-to-head competition between Coach and City Sights. As discussed above, because each company closely monitored the other's services and battled for market share, the competition between Coach and City Sights provided tangible benefits for consumers with respect to prices and new product offerings. The elimination of this competition increases the likelihood that City Sights and Coach will raise prices and refrain from improving their product offerings. The elimination of this competition increases the likelihood that City Sights and Coach will raise prices and refrain from improving their product offerings.

ANSWER: Denied.

50. In addition to these likely anticompetitive effects, the formation of Twin America has resulted in actual anticompetitive effects. Consistent with months of internal transaction-related documents outlining plans for a 10 percent fare increase in connection with the joint venture, both Coach and City Sights increased base fares by \$5 (approximately 10 percent) in early 2009. The price increase was part of, and was enabled by, the joint venture. Indeed, as of February 23, 2009, over two weeks after the increase, Coach executives represented to Stagecoach's Board of Directors that the 10 percent fare increase was connected to the pending joint venture and that absent the Transaction there would be "[n]o fare increase (due to competition)."

ANSWER: Twin America lacks knowledge or information regarding the document

quoted selectively in Paragraph 50 sufficient to form a belief as to the truth of those allegations and on this basis denies those allegations. Twin America denies the remaining allegations in Paragraph 50.

51. It is unlikely that future entry or expansion will occur in a manner that is timely and sufficient to counteract the competitive harm caused by the Transaction. In the more than three years of Twin America's operation, neither entry nor expansion has taken place to an extent that would sufficiently replace the competition lost by the combination of City Sights and Coach.

ANSWER: Denied. Twin America avers that, at the time of the merger, the economy was facing a historic recession, which had a major impact on tourism in New York City. The rebounding tourism economy has brought with it even more competitors, including more providers of double-decker hop-on/hop-off bus tours.

Go New York Tours ("Go New York"), started by Bike Rental Central Park, a bike tour company, began operating in 2012. Go New York initially began running ad-wrapped buses without passengers on routes throughout the City to generate revenue. In August 2012, Go New York began serving both Upper and Lower Manhattan with a full suite of bus stops at all the major New York City attractions.

New York Water Taxi ("NYWT") has been operating hop-on/hop-off water tours since 2002. In July 2012, NYWT added a hop-on/hop-off double-decker bus tour, linking its existing hop-on/hop-off water service to Midtown Manhattan attractions, providing a 90-minute guided bus tour with four hop-on/hop-off stops around Midtown (the Empire State Building, Rockefeller Center, Times Square North, and Times Square South), terminating at NYWT's Pier 84. The double-decker bus tour is included in the purchase of any NYWT boat ticket, permitting a customer to see (and hop off at) New York's primary attractions from both its water stops around Manhattan and now across Midtown via double-decker bus.

In addition to Go New York and NYWT, two longstanding New York tourism companies have announced plans to begin hop-on/hop-off bus tours this year. Skyline Sightseeing, affiliated with the well-known NY SKYRIDE virtual sightseeing tour, is now marketing and selling its newly announced double-decker sightseeing bus tour service to the world travel trade, and upon information and belief, to wrap advertisers. Upon information and belief, Skyline has obtained authorization from the NYCDOT for at least eighteen bus stops covering all major New York City attractions. And Circle Line, the iconic brand that has operated sightseeing cruises in New York City since 1945, has announced and started operating bus tours under the name “Metro Sightseeing.”

52. Significant barriers exist to new entry. In order to commence operations, an entrant must obtain approval from NYCDOT to pick up and drop off passengers at specified bus stops along its proposed tour route. Defendants obtained bus stop authorizations on a “first come, first served” basis several years ago and secured stopping rights directly in front of New York City’s major tourist attractions. Due in part to congestion and other traffic issues that have intensified in recent years, however, the majority of bus stops at major tourist destinations that have been requested by potential entrants have been denied, including stops at top attractions such as the Empire State Building, Times Square, Macy’s, the World Trade Center site, and Battery Park. Moreover, where potential entrants have received stopping rights within the vicinity of a key attraction, the stop has typically been located multiple blocks away. Without the ability to stop (and enable passengers to hop on and hop off) at a critical mass of top tourist attractions and neighborhoods, a would-be entrant cannot offer a hop-on, hop-off service that meaningfully competes with Twin America’s hop-on, hop-off bus tours.

ANSWER: Denied. Twin America further incorporates its averments in Paragraph 51 as though fully set forth herein. Twin America further avers that many of the new entrants have obtained bus stops that are around the same proximity to attractions as existing Twin America bus stops.

53. Even if a company were to overcome this obstacle and commence operations, it would need to obtain and deploy a large fleet of buses and operate service at a high frequency in order to offer “hop on” wait times similar to Twin America’s. Without a large fleet of buses to

offer comparable wait times to Twin America's, a would-be entrant cannot provide a hop-on, hop-off service that meaningfully competes with Twin America. These measures take time and are costly to implement.

ANSWER: Denied. Twin America expressly avers that CitySights' entry and growth from 2005 to 2009 demonstrate that any new bus tour operator can effectively and efficiently enter the market and scale its fleet and operations commensurate with its ridership.

54. Brand recognition is another important part of providing a hop-on, hop-off bus tour business that would be able to effectively compete against Twin America. A lack of brand recognition creates difficulties in establishing multiple distribution channels, selling advance tickets to international customers, and obtaining cross-marketing partnerships. As Coach itself recognized, "market entry requires the establishment of strong brands and critical mass." More than three years have passed since the formation of Twin America without any company surmounting these barriers.

ANSWER: Denied. Twin America further incorporates its averments in Paragraph 51 as though fully set forth herein.

55. Expansion by Big Taxi has been minimal and not nearly on a scale sufficient to reverse the Transaction's anticompetitive effects. Although it was established in 1999, Big Taxi operates today with approximately six buses, rendering it unable to offer hop-on, hop-off bus service at a frequency remotely comparable to or competitive with those offered by Twin America. Whereas Twin America operates dozens of buses that pick up customers along the company's tour routes multiple times per hour, Big Taxi operates its primary loop with only three buses on an average day, causing extended wait times for customers attempting to hop off and hop back on. Indeed, Big Taxi was not able to discipline Defendants' early 2009 price increase, and has not replaced the competition lost due to the formation of Twin America.

ANSWER: Twin America admits that Big Taxi has operated hop-on/hop-off buses in New York City since 1999. Twin America denies the remaining allegations in Paragraph 55.

56. Additionally, in the summer of 2012, a small company named Go New York Tours began operating approximately five hop-on, hop-off buses in New York City. Like Big Taxi, Go New York's bus fleet is not large enough to offer hop-on, hop-off service at a frequency that competes meaningfully with Twin America's. Moreover, the company has been

unable to obtain from NYCDOT the critical mass of bus stop authorizations at top New York City attractions and neighborhoods needed to rival Twin America's tour offerings.

ANSWER: Twin America admits that Go New York began operating hop-on/hop-off buses in New York City in 2012. Twin America incorporates by reference its response to Paragraph 51 as though fully set forth herein. Twin America denies the remaining allegations in Paragraph 56.

57. Defendants cannot demonstrate cognizable and merger-specific efficiencies that are or would be sufficient to offset Twin America's anticompetitive effects.

ANSWER: Denied.

58. Plaintiffs reallege and incorporate paragraphs 1 through 57 as if set forth fully herein.

ANSWER: Twin America realleges and incorporates by reference its response to Paragraphs 1 through 57 as though fully set forth herein.

59. By entering into the Transaction, as defined in paragraph 12, Defendants formed and continue to operate the Twin America joint venture, the effect of which has been and will likely continue to be to substantially lessen competition and to tend to create a monopoly in the market for hop-on, hop-off bus tours in New York City, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

ANSWER: Denied.

60. Through Coach and City Sights contributing their New York City hop-on, hop-off bus tour operations and assets to the joint venture and acquiring an interest in Twin America, the Transaction has had, and will likely continue to have, the following effects, among others:

- (a) competition between Coach and City Sights in the provision of hop-on, hop-off bus tours in New York City was, is, and will continue to be eliminated;
- (b) competition generally in the provision of hop-on, hop-off bus tours in New York City was, is, and will continue to be substantially lessened;

(c) the prices of hop-on, hop-off bus tours in New York City did and will likely continue to increase to levels above those that would have prevailed absent the Transaction; and

(d) consumers were, are, and will continue to be deprived of benefits and features that would have existed but for the Transaction.

ANSWER: Denied.

61. Plaintiffs reallege and incorporate paragraphs 1 through 60 as if set forth fully herein.

ANSWER: Twin America realleges and incorporates by reference its response to Paragraphs 1 through 60 as though fully set forth herein.

62. Coach's and City Sights's agreement to combine their hop-on, hop-off bus tour assets and operations through the Transaction, to eliminate competition between them, and to not compete against each other or against Twin America unreasonably restrains trade, and will likely continue to unreasonably restrain trade, in the market for hop-on, hop-off bus tours in New York City, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The Transaction has and will likely continue to have the effects enumerated in paragraph 60.

ANSWER: Denied.

63. Plaintiff State of New York realleges and incorporates paragraphs 1 through 62 as if set forth fully herein.

ANSWER: Twin America realleges and incorporates by reference its response to Paragraphs 1 through 62 as though fully set forth herein.

64. Coach's and City Sights's agreement to combine their hop-on, hop-off bus tour assets and operations through the Transaction, to eliminate competition between them, and to not compete against each other or against Twin America unreasonably restrains trade, and will likely continue to unreasonably restrain trade, in the market for hop-on, hop-off bus tours in New York City, in violation of Section 340 of the Donnelly Act, N.Y. Gen. Bus. Law § 340.

ANSWER: Denied.

65. The Transaction has and will likely continue to have effects as described in paragraph 60.

ANSWER: Denied

66. Plaintiff State of New York realleges and incorporates paragraphs 1 through 65 as if set forth fully herein.

ANSWER: Twin America realleges and incorporates by reference its response to Paragraphs 1 through 65 as though fully set forth herein.

67. By forming and operating the Twin America joint venture in violation of Section 1 of the Sherman Act, Section 7 of the Clayton Act, and Section 340 of the Donnelly Act, the Defendants have engaged in repeated illegal acts in the carrying on, conducting, or transaction of business, in violation of Section 63(12) of the New York Executive Law, N.Y. Exec. Law § 63(12).

ANSWER: Denied.

68. Plaintiffs request:
- (a) that the Twin America joint venture be adjudged to substantially lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18;
 - (b) that the Twin America joint venture be adjudged to unreasonably restrain trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;
 - (c) that the Twin America joint venture be adjudged to unreasonably restrain trade in violation of Section 340 of the Donnelly Act, N.Y. Gen. Bus. Law § 340;
 - (d) that the Twin America joint venture be adjudged to violate Section 63(12) of the New York Executive Law;
 - (e) that Coach and City Sights be ordered to dissolve the joint venture, or, in the alternative, that Twin America be ordered to divest a business approximating the pre-venture City Sights, including that brand;
 - (f) that Coach and City Sights be permanently enjoined from combining, in any form, the Gray Line New York and City Sights hop-on, hop-off bus tour businesses;
 - (g) that Plaintiffs shall have such other relief, including equitable monetary relief, as the nature of this case may require and as is just and proper to dissipate the anticompetitive effects of this violation and to deter future violations;
 - (h) that the State of New York receive reasonable attorneys' fees; and

- (i) that Plaintiffs recover the costs of this action.

RESPONSE TO PLAINTIFFS' PRAYER FOR RELIEF

Twin America denies that the Twin America joint venture has violated the law and that Plaintiffs are entitled to any of the relief, legal or equitable, sought. Twin America further denies, generally and specifically, that the elements of relief sought are available to Plaintiffs on the claims alleged.

AFFIRMATIVE AND ADDITIONAL DEFENSES

As additional defenses to the Complaint, Twin America states, without assuming any burden of pleading or proof that would otherwise rest on the Government, as follows:

FIRST DEFENSE

(Failure to State a Claim)

1. The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

(State Action Doctrine)

2. The claims set forth in the Complaint are barred by the State Action Doctrine.

THIRD DEFENSE

(Equitable Monetary Relief)

3. Plaintiffs are not entitled to equitable monetary relief.

FOURTH DEFENSE

(Mootness)

4. Plaintiffs' claims should be dismissed to the extent they are moot.

FIFTH DEFENSE

(Improper Antitrust Market)

5. The purported relevant market alleged in the Complaint is not a relevant antitrust market, and Plaintiffs cannot carry their burden of defining a proper relevant market.

SIXTH DEFENSE

(Lack of Market or Monopoly Power)

6. Twin America does not have market power or monopoly power in any properly defined relevant market, and Plaintiffs therefore cannot state a claim sounding in antitrust.

SEVENTH DEFENSE

(Lack of Barriers to Entry)

7. Twin America would not have market power even if the relevant market were as alleged in the Complaint because of the lack of significant barriers to entry.

EIGHTH DEFENSE

(Lack of Anticompetitive Conduct)

8. Any conduct engaged in by Twin America was not anticompetitive and cannot support a claim sounding in antitrust.

NINTH DEFENSE

(Lack of Illegal Activity)

9. Plaintiffs' claims are barred, in whole or in part, because Twin America did not engage in any illegal activity.

TENTH DEFENSE

(Lack of Supracompetitive Pricing)

10. Plaintiffs' claims are barred, in whole or in part, because Twin America did not engage in supracompetitive pricing.

ELEVENTH DEFENSE

(Conduct Did Not Lessen Competition)

11. Plaintiffs' claims are barred, in whole or in part, because the alleged conduct that is the subject of the Complaint did not lessen competition in a relevant market or markets.

TWELFTH DEFENSE

(Laches/Timeliness)

12. Plaintiffs' claims are barred by the doctrine of laches and/or any applicable statutes

of limitation.

THIRTEENTH DEFENSE

(No Entitlement to Attorneys' Fees)

13. The Government is not entitled to receive reasonable attorneys' fees.

FOURTEENTH DEFENSE

(Incorporation of Defenses of Others)

14. Twin America adopts by reference any applicable defense pleaded by any other defendant not otherwise expressly set forth herein.

FIFTEENTH DEFENSE

(Reservation of Other Defenses)

15. Twin America reserves the right to assert other defenses as this action proceeds up to and including the time of trial.

Dated: February 11, 2013

Respectfully submitted,

/s/ Michael P. A. Cohen

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