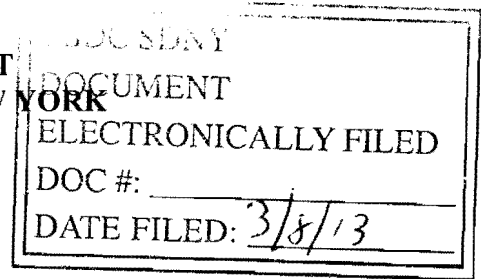


UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



 UNITED STATES OF AMERICA,)
)
 and)
)
 STATE OF NEW YORK,)
)
 Plaintiffs,)
 v.)
)
 TWIN AMERICA, LLC, et al.)
)
 Defendants.)

Civil Action No.
12-cv-8989 (ALC) (GWG)

ECF CASE

**JOINT ELECTRONIC DISCOVERY SUBMISSION NO. 1
AND [PROPOSED] ORDER**

One or more of the parties to this litigation have indicated that they believe that relevant information may exist or is stored in electronic format, and that this content is potentially responsive to current or anticipated discovery requests. This Joint Electronic Discovery Submission and [Proposed] Order (and any subsequent one) shall be the governing document(s) by which the parties and the Court manage the electronic discovery process in this action. The parties and the Court recognize that this Joint Electronic Discovery Submission No. 1 and [Proposed] Order is based on facts and circumstances as they are currently known to each party, that the electronic discovery process is iterative, and that additions and modifications to this Submission may become necessary as more information becomes known to the parties.

General Provisions

Throughout this Joint Electronic Discovery Submission and [Proposed] Order, text located in boxes are statements of the parties.

At several places in this document, where noted, each party has been asked to supply a unilateral statement regarding its ESI resources, plans for collection and review, and related issues. Those statements have been included here unchanged, and no party makes any representations regarding the accuracy of another party's unilateral statement. Nothing in a party's unilateral statement binds any other party in any way, limits any discovery that may be sought, or limits any objections that any other party may have in future proceedings and negotiations in the actions.

1. Brief Joint Statement Describing the Action

Plaintiffs United States of America and State of New York bring this civil antitrust action to obtain equitable relief against Defendants Coach USA, Inc. and International Bus Services, Inc. (collectively "Coach"); CitySights LLC and City Sights Twin, LLC (collectively "CitySights"); and their joint venture, Twin America, LLC ("Twin America"), for violations of Section 7 of the Clayton Act, 15 U.S.C. § 18; Section 1 of the Sherman Act, 15 U.S.C. § 1; Section 340 of the Donnelly Act, N.Y. Gen. Bus. Law § 340; and Section 63(12) of the New York Executive Law, N.Y. Exec. Law § 63(12). Plaintiffs' claims arise out of Coach and CitySights' combination of their New York City hop-on, hop-off sightseeing bus tour operations into Twin America pursuant to a joint venture agreement executed by Coach and City Sights in 2009.

(a) Estimated amount of Plaintiff(s)' Claims:

- Less than \$100,000
- Between \$100,000 and \$999,999
- Between \$1,000,000 and \$49,999,999
- More than \$50,000,000
- Equitable Relief (including equitable monetary relief in the likely range of \$1,000,000 to \$49,999,999)
- Other (if so, specify) _____

(b) Estimated amount of Defendant(s)' Counterclaim/Cross-Claims:

- Less than \$100,000
- Between \$100,000 and \$999,999
- Between \$1,000,000 and \$49,999,999
- More than \$50,000,000
- Equitable Relief
- Other (if so, specify): N/A (no counterclaims or cross-claims)

2. Competence. Counsel certify that they are sufficiently knowledgeable in matters relating to their clients' technological systems to discuss competently issues relating to electronic discovery, or have involved someone competent to address these issues on their behalf.

3. Meet and Confer. Pursuant to Fed. R. Civ. P. 26(f), counsel are required to meet and confer regarding certain matters relating to electronic discovery before the Initial Pretrial Conference (the Rule 16 Conference). Counsel hereby certify that they have met and conferred to discuss these issues.

Dates of parties' meet and confer conferences: January 22, 2013 (conference call); January 29, 2013 (conference call); February 13, 2013 (conference call); February 14, 2013 (conference call); February 27, 2013 (conference call); February 28, 2013 (conference call).

4. Unresolved Issues. After the meet-and-confer conferences taking place on the aforementioned dates, the following issues remain outstanding or require court intervention: ___ Preservation; ___ Search and Review; ___ Source(s) of Production; ___ Form(s) of Production; ___ Identification or Logging of Privileged Material; ___ Inadvertent Production of Privileged Material; ___ Cost Allocation; and/or ___ Other (if so, specify). To the extent specific details are needed about one or more issues in dispute, describe briefly below.

None at this time.

As set forth below, to date, the parties have addressed the following issues:

5. Preservation.

- (a) The parties have discussed the obligation to preserve potentially relevant electronically stored information (ESI) and agree to the following scope and methods for preservation, including but not limited to: retention of electronic data and implementation of a data preservation plan; identification of potentially relevant data; disclosure of the programs and manner in which the data is maintained; identification of computer system(s) utilized; and identification of the individual(s) responsible for data preservation, etc.

The parties agree that:

1. Each party will take reasonable and good faith steps to prevent the loss, destruction, alteration, overwriting, deletion, shredding, incineration, or theft of any document or data the party knows, or reasonably should know, falls within the scope of Fed. R. Civ. P. 26(b)(1). This includes all documents and data in the party's possession, custody, or control, except as noted in the following paragraph.
2. No party needs to preserve the following types of information, unless that party has a policy that results in routine preservation of such information:
 - (a) transitory information such as Internet history, cookie files, cache files, and temporary files; and
 - (b) data stored on a personal digital assistant (Blackberry, e.g.), including email, calendar data, contact data, and notes, provided that a copy of such information is routinely saved elsewhere.

Below, the parties provide the specific information requested in this item 5(a):

<p><u>DOJ</u></p>	<p>DOJ has implemented a litigation hold notice describing the information in the possession, custody, and control of DOJ that may be discoverable. This written notice instructs all recipients to retain and not to destroy this information, and provides instructions on preserving the information where it can be collected for production. The hold notice has been given to key personnel, including all members of the investigation team, and has been provided to all DOJ personnel subsequently added to the investigation team. All recipients have been required to affirmatively respond to the notice stating whether they have documents or data covered by the notice and that they have complied with its instructions. In addition, DOJ has sent periodic reminders of the hold requirements to all of the litigation hold notice recipients.</p> <p>DOJ is also subject to the requirements of the Federal Records Act and Antitrust Division Directive 2710.1 (Procedures for Handling Division Document and Information), the provisions of which apply notwithstanding (or, where applicable, in addition to) any litigation hold notice.</p> <p>The potentially relevant ESI that DOJ maintains consists of the information it collected during its pre-Complaint investigation, which includes Civil Investigative Demands (“CIDs”); documents and testimony produced from the Defendants and non-parties in response to those CIDs; documents and data produced from non-parties in response to voluntary requests; and associated communications with parties and non-parties, including email. This ESI resides in: (1) a Summation Enterprise database, which contains image and data files, primarily for documents produced to DOJ by recipients of CIDs; (2) DOJ’s email server (Microsoft Exchange 2003), which contains both discoverable and privileged/work-product communications; and (3) a set of shared document storage drives (H: and R:), which (in relevant portion) contain documents and data produced to DOJ by party and non-party recipients of CIDs and voluntary requests, as well as privileged/work-product documents generated by members of DOJ’s case team. All these sources reside on live servers in DOJ’s Washington, D.C. offices.</p> <p>The individual at DOJ with primary responsibility for the preservation of material discoverable in these actions is John</p>
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	<p>Elias, a Trial Attorney with the Antitrust Division.</p>
<p><u>NYAG</u></p>	<p>NYAG has implemented a litigation hold notice describing the information in the possession, custody, and control of NYAG that may be discoverable. This written notice instructs all recipients to retain and not to destroy this information, and provides instructions on preserving the information where it can be collected for production. The hold notice has been given to key personnel, including all members of the investigation team, and has been provided to all NYAG personnel subsequently added to the investigation team. All recipients have been spoken to individually to affirmatively respond to the notice stating whether they have documents or data covered by the notice and that they have complied with its instructions.</p> <p>The potentially relevant ESI that NYAG maintains consists of the information it collected during its pre-Complaint investigation, which includes civil investigative Subpoenas (“Subpoenas”); documents and testimony produced from the Defendants and non-parties in response to those Subpoenas; documents and data produced from non-parties in response to voluntary requests; and associated communications with parties and non-parties, including email. This ESI resides in: (1) Concordance databases, which contain image and data files, primarily for documents produced to NYAG by recipients of Subpoenas; (2) NYAG’s email server (currently Microsoft Exchange 2007 Service Pack 2), which contains both discoverable and privileged/work-product communications; and (3) a set of shared documents preserved on the shared network drive(s) associated with the custodians/creators of such data, which (in relevant portion) contain documents and data produced to NYAG by party and non-party recipients of CIDs and voluntary requests, as well as privileged/work-product documents generated by members of NYAG’s case team. All these sources reside on live servers in the NYAG’s New York City Offices.</p> <p>The individual at NYAG with primary responsibility for the preservation of material discoverable in these actions is James Yoon, an Assistant Attorney General in the Antitrust Bureau.</p>

<p><u>Twin America</u></p>	<p>Twin America has implemented a litigation hold notice describing the information in the possession, custody, and control of CitySights/City Sights Twin that may be discoverable. This written notice instructs all recipients to retain and not to destroy this information and provides instructions on preserving the information where it can be collected for production.</p> <p>The potentially relevant ESI that Twin America maintains consists of the documents and data that Twin America produced in response to the DOJ's CID and the NYAG's Subpoena; email files of key custodians; electronic documents and data of key custodians; electronic documents residing on a shared server space; and transactional sales data. This ESI resides in: (1) a database that contains image and data files for documents produced to the DOJ and the NYAG; (2) the Twin America email server, which contains both discoverable and privileged communications; (3) the electronic files of the key custodians; (4) Twin America's shared server space, and (5) Twin America's data application server space.</p> <p>The individual at Twin America with primary responsibility for the preservation of material discoverable in these actions is Israel Dembitzer.</p>
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<p><u>CitySights and City Sights Twin</u></p>	<p>CitySights/City Sights Twin has implemented a litigation hold notice describing the information in the possession, custody, and control of CitySights/City Sights Twin that may be discoverable. This written notice instructs all recipients to retain and not to destroy this information and provides instructions on preserving the information where it can be collected for production.</p> <p>The potentially relevant ESI that CitySights/City Sights Twin maintains consists of the documents and data that CitySights produced in response to the DOJ's CID and the NYAG's Subpoena; email files of key custodians; electronic documents and data of key custodians; and electronic documents residing on a shared server space. This ESI resides in: (1) a database that contains image and data files for documents produced to the DOJ and the NYAG; (2) the Twin America email server, which contains both discoverable and privileged communications; (3) the electronic files of the key custodians; and (4) Twin America's shared server space.</p> <p>The individual at CitySights/City Sights Twin with primary responsibility for the preservation of material discoverable in these actions is Israel Dembitzer.</p>
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<p><u>Coach USA and IBS</u></p>	<p>Coach USA/IBS has implemented a litigation hold notice describing the information in the possession, custody, and control of Coach USA/IBS that may be discoverable. This written notice instructs all recipients to retain and not to destroy this information and provides instructions on preserving the information where it can be collected for production. The hold notice has been given to key personnel, who have confirmed their compliance with its instructions.</p> <p>The potentially relevant ESI that Coach USA maintains consists of the documents and data produced in response to the DOJ's CID and the NYAG's Subpoena; email files of key custodians; electronic documents and data of key custodians; and electronic documents residing on a shared server space. This ESI resides in: (1) a database that contains image and data files for documents produced to the DOJ and the NYAG; (2) the Coach USA email server, which contains both discoverable and privileged communications; (3) the electronic files of the key custodians; and (4) the shared server space. With respect to IBS, following the Twin American joint venture, the relevant ESI from IBS migrated to the Twin America IT system.</p> <p>The individual at Coach/IBS with primary responsibility for the preservation of material discoverable in these actions is Ross Kinnear.</p>
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- (b) State the extent to which the parties have disclosed or have agreed to disclose the dates, contents, and/or recipients of "litigation hold" communications.

<p>The parties currently agree that no party needs to disclose the date, specific content, or specific recipients of their respective litigation hold communications, although the nature of those communications is generally described above. However, each party reserves the right to demand such disclosure in the future if a dispute arises as to the adequacy of another party's document preservation or production, potential spoliation, or the propriety of a claim of privilege or work product, or if other circumstances arise justifying such disclosure.</p>

- (c) The parties anticipate the need for judicial intervention regarding the following issues concerning the duty to preserve, the scope, or the method(s) of preserving electronically stored information:

None at this time.

6. Search and Review

- (a) The parties have discussed methodologies or protocols for the search and review of ESI, as well as the disclosure of techniques to be used. Some of the approaches that may be considered include: the use and exchange of keyword search lists, "hit reports," and/or responsiveness rates; concept search; machine learning, or other advanced analytical tools; limitations on the fields or file types to be searched; date restrictions; limitations on whether back-up, archival, legacy, or deleted ESI will be searched; testing; sampling; etc. To the extent the parties have reached agreement as to search and review methods, provide details below:

The parties have discussed potential techniques for the search and review of ESI, including manual review and the use of keyword search terms. Each party has agreed to describe their proposed ESI plan below and agrees to review this information and work cooperatively to ensure that each party's plan for the identification, culling, search, review, and production of ESI in the actions is thorough, reasonable, and comports with all applicable rules.

Defendants have indicated a desire to use keyword search term techniques in lieu of manual review to reduce the time, cost, and burden associated with the search and review of ESI. Plaintiffs are generally receptive to the use of keyword search term techniques for at least some of Defendants' ESI search and review so long as Defendants can demonstrate the adequacy and reasonableness of such techniques and work collaboratively with Plaintiffs to develop a mutually agreeable search, review, and production plan. Plaintiffs reserve the right to request that any Defendant utilize other ESI search and review techniques, including manual search and review, to target identified gaps or inadequacies in any Defendant's keyword search methodology and/or to collect targeted categories of materials (*e.g.*, board of director presentations, meeting minutes, etc.) for review. Defendants agree to meet and confer in good faith in response to such requests.

The parties have agreed that Defendants are not required to re-produce documents produced to Plaintiffs during Plaintiffs' pre-Complaint investigations. The parties have further agreed that Defendants are not required to re-run keyword searches identical to those performed during the pre-Complaint investigation (*i.e.*, searches that utilize the exact same search terms on custodians and date ranges previously searched). Plaintiffs may, however, request that Defendants run prior keyword searches on different custodians or date ranges or run keyword searches utilizing search terms that are variations on (but not identical to) prior search terms. Without waiving any right to object, Defendants agree to meet and confer in good faith with Plaintiffs on any such requests.

The parties have agreed upon the following initial ESI search and review plan regarding Defendants' responses to Plaintiffs' first set of document requests:

- (i) Within 14 days after receipt of Plaintiffs' first set of document requests, each Defendant shall propose a list of custodians (including shared sources) whose files will be searched for potentially responsive documents. In order for Plaintiffs to properly evaluate Defendants' proposed lists, Defendants shall produce organizational charts (or equivalent personnel information) indicating the roles and responsibilities of employees currently or previously involved in Defendants' provision of hop-on/hop-off sightseeing bus tours in New York City, the negotiation and formation of the Twin America joint venture, and/or any other aspect of Defendants' business that may be relevant to the document requests. Upon receipt of Defendants' proposed custodian lists, the parties will meet and confer in good faith to

develop a final list of custodians whose files should be searched for potentially responsive documents.

- (ii) Within 21 days after the parties have agreed upon a list of custodians, each Defendant shall provide Plaintiffs: (A) an estimate of the total amount of data collected from each custodian or shared source; (B) a description of the Defendant's proposed search methodology, including an initial list of keyword terms proposed to be used, and the relevant date ranges and custodians for these keyword term searches; and (C) an accounting of the frequency with which the Defendant's proposed search terms appear in the collection of documents. Upon Plaintiffs' receipt of this information, the parties will make reasonable efforts to agree upon search methodologies, including any keyword search terms. During this meet-and-confer process, Defendants agree to consider in good faith any keyword term searches or search methodologies requested by Plaintiffs.
- (iii) Within 7 days after the parties have agreed upon the search methodologies, each Defendant will provide Plaintiffs a proposed schedule for a rolling production of responsive non-privilege documents resulting from this search and review. At that time, Defendants will be willing to discuss with Plaintiffs the possibility of engaging in a priority review and production of documents from certain custodians.

Defendants agree to the foregoing initial ESI search and review plan without waiving any right to object to Plaintiffs' first set of document requests. To the extent Defendants are unable to adhere to the initial ESI search and review plan upon using reasonable efforts, the parties will meet and confer in good faith to modify the process and schedule.

To the extent that Plaintiffs issue additional document requests, or the parties or the Court resolve disputes as to the appropriate scope of Plaintiffs' first set of document requests after the development of the initial ESI search and review plan, the parties will meet and confer in good faith to develop additional search methodologies and keyword search terms as necessary for any supplemental searches.

<u>DOJ</u>	Because DOJ possesses only a limited universe of documents and data that may be discoverable in the action, much of which was produced by parties and non-parties during its investigation, it will not need to use any keyword searching or other non-manual techniques to identify or produce potentially responsive material. When review is necessary to cull privileged or work-product documents from the productions, this will be done by manual review by members of DOJ's case team.
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<u>NYAG</u>	Because NYAG possesses only a limited universe of documents and data that may be discoverable in the action, much of which was produced by parties and non-parties during its investigation, it will not need to use any keyword searching or other non-manual techniques to identify or produce potentially responsive material. When review is necessary to cull privileged or work-product documents from the productions, this will be done by manual review by members of NYAG's case team.
<u>Twin America</u>	Twin America plans to use the procedures described above for search and review of ESI.
<u>CitySights and City Sights Twin</u>	CitySights and City Sights Twin plan to use the procedures described above for search and review of ESI.
<u>Coach USA and IBS</u>	Coach USA and IBS plan to use the procedures described above for search and review of ESI.

- (b) The parties anticipate the need for judicial intervention regarding the following issues concerning the search and review of electronically stored information:

None at this time.

7. Production

- (a) **Source(s) of Electronically Stored Information.** The parties anticipate that discovery may occur from one or more of the following potential source(s) of electronically stored information [e.g., email, word processing documents, spreadsheets, presentations, databases, instant messages, web sites, blogs, social media, ephemeral data, etc.]:

The parties agree to search and produce responsive documents and data from all of the following sources, to the extent those sources exist within the party's possession, custody, and control, or that of its individual custodians: document servers, email servers and programs (including any calendar, contact, note, and task information residing therein, and including personal email accounts), instant messaging servers, databases, repositories for audio and video records (including voicemail records, call logs, and text messages), local electronic devices (such as hard drives and disk drives of employees' desktop or laptop computers), portable devices (such as mobile phones, PDAs, iPads and tablets, thumb drives, portable hard drives, disks, CDs, and DVDs), and third-party hosted storage or platforms, including cloud storage.

If any party concludes that any of the sources of information listed above are inaccessible or that collection from or search of any of those sources would be unduly burdensome, the parties will meet and confer in an attempt to resolve the matter as early as practicable.

With respect to archive sources that may contain discoverable and responsive documents and data (whether residing on archive servers, backup tapes, or otherwise), the parties have agreed to describe such sources in this submission (see Item 5(a) above), including how such sources may be accessed and searched, even if the party objects to including such sources in its document collection and production. Plaintiffs do not request any search and review of ESI from these archive sources at this time but reserve the right to demand collection and production from archive sources when warranted under applicable law and rules.

In addition to these sources of ESI, the parties agree to search and produce discoverable and responsive documents and data that exist in hard copy form, wherever they may reside, including libraries, filing and records departments, desks, cabinets, and warehouses or other archives.

In addition, the parties agree to ask each of their document custodians whether he or she maintains potentially responsive documents or data in any of the electronic or hard-copy sources listed above, whether at the person's office, home, or online.

- (b) **Limitations on Production.** The parties have discussed factors relating to the scope of production, including but not limited to: (i) number of custodians; (ii) identity of custodians; (iii) date ranges for which potentially relevant data will be drawn; (iv) locations of data; (v) timing of productions (including phased discovery or rolling productions); and (vi) electronically stored information in the custody or control of non-parties. To the extent the parties have reached agreements related to any of these factors, they are described below:

Custodians: See Item 6(a) herein.

Date Range: The parties agree that the default date range of discoverable documents and data will be January 1, 2007 to the present. However, the parties agree that any party may propose a different date range for any particular custodian or type of documents or data, when warranted. Any party proposing a different date range will inform the other parties of the new date range and state to which documents or custodian it proposes the new date range to apply, and the parties will seek to resolve any disputes on that issue.

Locations of Data; Timing of Productions: As discussed in Item 6(a), the parties intend to hold a series of meet-and-confer sessions to determine the appropriate limits of ESI collection and production and develop a schedule for the rolling production of documents intended to facilitate an orderly production and maintain the proposed case schedule.

(c) **Form(s) of Production:**

- 1) The parties have reached the following agreements regarding the form(s) of production:

The parties are working on a draft of a Specifications for Production of ESI and Hard Copy Documents. During the upcoming negotiations concerning document collection and production, the parties will work toward finalizing these specifications and alert the Court to any disputes arising therefrom.

All parties have agreed to produce documents and data according to these Specifications, when finalized. To the extent a party finds that production of any particular document or data according to the Specifications is impossible, impracticable, or entails significantly greater burden than expected, the party will inform the other parties and seek agreement to an acceptable alternative format.

- 2) Please specify any exceptions to the form(s) of production indicated above (e.g., word processing documents in TIFF with load files, but spreadsheets in native form):

The Specifications for Production of ESI and Hard Copy Documents will address this issue.

- 3) The parties anticipate the need for judicial intervention regarding the following issues concerning the form(s) of production:

None at this time.

(d) Privileged Material

- 1) **Identification.** The parties have agreed to the following method(s) for the identification (including the logging, if any, or alternatively, the disclosure of the number of documents withheld), and the redaction of privileged documents, including documents located outside the United States that would be privileged under United States law:

On a date to be determined in the case schedule, each party agrees to serve all other parties with a log of all documents withheld from its production or produced in redacted form on ground of attorney-client privilege, attorney work-product, or other applicable privilege ("privilege log"). Such privilege log may consist of certain metadata fields for each of the listed documents, as long as it comports with all requirements herein. In addition, each party will serve a revised version of any privilege log served on DOJ or the NYAG during Plaintiffs' pre-Complaint investigations, or certify that the party's previously produced privilege log remains accurate and complete. Plaintiffs reserve all rights to challenge the adequacy of these previously produced logs, as well as any of Defendants' specific privilege assertions on the log upon Defendants' certification.

Privilege logs must conform to Federal Rule of Civil Procedure 26(b)(5), S.D.N.Y. Local Civil Rule 26.2, and section II(D) and (E) of the Pilot Project Standing Order, and shall contain the following information:

- (1) the type of document, *e.g.*, letter or memorandum; (2) the general subject matter of the document; (3) the date of the document; (4) the author of the document, the addressees of the document, and any other recipients (indicating in separate columns on the log whether the recipients are in the "To," "CC," or "BCC" field of the document), and where not apparent, the relationship of the author, addressees, and recipients to each other; (5) the nature of the privilege (including work product) which is being claimed, and if the privilege is governed by state law, the state's privilege rule being invoked; (6) for documents redacted rather than withheld entirely, the Bates number of the produced version; and (7) for documents that are part of a document family, whether the document is a parent or child document and an identification of all other documents in the document family.

The logs must be provided in text-searchable format and include a key identifying by name, position, and employer each individual listed on the log, including all attorneys and attorneys' agents (such as paralegals and litigation support staff).

If a party produces a privilege log based in whole or in part on metadata for the listed documents, it may redact any metadata information that discloses privileged information.

The parties agree that the following documents need not be produced or described on a privilege log if the document is protected from disclosure in this action by the attorney-client privilege, work-product protection, or

other applicable privilege:

(1) a party's communications exclusively with or between its in-house or external litigation counsel or their employees or agents solely concerning (i) the NYAG or DOJ's pre-Complaint investigation of Twin America; (ii) the action titled *Continental Guest Services Corp. v. International Bus Services, Inc., et al.*, Index No. 600643/2010 (inclusive of both the New York Supreme Court and Appellate Division matters); or (iii) this Action;

(2) internal communications (including email) exclusively between or among any Defendant's in-house or external litigation counsel, or their employees or agents, and consultants working at the direction of such counsel solely concerning (i) the NYAG or DOJ's pre-Complaint investigation of Twin America; (ii) the action titled *Continental Guest Services Corp. v. International Bus Services, Inc., et al.*, Index No. 600643/2010 (inclusive of both the New York Supreme Court and Appellate Division matters); or (iii) this Action;

(3) work product created by a party's in-house or external litigation counsel or their employees or agents in anticipation of litigation with the NYAG or DOJ about the formation and operation of Twin America, including work product generated during and in connection with the NYAG or DOJ's pre-Complaint investigation of Twin America;

(4) internal communications (including email) exclusively between or among DOJ or NYAG attorneys, staff, and consultants working at the direction of those attorneys;

(5) internal memoranda, status reports, notes, and other work product created by DOJ or NYAG attorneys, staff, and consultants working at the direction of those attorneys;

(6) drafts of documents such as pleadings, other filings, discovery requests and responses, correspondence, and other intermediate work product created by DOJ or NYAG attorneys, staff, and consultants working at the direction of those attorneys; or Defendants' in-house counsel and external litigation counsel, and staff and consultants working at the direction of those attorneys;

(7) communications exclusively between DOJ attorneys, staff, and consultants working at the direction of those attorneys, and NYAG attorneys, staff, and consultants working at the direction of those

attorneys.

Nothing in the provisions above prevents any party from challenging any claim of privilege or other protection asserted by another party. The parties further agree that these provisions supersede the provisions of section II(D) of the Pilot Project Standing Order.

- 2) **Inadvertent Production / Claw-Back Agreements.** Pursuant to Fed R. Civ. Proc. 26(b)(5) and F.R.E. 502(e), the parties have agreed to the following concerning the inadvertent production of privileged documents (e.g. "quick-peek" agreements, on-site examinations, nonwaiver agreements or orders pursuant to F.R.E. 502(d), etc.):

The parties are working on a draft of a Stipulated Agreement and [Proposed] Order Regarding Preservation of Privilege Claims. The parties will work toward finalizing this stipulation and submit it to the Court for approval and entry.

- 3) The parties have discussed a 502(d) Order. Yes X; No .

The provisions of any such proposed Order shall be set forth in a separate document and presented to the Court for its consideration.

The parties are working on a draft of a Stipulated Agreement and [Proposed] Order Regarding Preservation of Privilege Claims. The parties will work toward finalizing this stipulation and submit it to the Court for approval and entry.

- (e) **Cost of Production.** The parties have analyzed their clients' data repositories and have estimated the costs associated with the production of electronically stored information. The factors and components underlying these costs are estimated as follows:

i. **Costs:**

<u>DOJ</u>	DOJ will incur costs in terms of time spent by its attorneys and staff in preparing documents for production, and in the partial dedication of shared resources (such as server space). However, the cost of DOJ's litigation production is not "billed" or readily communicated in terms of dollars, nor does DOJ routinely calculate such cost per litigation (except when making an application for costs in litigation or settlement).
<u>NYAG</u>	NYAG will incur costs in terms of time spent by its attorneys and staff in preparing documents for production, and in the partial dedication of shared resources (such as server space). However, the cost of NYAG's litigation production is not "billed" or readily communicated in terms of dollars, nor does NYAG routinely calculate such cost per litigation (except when making an application for costs in litigation or settlement).
<u>Twin America</u>	Twin America will incur significant costs in terms of time spent by its attorneys and staff in collecting, reviewing, and preparing documents for production. Twin America will also incur vendor costs in terms of time spent in collecting, storing, searching, and preparing documents for production.
<u>CitySights and City Sights Twin</u>	CitySights and City Sights Twin will incur significant costs in terms of time spent by its attorneys and staff in collecting, reviewing, and preparing documents for production. CitySights and City Sights Twin will also incur vendor costs in terms of time spent in collecting, storing, searching, and preparing documents for production.
<u>Coach USA and IBS</u>	Coach USA/IBS will incur costs in terms of time spent by its attorneys and staff in collecting, reviewing, and preparing documents for production. Coach USA/IBS will also incur vendor costs in terms of time spent in collecting, storing, searching, and preparing documents for production.

- ii. **Cost Allocation.** The parties have considered cost-shifting or cost-sharing and have reached the following agreements, if any:

Each party agrees to bear its own costs of discovery, without prejudice to any application for costs pursuant to 15 U.S.C. §§ 15, 15a, 15c, N.Y. Gen. Bus. Law § 340, or N.Y. Exec. Law § 63(12).

- iii. **Cost Savings.** The parties have considered cost-saving measures, such as the use of a common electronic discovery vendor or a shared document repository, and have reached the following agreements, if any:

N/A

- (f) The parties anticipate the need for judicial intervention regarding the following issues concerning the production of electronically stored information:

None at this time.

8. Other Issues:

None at this time.

The preceding constitutes the agreement(s) reached, and disputes existing, (if any) between the parties to certain matters concerning electronic discovery as of this date. To the extent additional agreements are reached, modifications are necessary, or disputes are identified, they will be outlined in subsequent submissions or agreements and promptly presented to the Court. This Stipulation is effective upon execution by the parties, without regard to filing with the Court, and may be signed in counterparts.

The next scheduled meet-and-confer conference to address electronic discovery issues, including the status of electronic discovery and any issues or disputes that have arisen since the last conference or Order, shall take place: at a date to be mutually agreed upon by the parties.

The next scheduled conference with the Court for purposes of updating the Court on electronic discovery issues has been scheduled for . Additional conferences, or written

status reports, shall be set every 3 to 4 weeks, as determined by the parties and the Court, based on the complexity of the issues at hand. An agenda should be submitted to the Court four (4) days before such conference indicating the issues to be raised by the parties. The parties may jointly seek to adjourn the conference with the Court by telephone call 48 hours in advance of a scheduled conference, if the parties agree that there are no issues requiring Court intervention.

Check this box if the parties believe that there exist a sufficient number of e-discovery issues, or the factors at issue are sufficiently complex, that such issues may be most efficiently adjudicated before a Magistrate Judge.

Additional Instructions or Orders, if any:

AGREED TO:
Dated: March 1, 2013

By: William H. Stallings
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U.S. Department of Justice
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For the United States

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*For Coach USA, Inc. and International Bus Services,
Inc.*

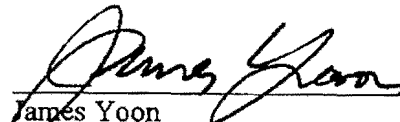
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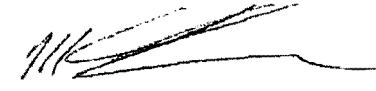
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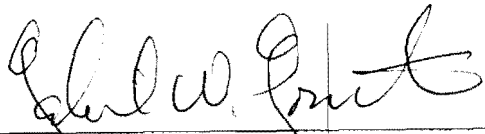

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SO ORDERED:



JUDGE GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE

March 8, 2013