UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NATASHA BHANDARI, on behalf of herself and all others similarly situated,

Plaintiff,
v.

TWIN AMERICA, LLC,
COACH USA, INC.,
INTERNATIONAL BUS SERVICES, INC.,
CITYSIGHTS LLC, and
CITY SIGHTS TWIN, LLC,

Defendants.

Civil Action No.: 13-CV-711 (ALC)(GWG)

ECF Case

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiff Natasha Bhandari brings this antitrust action on her own behalf and on behalf of a similarly situated class (the "Class") against Coach USA, Inc. and International Bus Services, Inc. (collectively, "Coach"); CitySights LLC and City Sights Twin America, LLC (collectively, "City Sights"); and Twin America, LLC ("Twin America"). Coach, City Sights, and Twin America are collectively referred to herein as "defendants."

NATURE OF THE CASE

1. This case concerns an unlawful scheme orchestrated by Coach and City Sights, formerly the two main competitors in the market for "hop-on, hop-off" bus tours in New York City, to fix prices in the market for "hop-on, hop-off" bus tours. To provide cover for their plan to fix prices and eliminate competition, Coach and City Sights decided to engage in a purported joint venture, Twin America. However, the improper purpose and effect of defendants' plan was to fix prices, a *per se* violation of the federal antitrust laws.

2. The record to date demonstrates—even prior to the taking of discovery—that the purpose and effect of the defendants' plan was to fix prices.

- Nine months before consummation, Coach proposed to its parent that an agreement with City Sights would allow both firms to "***increase fares by 10%***";

- Four months later, Coach explained to City Sights that an agreement between the two firms would permit "***flexibility regarding pricing***";

- One month before the alleged joint venture, Coach represented to its parent that without an agreement with City Sights, "competition" would make a price increase impossible;

- Shortly after the joint venture, defendants admittedly raised prices for City Sights by 10-17% to "***match***" fare increases by Coach implemented just prior to the parties' agreement; and

- Defendants maintained what the Surface Transportation Board has referred to as "***unchecked rate increases***" for years after the joint venture.

Meanwhile, from the very outset, the agreement had no legitimate business purpose. Rather, the agreement was simply an improper attempt to skirt the antitrust laws.

3. Since entering the agreement and ceasing to compete nearly four years ago, defendants have successfully fixed the price of "hop-on, hop-off" bus tours in New York City at 10 to 17 percent above the previously prevailing market rate. Defendants have been able to maintain these artificially inflated prices even in the face of reduced consumer demand due to the recession.

4. Defendants' joint venture agreement has never been approved by state or federal regulators. To the contrary, the Attorney General's Office of the State of New York immediately sought to investigate the formation of the joint venture. Aware that their joint venture raised serious antitrust concerns, and with intent to subvert the government's inquiry, defendants temporarily staved off an antitrust investigation by belatedly applying to the Surface Transportation Board ("STB") for approval of the joint venture. Even the STB noted its concern that its "***processes may have been manipulated to avoid the [antitrust] inquiry***." Ultimately, defendants' effort was

unsuccessful, and federal and state regulators together recently filed a federal court antitrust action seeking to enjoin operation of the joint venture.

5. Defendants' conduct in connection with the Twin America transaction was price-fixing in clear violation of Section 1 of the Sherman Act. By willfully acquiring and maintaining monopoly power in the hop-on, hop-off bus tour market through the same means, defendants also violated Section 2 of the Sherman Act. Moreover, because the joint venture agreement also had the likely effect—and the express purpose—of substantially lessening competition and creating a monopoly, defendants violated Section 7 of the Clayton Act. For the same reasons, defendants have also violated New York's Donnelly Act.

JURISDICTION AND VENUE

6. This action is instituted under Section 4 of the Clayton Act, 15 U.S.C. § 15, to recover treble damages and the costs of this suit, including reasonable attorneys' fees, against defendants for the injuries sustained by plaintiff and the members of the Class by reasons of defendants' violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2, and Section 7 of the Clayton Act, 15 U.S.C. § 18. The action is also instituted under New York's Donnelly Act, N.Y. Gen. Bus. Law § 340, to recover treble damages and the costs of this suit, including reasonable attorneys' fees, for defendants' violations of that Act.

7. The Court has subject-matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1337. The Court also has supplemental jurisdiction over plaintiff's Donnelley Act claim pursuant to 28 U.S.C. § 1367(a).

8. The Court has personal jurisdiction over each defendant and venue is proper in this district pursuant to Sections 4 and 12, of the Clayton Act, 15 U.S.C. §§ 15, 22, because, during the

Class Period (defined below), each defendant resided in, was found in, had an agent in, and/or transacted business in the district.

THE PARTIES

9. Plaintiff Natasha Bhandari is a citizen and resident of Pleasantville, New York. Ms. Bhandari directly purchased tickets for hop-on, hop-off bus tours of New York City from one or more defendants and was overcharged for her purchase due to the acts alleged in this complaint.

10. Coach USA 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"), an international transportation company based in the United Kingdom and registered in Perth, Scotland. Coach controls numerous American motor passenger carriers, including airport shuttles in the New York City area and the discount express bus service Megabus.com. 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 unaffiliated with Stagecoach.

11. International Bus Services ("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, and acts as one of its motor passenger carriers, with a focus on the New York/New Jersey area.

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

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

14. Twin America is a Delaware limited liability company with its principal place of business in New York, New York. Twin America was established pursuant to an agreement executed on March 17, 2009, between IBS and City Sights Twin (the "Transaction"). Pursuant to the Transaction, Coach (through IBS) and City Sights (through City Sights Twin) contributed all of their New York City hop-on, hop-off bus tour operations and assets to Twin America; acquired a 60 percent and 40 percent membership interest in Twin America, respectively; and divided management control of Twin America. The 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.

BACKGROUND

A. Hop-On, Hop-Off Bus Tours in New York City

15. 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 then "hop on" another bus to continue on the tour route using the same ticket. Tickets range from one to four days of validity.

16. 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.

17. Hop-on, hop-off bus tour businesses in New York City must operate large numbers of buses in order to succeed. A customer who "hops off" a bus to visit an attraction and then decides to "hop on" again and resume the tour will expect to wait no more than ten or fifteen minutes for another bus to arrive. Indeed, excessive wait times are one of the most frequent customer complaints received by hop-on, hop-off tour bus operators. In order to ensure minimum wait times for its customers, a hop-on, hop-off bus tour business must secure permits from the New York City Department of Transportation ("NYCDOT") to create a large network of convenient—and legal—pick-up and drop-off locations where new customers can also purchase tickets and begin their tours.

18. 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.

19. 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. 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.

20. 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 service offerings

largely independently of the prices and service 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 services as close competitors to or substitutes for their hop-on, hop-off bus tours, and instead view them as complements to their services.

B. City Sights Enters the Market and Threatens Coach's Dominant Position

21. 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 ("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 percent of the market. In 2000, Coach acquired many of Apple Tours's assets and employees after 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.

22. In 2005, Coach's market dominance came under attack with the entry of City Sights into the hop-on, hop-off bus tour market. City Sights was founded by an existing New York City tourism firm with years of experience primarily managing airport transportation businesses.

23. Before City Sights could begin operating its hop-on, hop-off bus tours, it had to obtain authorization from 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.

24. 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 service 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 services from third-party providers at a reduced combined ticket price.

25. In the years following its entry into the hop-on, hop-off bus tour market, 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.

26. 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 service 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.

27. 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.

28. 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.

29. The 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 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 the 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.

C. Coach's Plan to End Competition and Fix Prices Above the Market Rate

30. 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 toward the express goal of ending competition and fixing hop-on, hop-off bus tour prices above the market rate. Starting in June 2008, Souter traveled to New York City to meet with City Sights's President, Mark Marmurstein.

31. 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. In a proposal that Coach transmitted to City Sights in September 2008, Coach made clear that the basic purpose of such a joint venture would be anticompetitive in nature. Indeed, Coach expressly stated in the proposal that the benefits of the combination would include "easier decision making as the sole player in [the] 'double deck' market," and "flexibility regarding pricing."

32. 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 eventually executed the Transaction forming Twin America on March 17, 2009.

33. The underlying anticompetitive purpose of the joint venture was clear from the very start of Coach's negotiations with City Sights. 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 focused on the 10 percent fare increase assumption. City Sights, for its part, developed its own hopeful internal projection of the millions of dollars the 10 percent fare increase would yield, and shared and discussed this analysis with Coach.

34. By December 2008, the plan to jointly raise prices by 10 percent was firmly established as the 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 central to Coach's February 2009 presentation to Stagecoach's board seeking approval for the Transaction. A Coach executive advised the Stagecoach board that 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 was no opportunity to implement a fare increase "due to competition."

35. There were no other legitimate, non-pretextual justifications underlying defendants' decision to enter into the joint venture agreement. It was simply the mechanism by which to eliminate competition and increase prices, which they could not do absent an agreement between Coach and City Sights. As noted by the STB in its decision denying approval to defendants' venture, "the elimination of a close competitor appears to have ended the market constraints that prevented City Sights from raising its prices without fear of a market response. After the transaction, Twin America was free to decide to raise its prices." This was precisely defendants' plan.

36. Consistent with defendants' projections, in early 2009, over a period of approximately two months, defendants implemented the joint venture and began their successful effort to fix prices substantially above the market rate. 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. In the course of the proceedings before the STB, Twin America's counsel conceded that City Sights's prices were increased in order to "match" the fares of Gray Line.

37. The 2009 price increase is significant when compared to Gray Line's historical price changes for the 18 month period between February 2007 and August 2008. During that period, Gray Line had increased its fares twice with a range of just 1 to 3 percent. Defendants' significant price increases in the period surrounding the Twin America deal are also noteworthy because they were executed in the face of difficult market conditions of declining demand caused in part by the worldwide economic crisis. Between 2001 and 2011, New York City experienced an increase of approximately two million visitors every year (compared to the prior year) *except for 2009*. In 2009, 1.3 million *fewer* visitors came to New York City (compared to 2008), the only decline in visitors during that decade. Similarly, between 2003 and 2011, direct visitor spending in New York City

increased every year by approximately $2 billion per year, *except for 2009*, during which New York City experienced a decline of $3.8 billion in direct visitor spending. Absent defendants' price-fixing conspiracy, economics would suggest that lower demand would lead to price reductions—not the 10 percent and greater price increases that defendants profitably implemented.

38. 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." In other words, defendants have maintained these two separate brands for the express purpose of avoiding the appearance of an unlawful conspiracy to fix prices above the market rate.

D. Defendants' Attempt to Evade Antitrust Scrutiny By Seeking STB Review

39. 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.

40. 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.

41. Coach and City Sights initially proceeded as if Twin America's services were subject only to local jurisdiction. They subsequently engaged the federal licensing process by filing their application with the STB, but not until four months after the joint venture was actually formed. The trigger for their federal filing was the New York State Attorney General's service of subpoenas on Coach and City Sights concerning the antitrust implications of Twin America's formation and operation.

42. Indeed, in their efforts to avoid the State's antitrust inquiry, Coach and City Sights went as far as to modify the transaction to include interstate transportation, thereby raising the likelihood that the transaction would come within the scope of the Board's jurisdiction.

43. 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."

44. 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 transaction resulted in "unchecked rate increases"; 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.

45. Further, as noted by the STB, the 2009 fare increases of 10 to 17 percent—completed after the formation of Twin America—were put in place during a period of depressed passenger demand and when fuel prices were dropping.

46. 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.

E. Federal and State Regulators' Suit to Enjoin Defendants' Antitrust Violations

47. On December 11, 2012, the United States and the State of New York filed a complaint against defendants in the United States District Court for the Southern District of New York alleging violations of Sections 1 and 2 of the Sherman Act and Section 7 of the Clayton Act.

DEFENDANTS' MONOPOLY POWER

48. Defendants possess monopoly power in the relevant market. Twin America currently operates approximately 99 percent of New York City's hop-on, hop-off bus tours. Defendants control pricing for hop-on, hop-off bus tours in New York City and, accordingly, have monopoly power with respect to such tours. Defendants have demonstrated the ability to sell their services profitably at prices substantially above the competitive level and above marginal costs, without

losing significant sales. Defendants' ability to profitably sustain 10 to 17 percent price increases for over three years is direct evidence of their possession of monopoly power.

49. Defendants willfully acquired monopoly power, and have willfully maintained such power, through illegitimate means. 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, such as bus tours with a fixed itinerary and duration. 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.

ANTICOMPETITIVE EFFECTS

50. 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 has created a new entity with monopoly power, owning over 120 double-decker buses and controlling approximately 99 percent of the relevant market. This market concentration creates a presumption that the joint venture substantially lessens competition.

51. 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.

52. 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 the New York City hop-on, hop-off bus tour market exceeded 5,000. 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 creation of the joint venture is far greater than the 200 point change that renders a transaction presumptively anticompetitive under the Guidelines.

53. The formation of Twin America eliminated 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 service offerings. The elimination of this

[1] See U.S. Dep't of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 5.3 (2010), available at http://www.justice.goviatr/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.

competition increased the likelihood that City Sights and Coach would raise prices and refrain from improving their service offerings.

54. 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.

LACK OF ENTRY AND EFFICIENCIES

55. In the nearly four years of Twin America's operation, neither entry nor expansion of the hop-on, hop-off bus tour market has taken place to an extent that would sufficiently replace the competition lost by the combination of City Sights and Coach.

56. 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.

57. 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 wait times similar to Twin America's. Without a large fleet of buses to offer comparable wait times, 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.

58. 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.

59. Expansion by Big Taxi Tours 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 Tours 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 Tours 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. Big Taxi Tours was not able to discipline defendants' early 2009 price increase, and has not replaced the competition lost due to the formation of Twin America.

60. 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 Tours, Go New York Tours'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.

61. Another New York City tourism company, Skyline Multimedia Entertainment, Inc., is contemplating entering the hop-on, hop-off bus tour market. Skyline currently operates a virtual tour simulator, narrated by actor Kevin Bacon, located inside the Empire State Building. However, Skyline has no prior experience operating hop-on, hop-off bus tours—nor bus tours of any kind for that matter—and its plans to compete with Twin America are not yet definitive.

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

CLASS ALLEGATIONS

63. Plaintiff brings this lawsuit on behalf of herself and as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following Class:

> All persons who, or entities that, directly purchased "hop-on, hop-off" bus tours from defendants from March 17, 2009, until the effects of defendants' anticompetitive conduct cease (the "Class Period"). Excluded from the Class are defendants, their present and former parents, subsidiaries, affiliates, and employees.

64. Plaintiff does not know the exact number of Class members because such information is in the control of defendants, but based upon the nature of the trade and commerce involved, plaintiff believes the Class numbers in the thousands.

65. The Class is so numerous that joinder of all members is impracticable.

66. There are numerous questions of law and fact common to the Class, including most importantly whether defendants' conduct is price-fixing in violation of the Sherman Act.

67. In addition, the following questions of law and fact are common to the Class

(a) the definition of the relevant market;

(b) whether defendants' joint venture had any legitimate business purpose beyond enabling defendants to fix prices above the market rate;

(c) whether defendants possess monopoly power;

(d) whether defendants willfully acquired and/or maintained that monopoly power through illegitimate means; and

(e) whether the effect of defendants' merger transaction has been to substantially lessen competition and to create a monopoly.

68. Plaintiff's claims seeking overcharge damages as a direct purchaser of hop-on, hop-off bus tours are typical of the claims of Class members.

69. Plaintiff is represented by experienced antitrust counsel and will fairly and adequately protect the interest of the Class.

70. The above-described questions of law and fact common to the Class predominate over any questions affecting only individual members.

71. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. There are no significant foreseeable difficulties involved with managing a direct purchaser class action seeking overcharge damages for defendants' antitrust violations. A class action will permit a large number of similarly situated persons to adjudicate common claims simultaneously, efficiently, and without the duplication of effort or expense that numerous individual actions would engender. Moreover, the United States District Court for the Southern District of New York is a desirable forum for adjudicating common claims arising from defendants' conduct largely within the district.

ANTITRUST INJURY AND STANDING

72. On behalf of herself and the Class, plaintiff realleges and incorporates all of the preceding paragraphs as if set forth fully herein.

73. As direct purchasers of hop-on, hop-off bus tour tickets from defendants at artificially inflated prices, plaintiff and the other Class members have suffered antitrust injuries and have standing to pursue all of the federal and state law antitrust claims set forth below.

ANTITRUST VIOLATIONS ALLEGED

FIRST CAUSE OF ACTION
(Violation of Section 1 of the Sherman Act)

74. Plaintiff realleges and incorporates the preceding paragraphs as if set forth fully herein.

75. Coach's and City Sights's agreement to combine their hop-on, hop-off bus tour assets and operations, 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 alleged above.

SECOND CAUSE OF ACTION
(Violation of Section 2 of the Sherman Act)

76. Plaintiff realleges and incorporates the preceding paragraphs as if set forth fully herein.

77. Defendants monopolized the market for hop-on, hop-off bus tours in New York City in violation of Section 2 of the Sherman Act (15 U.S.C. § 2).

78. Defendants, by and through their officers, directors, employees, agents, and/or other representatives, engaged in anticompetitive exclusionary conduct, as set forth above, that was intended to and had the effect of illegally establishing and maintaining Twin America's monopoly in the New York City hop-on, hop-off bus-tour market.

79. Defendants have effectively excluded competition from a significant and substantial portion of the New York City market, unlawfully expanded and maintained their combined market share, and profited from their anticompetitive conduct by setting and maintaining prices at artificially high levels and by otherwise reaping the benefits of their illegally obtained and maintained monopoly power.

80. There is no legitimate business justification for defendants' anticompetitive actions and conduct through which they established, expanded, and maintained their monopoly power in the New York City hop-on, hop-off bus-tour market.

THIRD CAUSE OF ACTION
(Violation of Section 7 of the Clayton Act)

81. Plaintiff realleges and incorporates the preceding paragraphs as if set forth fully herein.

82. By entering into the Transaction identified above, 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.

83. 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.

FOURTH CAUSE OF ACTION
(Violation of the Donnelly Act)

84. On behalf of herself and the Class, plaintiff realleges and incorporates the preceding paragraphs as if set forth fully herein.

85. Through the misconduct described above, defendants also violated the Donnelly Act, N.Y. Gen. Bus. Law § 340.

PRAYER FOR RELIEF

86. For the reasons set forth above, plaintiff requests:

(a) that the Court determine that this action may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and direct that reasonable notice of this action, as provided by Rule 23, be given to the Class;

(b) that the Court adjudge defendants' conduct to violate Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2; Section 7 of the Clayton Act, 15 U.S.C. § 18; and the Donnelly Act, N.Y. Gen. Bus. Law § 340;

(c) that judgment be entered for plaintiff and members of the Class for three times the amount of damages sustained as allowed by law, together with the costs of this action, including reasonable attorneys' fees;

(d) that plaintiff and the Class be awarded pre-judgment and post-judgment interest at the highest legal rate from the earliest date allowable to the extent provided by law; and

(e) that plaintiff and the Class have such other, further, or different relief as the case may require and the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

87. Plaintiff demands a trial by jury on all issues so triable.

DATED: March 13, 2013

Respectfully submitted,

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