Gina Kim vs. Coach, Inc., et al. Doc. 12

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GINA KIM, on behalf of a class consisting of herself and all other persons similarly situated,

Plaintiffs,

v.

COACH, INC., a Maryland corporation, and COACH SERVICES, INC., a Maryland corporation,

Defendants, and, as to Coach, Inc., counterclaim plaintiff,

v.

JAY CARLSON, a Washington resident; CARLSON LEGAL, a Washington resident; CHRISTOPHER CARNEY, a Washington resident; CARNEY GILLESPIE & ISITT PLLC, a Washington PLLC,

Counterclaim defendants.

No. 2:11-cv-00214-RSM

DECLARATION OF PATRICK EAGAN IN SUPPORT OF DEFENDANT COACH, INC.'S MOTION FOR PROTECTIVE ORDER

I, Patrick Eagan, declare as follows:

1. I am one of the attorneys for Coach, Inc. ("Coach") in this lawsuit. I am an attorney in the Seattle office of DLA Piper LLP. I have personal knowledge of the facts set

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forth in this declaration, and if called to do so, I can and would testify competently thereto.

2. This litigation centers on a letter received by plaintiff Gina Kim in connection with her listing of a "NEW" Coach bag on eBay. The letter was written by Coach's law firm, Gibney Anthony & Flaherty LLP ("Gibney"), and is attached to Coach's Answer and Counterclaim (Dkt. No. 6). It is my understanding from representations by counsel for Ms. Kim that Ms. Kim's eBay listing was also removed from the website for a short period of time.

3. The allegations in the Amended Complaint center around plaintiff's assertion that there was no investigation into Ms. Kim's listing before Gibney sent the letter. *See, e.g.*, Amended Complaint (Dkt. No. 4) at 1-6 (repeatedly alleging that Coach conducted no investigation, no reasonable investigation, or no thorough investigation).

4. Counsel for Ms. Kim has also asserted in the newsmedia that Coach conducted no investigation, which assertion resulted in broad negative reaction toward Coach.

5. Coach's lawyers at Gibney did, in fact, conduct an investigation before Ms. Kim received the letter. Details about that investigation are central to Coach's efforts to defend itself in this litigation.

6. In order to reveal details about the investigation into Ms. Kim's listing, Coach must reveal information regarding its efforts to limit counterfeiting on websites such as eBay. This information includes the process that Gibney uses to identify listings of potentially counterfeit goods, and then to take action against potential counterfeiters.

7. The details of Coach's online anti-counterfeiting efforts are highly confidential. Disclosure of that information would be enormously valuable to counterfeiters and potential counterfeiters, who would use such information as a blueprint for evading detection.

8. Counterfeiting is an enormous problem for Coach, and for consumers who believe that they are purchasing genuine, high-quality Coach products and instead receive lower quality knockoffs.

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9. The interests of Coach and the public thus align in protecting the details of Coach's online anti-counterfeiting efforts from wide disclosure.

10. On February 28, 2011 – after the filing of the lawsuit, but before the filing of Coach's Answer and Counterclaim – my colleague, Stellman Keehnel, sent an email to counsel for plaintiff Gina Kim. In his email, Mr. Keehnel explained that Coach wants plaintiffs' counsel's assistance in agreeing to a confidentiality agreement in order to provide a complete response to the original Complaint. Mr. Keehnel attached a broad confidentiality agreement that addresses all potential confidentiality issues, and he requested a conference on the confidentiality agreement. Mr. Keehnel also indicated that Coach was not then prepared for a Rule 26(f) conference, in part because co-defendant Coach Services, Inc. had not even been served (and still has not be served, to my knowledge). A true and correct copy of Mr. Keehnel's February 28, 2011 email and its attachment is attached to this declaration as Exhibit A.

11. On February 28, 2011, Jay Carlson one of the attorneys for Ms. Kim, sent an email inquiring why Coach Services, Inc. needed to be served and suggesting that consideration of a confidentiality agreement should take place at a Rule 26(f) conference. A true and correct copy of that email is attached to this declaration as Exhibit B.

12. In response to Mr. Carlson's email, Mr. Keehnel and I called Mr. Carlson on February 28, 2011 to confer regarding the confidentiality agreement and the possibility of a protective order. In our phone call, Mr. Carlson stated that he would not consider a broad confidentiality agreement before the Rule 26(f) conference. Mr. Keehnel stated Coach would strongly prefer to share detailed information about its online anti-counterfeiting efforts. Mr. Keehnel stated that such information would establish conclusively that counsel for Ms. Kim's statements in the Complaint that Coach failed to conduct any investigation into Ms. Kim's eBay listing were demonstrably false. Mr. Keehnel further stated that such information could not be shared unless counsel for Ms. Kim would agree to keep confidential

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the information describing Coach's online anti-counterfeiting efforts. Mr. Keehnel stated that, if counsel for Ms. Kim would not consider either a broad confidentiality agreement or one limited to specific details about Coach's online anti-counterfeiting efforts, Coach would be forced to move for a protective order in order to prevent wide disclosure of highly confidential information.

13. In our February 28, 2011 telephone conference, Mr. Keehnel asked Mr. Carlson if Coach had fulfilled its obligation to meet and confer prior to filing a motion for a protective order regarding the disclosure of Coach's online anti-counterfeiting efforts. Mr. Carlson stated that he did not believe that Coach had done so, but would not explain his reason or what more supposedly needed to be done.

14. On March 7, 2011, in further effort to satisfy our meet-and-confer obligation, I sent to counsel for Ms. Kim an email attaching a draft confidentiality agreement. That agreement is limited to the narrow subject matter discussed in our earlier telephone call – information and documents describing Coach and Coach's attorneys' online anti-counterfeiting efforts. I informed counsel for Ms. Kim that, assuming that a confidentiality agreement was not forthcoming, Coach was anticipating filing a motion for a protective order. I therefore requested counsel for Ms. Kim's agreement that Coach had fulfilled its meet-and-confer obligation as to its intent to seek a protective order so that information about its online anti-counterfeiting efforts could be shared with counsel for Ms. Kim and with the Court. A true and correct copy of that email is attached to this declaration as Exhibit C.

15. On the afternoon of March 8, 2011, I placed another telephone call to plaintiffs' counsel, Mr. Carlson. He did not answer. I left him a voice message that included my telephone number, and I requested that he call me back.

16. Also on the afternoon of March 8, 2011, I sent another email to counsel for Ms. Kim. I requested that counsel inform me whether the parties could agree that Coach had fulfilled its meet-and-confer requirement as to its contemplated motion for a protective order,

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and inquired as to whether counsel for Ms. Kim would oppose Coach's motion for a protective order. A true and correct copy of my March 8, 2011 email is attached to this declaration as Exhibit D.

17. On the evening of March 8, 2011, Mr. Carlson responded to my March 8, 2011 email. Mr. Carlson stated that he did not agree that Coach had fulfilled its meet-and-confer obligation. A true and correct copy of that email is attached to this declaration as Exhibit E.

18. Later on the evening of March 8, 2011, I responded to Mr. Carlson's email. I explained that we had discussed this issue more than a week prior to this latest email exchange. I nevertheless indicated that I was available any time on March 9, 2011 to discuss our contemplated motion for a protective order. A true and correct copy of my second March 8, 2011 email is attached to this declaration as Exhibit F.

19. On March 9, 2011, Mr. Carlson responded to my email and asserted that he had never considered the issues that he, Mr. Keehnel, and I had discussed at length in our earlier telephone call. Mr. Carlson identified some objections to the proposed agreement. In addition, Mr. Carlson again stated his belief that a confidentiality agreement should be the subject of an omnibus Rule 26(f) conference. A true and correct copy of that email is attached to this declaration as Exhibit G.

20. In response to Mr. Carlson's email, I emailed counsel for Ms. Kim to inform them in writing the reasons that Coach strongly preferred that a confidentiality agreement be entered into. I reiterated Coach's belief that counsel for Ms. Kim would be under an obligation to drop all class allegations upon review of the information that Coach was proposing to share. I stated that Coach was prepared to file a motion to strike class allegations if counsel for Ms. Kim refused to drop the class allegations. Finally, I stated that Coach was prepared to file a motion for sanctions under Fed. R. Civ. P. 11 if counsel for Ms. Kim refused to file an amended complaint removing unsubstantiated allegations. For all of these reasons, I stated that, if counsel for Ms. Kim continued to refuse to consider a confidentiality agreement, Coach

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would be forced to file a motion for a protective order in order to share the information contemplated. A true and correct copy of my March 9, 2011 email is attached to this declaration as Exhibit H.

21. I have received no response to my March 9, 2011 email.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at Seattle, Washington, this 10th day of March, 2011.

s/ Patrick Eagan
Patrick Eagan, WSBA No. 42679

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CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to all counsel of record.

Dated this 10th day of March, 2011.

s/Stellman Keehnel
Stellman Keehnel, WSBA No. 9309

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EXHIBIT A

Keehnel, Stellman

From: Keehnel, Stellman

Sent: Monday, February 28, 2011 10:50 AM

To: Jay Carlson; Christopher Carney; Jason Moore

Subject: Coach adv. Kim -- Confidentiality Agreement

Attachments: [Untitled].pdf

Messrs. Carlson, Carney, and Moore:

In order to be able to provide a complete answer to the complaint you filed, the Coach companies need to provide details about their counterfeits detection program. Public disclosure of the program would enable potential counterfeiters to escape detection. Therefore, we need to get a confidentiality agreement in place. Attached is a proposed Confidentiality Agreement. Please let me know ASAP today whether it is in a form acceptable to you. If there are details you want to discuss, please call me ASAP. Let's use the time you set aside today at 2pm to meet-and-confer on the proposed Confidentiality Agreement, if you are unable to reach me prior to that time.

The Coach companies are not prepared today to have the full Rule 26(f)(2) conference you proposed, for three reasons. First, the complaint was served on Coach, Inc. on February 9, only 19 days ago. I have not yet been able to ascertain whether Coach Services, Inc. has been served, and the mandatory proof of service is not on file. Has Coach Services, Inc. been served? If so, when? Second, while the Rule 26(f)(2) conference is to be conducted as soon as practicable, the list of matters to be covered in such a conference is extensive and requires corporate defendants, such as the Coach companies, to do a great deal of factual investigation and legal analysis to be prepared to address each of the many topics. That work is continuing. Third, Rule 26(a)(1)(C) initial disclosures are due within 14 days of a full Rule 26(f)(2) conference, and Rule 26(g)(1)(A) mandates that initial disclosures be complete and correct. It would be reckless for the Coach companies, at this very early point, to represent that their initial disclosures will be ready by March 14; too much work remains to be done.

I look forward to hearing from you right away on the proposed Confidentiality Agreement.

Stellman Keehnel
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Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GINA KIM, on behalf of a class consisting of herself and all other persons similarly situated, Plaintiffs, v. COACH, INC., a Maryland corporation, and COACH SERVICES, INC., a Maryland corporation, Defendants	No. 2:11-CV-00214-RSM **CONFIDENTIALITY AGREEMENT**

Plaintiff Gina Kim, defendants Coach, Inc. and Coach Services, Inc. (collectively "Coach"), and the undersigned counsel for all Parties hereby agree to the following Confidentiality Agreement (the "Agreement"). Kim and Coach shall be referred to herein as the "Parties."

Certain of the information to be exchanged by the Parties in this case, and certain of the information that may be filed with the Court, may be of a proprietary, confidential, and sensitive nature, the disclosure of which could lead to competitive disadvantage or loss of privacy rights. It is the purpose of this Agreement to allow the Parties to have reasonable access to information from other parties and third parties while protecting information that may be of a proprietary, trade secret, confidential, sensitive, and/or private nature without frequent resort to

determinations of discoverability by the Court or a discovery referee. Accordingly, the Parties hereby agree as follows:

1. **Confidential Information**

"Confidential Information" means any information disclosed in this lawsuit, whether disclosed in a discovery response, during a deposition, by way of a written statement in a document, or otherwise, that a Party designates as "confidential," irrespective of who produced the information, and that relates to the following:

a. Trade secret information, as defined in the Uniform Trade Secrets Act of Washington State (RCW 19.108.010) or similar or equivalent law in this or another jurisdiction;

b. Proprietary and competitive business information; and non-public information regarding Coach's program to identify counterfeit products, disclosure of which could enable potential counterfeiters to escape detection;

c. Personal information, where disclosure of that information would violate a person's privacy; and

d. Financial information (including, but not limited to, tax returns, financial statements, banking records, brokerage records, and electronic data containing financial information).

A "person" includes any natural person and, where relevant, a corporation or other entity. Notwithstanding any other provision in this Agreement, the Agreement does not apply to information that is publicly available.

2. **Attorneys Only Information**

"Attorneys Only Information" means all or any part of any Confidential Information the disclosure of which to any other Party or nonparty would create a substantial risk of serious injury that could not be avoided by less restrictive means.

3. **Designating Confidential Information and Attorneys Only Information**

A Party may designate any document produced in discovery or otherwise provided to another Party that the providing Party believes in good faith to be Confidential Information or Attorneys Only Information by stamping the word "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS ONLY" thereon. Even if not initially stamped "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS ONLY" prior to production, all Parties reserve the right to later identify as confidential any documents produced for inspection and selected by the receiving party for copying. Such Confidential Information or Attorneys Only Information, marked "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS ONLY," may not be used or disclosed by the receiving Party, its agents or its employees, except in accordance with the terms of this Agreement.

A Party may also, at any time, designate as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS ONLY" any documents produced by a third party that the Party believes, in good faith, to contain Confidential Information or Attorneys Only Information.

Deposition testimony that a Party reasonably believes will contain Confidential Information or Attorneys Only Information may be taken in the presence of only persons entitled to access to such information pursuant to this Agreement, and may be designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS ONLY" by the Party making an appropriate statement on the record, in which case the reporter must stamp or write "Contains Confidential Information" or "Contains Confidential-Attorneys Only Information" on the cover

of the transcript. The portions of any deposition testimony containing material designated as Confidential Information or Attorneys Only Information under this Agreement must be treated as such as discussed below.

Any Party seeking to use information designated as Confidential Information or Attorneys Only Information during a deposition must secure the deponent's agreement on the record to abide by the terms of this Agreement.

The failure to designate all or a portion of the record as confidential does not preclude a Party from designating all or a portion of the transcript as confidential within 30 days after the Parties receive the complete deposition transcript. During that period, a Party may notify the other Party in writing that the deposition testimony includes Confidential Information. The Party claiming confidentiality must designate specific portions of the transcript and any exhibits as Confidential Information or Attorneys Only Information and must give written notice to opposing counsel of the specific portions of transcripts and specific exhibits that have been designated as confidential. Only such designated portions and exhibits will be confidential at the expiration of the 30-day period. During and after the deposition, until the expiration of the above-described 30-day period, the entire transcript and any information derived therefrom may be disclosed only pursuant to the terms of this Agreement. If, however, portions of the transcript must be filed in court within the 30-day period, the designating Party must make such confidentiality designations as soon as practicable and in advance of the filing.

The designating Party bears the burden of demonstrating that good cause exists for any document to be designated as Confidential Information or Attorneys Only Information. Moreover, notwithstanding the designation as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS ONLY" of any testimony, documents, or other material as provided above, such

documents, testimony, and material will not in fact be deemed Confidential Information or Attorneys Only Information and will not be subject to this Agreement, if it is shown that the substance thereof:

a. Is, at the time of disclosure by the designating Party, public knowledge by publication or otherwise;

b. Becomes at any time, through no act or failure to act on the part of the receiving Party and without breach of any obligation of confidence, public knowledge;

c. Is, at the time of disclosure by the designating Party, already in the possession of the receiving Party, having not been acquired directly or indirectly from the designating Party; or

d. Has been made available to the receiving Party by a third party who obtained the same by legal means and without any obligation of confidence to the designating Party.

4. **Reasonable Efforts / Inadvertent Disclosure**

The Parties must use reasonable efforts to designate Confidential Information or Attorneys Only Information only as necessary to protect their respective interests. Any document, testimony, or material not designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS ONLY" will not be covered by this Agreement. If any Party inadvertently produces or discloses any Confidential Information or Attorneys Only Information without marking it with the appropriate legend, that Party may give notice to the receiving Party that the information should be treated in accordance with the terms of this Agreement. The new designation will be effective upon receipt of such notification and must be implemented by the receiving Party as soon as practicable. Disclosure by any Party of such information prior to

notice of the confidential nature thereof will not be deemed a violation of this Agreement.

5. **Persons Bound By This Agreement**

The persons bound by this Agreement are:

a. All present Parties to this lawsuit; and

c. All employees, agents, and attorneys of the Parties, including counsel of record, experts and consultants.

In the event that additional parties appear in this lawsuit, those parties will not have access to Confidential Information or Attorneys Only Information produced or obtained from any Party until such new parties execute a copy of this Agreement.

6. **Obligations of Persons Bound By This Agreement**

No person bound by this Agreement may disclose Confidential Information or Attorneys Only Information to any other person, other than as provided in Sections 7 and 8 below. No person bound by this Agreement may use Confidential Information or Attorneys Only Information for any purpose other than the prosecution or defense of this lawsuit. The attorneys of record for the Parties to this proceeding must make the terms of this Agreement known to all persons bound by this Agreement and, together with their clients, are responsible for compliance with this Agreement.

7. **Persons Who May Receive Confidential Information**

The only persons to whom Confidential Information may be disclosed by any Party are the following:

a. Parties;

b. Attorneys of record for any Parties to this lawsuit, including paralegal, stenographic, contract, and administrative personnel associated with the attorneys;

c. Members of any Party's in-house legal staff, including attorneys, paralegals and staff, who are directly involved in this lawsuit;

d. Experts, consultants and investigators who are assisting the Parties or the attorneys in this lawsuit; however, prior to disclosure of any Confidential Information, such third parties must agree to be bound by this Agreement by executing the form attached hereto as Exhibit A;

e. Litigation support services, including outside copying services, retained by a Party for the purpose of assisting that party in this lawsuit;

f. Any person, upon the written agreement of the attorneys for all the Parties, or upon Order of the Court;

g. The Court, judges, and Court personnel receiving pleadings or testimony related to this lawsuit if filed under seal;

h. Deposition witnesses; however, prior to disclosure of any Confidential Information, such witnesses must agree to be bound by this Agreement in the form attached hereto as Exhibit A;

i. Court reporters involved in taking depositions in this lawsuit; and

j. Any person who is an author, addressee, or recipient of, or who previously had access to, the Confidential Information.

No Confidential Information may be disclosed, either directly or indirectly, except by prior written approval of the Parties or pursuant to an order of the Court (where applicable), except to the persons specified above.

8. **Persons Who May Receive Attorneys Only Information**

The only persons to whom Attorneys Only Information may be disclosed are the following:

a. Attorneys of record for any Parties to this lawsuit, including paralegal, stenographic, contract, and administrative personnel associated with the attorneys;

b. Experts, consultants and investigators who are assisting the attorneys in this lawsuit; however, prior to disclosure of any Attorneys Only Information, such third parties must agree to be bound by this Agreement by executing the form attached hereto as Exhibit A;

c. Litigation support services, including outside copying services, retained by a Party for the purpose of assisting that party in this lawsuit;

d. Any person, upon the written agreement of the attorneys for all the Parties, or upon Order of the Court;

e. The Court, judges, and Court personnel receiving pleadings or testimony related to this lawsuit, if filed under seal;

f. Deposition witnesses; however, prior to disclosure of any Attorneys Only Information, such witnesses must agree to be bound by this Agreement in the form attached hereto as Exhibit A and, at least 10 days in advance of the deposition, the attorneys for the Party desiring to provide Attorney Only Information to the deponent must notify the attorneys for the other Parties of the specific information and documents to be provided to the deponent, and such Attorney Only Information may only be provided to the deponent if a Party does not, within the 10-day period, file a motion for protective order;

g. Court reporters involved in taking depositions in this lawsuit; and

h. Any person who is an author, addressee, or recipient of or who previously had access to, the Attorneys Only Information.

No Attorneys Only Information may be disclosed, either directly or indirectly, except by prior written approval of the Parties or pursuant to an order of the Court (where applicable), except to the persons specified above.

9. Confidentiality Challenge

If any Party to this lawsuit believes that designated Confidential Information or Attorneys Only Information should not be subject to this Agreement, the Party may provide written notification to the other Parties. The notice must clearly specify the designated information and the reason(s) for believing that the designated information is not properly subject to this Agreement. The Parties must confer in good faith regarding the information. Thereafter, if the challenging Party continues to assert that the subject information should not be covered by this Agreement, the designating Party has the burden of seeking a protective order from the Court. If the designating Party does not file, within 14 days after the Parties conclude their unsuccessful meet-and-confer session described in the preceding sentence, a motion to obtain a protective order, the designated information is not subject to this Confidentiality Agreement.

10. Confidential Information or Attorneys Only Information at Hearing or Trial

A Party that files with the Court, or seeks to use at trial, materials designated as Confidential Information or Attorneys Only Information, must seek to have the record containing such information sealed. Therefore, in addition to filing such materials under seal, that Party must simultaneously file with the Court a motion to seal and request appropriate findings supporting the need for the material to be maintained under seal, in full compliance with all applicable filing rules.

A Party that files with the Court, or seeks to use at trial, materials designated as Confidential Information or Attorneys Only Information, and who does not seek to have the record containing such information sealed, must comply with one of the following requirements:

(a) At least 10 business days prior to the filing or use of the Confidential Information or Attorneys Only Information, the submitting Party must give notice to all other parties of the submitting Party's intention to file or use the Confidential Information or Attorneys Only Information, including specific identification (by reference to Bates number or other identifier) of the Confidential Information or Attorneys Only Information. Any affected Party or non-party may then file with the Court a motion, in full compliance all applicable filing rules, and request appropriate findings supporting the need for the material to be maintained under seal; or

(b) At the time of filing or using the Confidential Information or Attorneys Only Information, the submitting Party must file the materials with the Court pursuant to the following procedure: (i) the document(s) containing Confidential Information or Attorneys Only Information must be filed under seal, in full compliance with all applicable filing rules; (ii) the document(s) must be labeled "CONDITIONALLY UNDER SEAL"; and (iii) the Party submitting the document(s) must include as part of each document filed under seal a statement

that the document may be unsealed pending Court order. Any affected Party or non-party may then file a motion to seal, in full compliance with all applicable filing rules, and request appropriate findings supporting the need for the material to be maintained under seal, within 10 business days after the document(s) are filed. If no Party or non-party files a motion to seal before the expiration of 10 business days, the Parties must file a stipulated motion to unseal the document in question. For the convenience of the Court, a full hardcopy of the Confidential Information or Attorneys Only Information may be provided directly to the Court, for the Court's use only.

To the extent practicable, Confidential Information or Attorneys Only Information to be filed with the Court must be filed separately or in severable portions of filed papers, so that the non-confidential portions may freely be disseminated.

11. Amendment of Agreement

This Agreement may be amended by the written agreement of counsel for all the Parties to this Agreement, and any pertinent third parties.

12. Duration of Agreement

This Agreement is intended to regulate the handling of Confidential Information and Attorneys Only Information during the entirety of this proceeding and thereafter, and will remain in full force and effect until modified, superseded, or terminated on the record by agreement of all the Parties to this proceeding and any pertinent third parties or by order of the Court. The terms of this Agreement will become effective as between the Parties and their attorneys when executed.

13. Return of Protected Materials and Attorneys Only Material

Once participation in this lawsuit by any person obtaining Confidential Information or Attorneys Only Information pursuant to paragraphs 7 or 8 has been concluded, all Confidential Information and Attorneys Only Information must be returned by such person within 30 days to the counsel from whom he or she obtained such Confidential Information or Attorneys Only Information. One copy of deposition transcripts, including those containing Confidential Information or Attorneys Only Information, may be retained by the Parties subject to continued handling of such transcripts in a manner consistent with paragraphs 7 and 8.

14. **Application to Third Parties**

Any third party (natural person or entity) who receives a subpoena, or other request or demand, for documents or information in this action may opt to become a signatory to this Agreement. Such third party must affirm in writing its agreement to abide and be bound by all terms of this Agreement, and may then avail itself of the terms and procedures set forth herein.

15. **Miscellaneous**

a. The information protected by this Agreement is the substance of the Confidential Information or Attorneys Only Information, no matter what form the information is in and no matter how the information might be communicated. The Parties do not intend to in any way waive, and hereby expressly reserve, their right to assert and preserve the confidentiality of any information disclosed in this proceeding that is not designated as Confidential Information or Attorneys Only Information pursuant to this Agreement.

b. Recipients of Confidential Information or Attorneys Only Information pursuant to this Agreement must exercise reasonable and appropriate care with regard to such Confidential Information or Attorneys Only Information to ensure that the confidential nature of the same is maintained.

c. In the event any person in receipt of Confidential Information or Attorneys Only Information receives a written request, subpoena, or court order seeking disclosure of another Party's Confidential Information or Attorneys Only Information, such person must immediately, upon receipt of such request, subpoena, or court order notify counsel for the Party that produced the Confidential Information or Attorneys Only Information of the request, subpoena, or court order, and must provide a copy of the same. Except in the case of an order requiring immediate production of the requested information, no Party may disclose another Party's Confidential Information without giving the other Parties an opportunity to seek from this Court an order governing disclosure of the requested information.

d. If Confidential Information or Attorneys Only Information is disclosed to any person other than in the manner authorized by this Agreement, the person responsible for the disclosure must immediately bring all the pertinent facts relating to such disclosure to the attention of counsel for all Parties without prejudice to the rights and remedies of any Party, and must make every effort to prevent further disclosure by it or by the person who was the recipient of such information.

e. This Agreement is made to facilitate discovery and the production of discoverable evidence in this action. Neither the execution of this Agreement by the Parties, the designation of any information as Confidential Information or Attorneys Only Information under this Agreement, the failure to make such designation, nor the failure to object to such designation by either Party constitutes evidence with respect to any issue in this lawsuit.

f. This Agreement does not abrogate, amend, enhance, or diminish any contractual, statutory, or other legal right or obligation any Party may have with respect to information disclosed in this lawsuit.

g. Nothing herein prevents a designating Party from using or disclosing its own Confidential Information or Attorneys Only Information.

AGREED TO this _____ day of February, 2011.

DLA Piper (US) LLP

By _____

Stellman Keehnel, WSBA No. 9309
Patrick Eagan, WSBA No. 42679
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E-mail: patrick.eagan@dlapiper.com

Attorneys for defendants
Coach, Inc. and Coach Services, Inc., on behalf of themselves and defendants

AGREED TO this _____ day of February, 2011

Van Eyk & Moore, PLLC

By _____

Jason Moore, WSBA No. 41324
100 West Harrison Street, N440
Seattle, WA 98119

Attorneys for plaintiff Gina Kim, on behalf of themselves and plaintiff

AGREED TO this _____ day of February, 2011

Carlson Legal

By _____
Jay Carlson, WSBA No. 30411

Attorneys for plaintiff Gina Kim, on behalf of themselves and plaintiff

AGREED TO this _____ day of February, 2011

Carney Gillespie & Isitt PLLC

By _____
Christopher Carney, WSBA No. 30325

Attorneys for plaintiff Gina Kim, on behalf of themselves and plaintiff

EXHIBIT A

THE UNDERSIGNED HEREBY AGREES AS FOLLOWS: (A) I HAVE READ THE CONFIDENTIALITY AGREEMENT AMONG THE PARTIES IN THIS LAWSUIT AND AGREE TO BE BOUND THEREBY; (B) I WILL NOT DISCLOSE ANY CONFIDENTIAL INFORMATION, ATTORNEYS ONLY INFORMATION, OR THE CONTENTS THEREOF TO ANY PERSON NOT ENTITLED TO ACCESS THAT INFORMATION UNDER THE TERMS OF THE CONFIDENTIALITY AGREEMENT; AND (C) I WILL NOT USE SUCH CONFIDENTIAL INFORMATION, ATTORNEYS ONLY INFORMATION, OR THE CONTENTS THEREOF EXCEPT IN CONNECTION WITH THIS LITIGATION.

Dated this _____ day of _____, 20___.

_____

Print Name:

EXHIBIT B

Keehnel, Stellman

From: Jay Carlson [jaycarlson.legal@gmail.com]
Sent: Monday, February 28, 2011 11:11 AM
To: Keehnel, Stellman
Cc: Christopher Carney; Jason Moore
Subject: Re: Coach adv. Kim -- Confidentiality Agreement

Why does Coach Services, Inc. need to be served? Do you represent them? Will you accept service of process on their behalf?

As for your proposal regarding discovery documents, we would be happy to discuss the possibility of a confidentiality agreement during the Rule 26 initial conference that we have repeatedly proposed and which you are refusing to participate in. You claim your client isn't ready to have that conference, yet with the same e-mail you forward a fully drafted proposed confidentiality agreement covering discovery. Obviously, a possible confidently agreement is an appropriate topic for the Rule 26 conference, and we would be happy to have that Rule 26 discussion at your earliest convenience. How about 2 pm today, or anytime tomorrow?

As for your other justifications for refusing to confer, obviously we can discuss issues such as the deadline for initial disclosures at the Rule 26 conference. If there are issues regarding the discovery plan that you want to discuss, the time to do so is the Rule 26 initial conference. So let's have that conference, and get it over with.

Take care.

Jay

On Mon, Feb 28, 2011 at 10:50 AM, Keehnel, Stellman <Stellman.Keehnel@dlapiper.com> wrote:

Messrs. Carlson, Carney, and Moore:

In order to be able to provide a complete answer to the complaint you filed, the Coach companies need to provide details about their counterfeits detection program. Public disclosure of the program would enable potential counterfeiters to escape detection. Therefore, we need to get a confidentiality agreement in place. Attached is a proposed Confidentiality Agreement. Please let me know ASAP today whether it is in a form acceptable to you. If there are details you want to discuss, please call me ASAP. Let's use the time you set aside today at 2pm to meet-and-confer on the proposed Confidentiality Agreement, if you are unable to reach me prior to that time.

The Coach companies are not prepared today to have the full Rule 26(f)(2) conference you proposed, for three reasons. First, the complaint was served on Coach, Inc. on February 9, only 19 days ago. I have not yet been able to ascertain whether Coach Services, Inc. has been served, and the mandatory proof of service is not on file. Has Coach Services, Inc. been served? If so, when? Second, while the Rule 26(f)(2) conference is to be conducted as soon as practicable, the list of matters to be covered in such a conference is extensive and requires corporate defendants, such as the Coach companies, to do a great deal of factual investigation and legal analysis to be prepared to address each of the many topics. That work is continuing. Third, Rule 26(a)(1)(C) initial disclosures are due within 14 days of a full Rule 26(f)(2) conference, and Rule 26(g)(1)(A) mandates that initial disclosures be complete and correct. It would be reckless for the Coach companies, at this very early point, to represent that their

initial disclosures will be ready by March 14; too much work remains to be done.

I look forward to hearing from you right away on the proposed Confidentiality Agreement.

Stellman Keehnel
Chair of Seattle Litigation Group
DLA Piper US LLP
701 Fifth Avenue, 70th Floor
Seattle, WA 98104-7044
Phone: (206) 839-4888
Fax: (206) 839-4801
Cell: (206) 618-4836
email: stellman.keehnel@dlapiper.com
www.dlapiper.com

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--

Jay Carlson
Carlson Legal
100 West Harrison Street
Suite N440
Seattle, WA 98119
P: (206) 445-0214
F: (206) 260-2486

EXHIBIT C

Eagan, Patrick

From: Eagan, Patrick
Sent: Monday, March 07, 2011 7:21 PM
To: jaycarlson.legal@gmail.com; christopher.carney@cgi-law.com; jason@vaneyk-moore.com
Cc: Keehnel, Stellman
Subject: Kim v. Coach -- Meet and Confer Confirmation
Attachments: Coach -- Short Form Confidentiality Agreement.DOC

Gentlemen,

Attached, please see a pared-down confidentiality agreement that addresses the potential disclosure of the following information:

(1) Descriptions of the online counterfeiting detection program by Gibney Anthony & Flaherty or Coach; and
(2) Documents relating to the online counterfeiting detecting program by Gibney Anthony & Flaherty or Coach.

If you are amenable to executing this agreement, please do so and return a signed copy. If not, this message is to confirm that we have fulfilled our obligation to meet and confer before filing a motion for a protective order obligating all plaintiffs to protect as confidential and file under seal evidence relating to or disclosing any of the above information. In substance, our proposed protective order will seek the same protections described in the attached agreement.

We anticipate filing a motion for a protective order relatively soon. If you believe that we have not fulfilled our obligation to meet and confer on the motion, please immediately let me know why. Also, please let me know if you intend to oppose the motion.

Yours very truly,

Patrick Eagan

DLA PIPER

Patrick Eagan
DLA Piper LLP (US)
701 Fifth Avenue, Suite 7000
Seattle, Washington 98104
T 206.839.4840
F 206.494.1830
Patrick.Eagan@dlapiper.com
www.dlapiper.com

Admitted to practice in Washington, Virginia, and the District of Columbia.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GINA KIM, on behalf of a class consisting of herself and all other persons similarly situated, Plaintiffs, v. COACH, INC., a Maryland corporation, and COACH SERVICES, INC., a Maryland corporation, Defendants	No. 2:11-CV-00214-RSM **CONFIDENTIALITY AGREEMENT**

Plaintiffs Gina Kim, Jay Carlson, Carlson Legal, Christopher Carney, Carney Gillespie & Isitt PLLC, Jason B. Moore, and Van Eyk & Moore, PLLC (together "Plaintiffs"), defendants Coach, Inc. and Coach Services, Inc. (collectively "Coach"), and the undersigned counsel for all Parties hereby agree to the following Confidentiality Agreement (the "Agreement"). Plaintiffs and Coach shall be referred to herein as the "Parties." This Agreement shall bind Plaintiffs, and employees, agents, and attorneys of Plaintiffs, including counsel of record, experts and consultants (collectively, the "Bound Persons").

ATTORNEYS ONLY INFORMATION

Plaintiff Ms. Kim alleges that Coach or its agents acted improperly in communicating with eBay and with Ms. Kim on the subject of whether an item Ms. Kim listed for sale on eBay

is a counterfeit Coach product. The actions of which Ms. Kim complains were taken as part of the counterfeiting detection program run by Coach's law firm, Gibney Anthony & Flaherty. Because information and documents concerning that counterfeiting detection program are relevant to this lawsuit, and because public disclosure of information and documents concerning the counterfeiting detection program would enable counterfeiters and potential counterfeiters to attempt to evade detection of their counterfeiting activities, the Bound Persons agree to preserve the confidentiality of the following information:

(1) Descriptions of the online counterfeiting detection program by Gibney Anthony & Flaherty or Coach; and

(2) Documents relating to the online counterfeiting detecting program by Gibney Anthony & Flaherty or Coach.

The above-listed information will be designated "Attorneys Only Information." Such designation may be made by stamping the documents "CONFIDENTIAL – ATTORNEYS ONLY." Other forms of designation are acceptable provided that they make clear that information is to be shared only among attorneys.

1. WHO MAY RECEIVE ATTORNEYS ONLY INFORMATION

No Bound Person may disclose Attorneys Only Information to any other person, other than as provided below. No Bound Person may use Attorneys Only Information for any purpose other than the prosecution or defense of this lawsuit. The attorneys of record for Ms. Kim must make the terms of this Agreement known to all Bound Persons and, together with their clients, are responsible for compliance with this Agreement.

The only persons to whom Attorneys Only Information may be disclosed are the following:

a. Attorneys of record for Ms. Kim, including paralegal, stenographic, contract, and administrative personnel associated with the attorneys;

b. Experts, consultants and investigators who are assisting the attorneys in this lawsuit; however, prior to disclosure of any Attorneys Only Information, such third parties must agree to be bound by this Agreement by executing the form attached hereto as Exhibit A;

c. The Court, judges, and Court personnel receiving pleadings or testimony related to this lawsuit, if filed under seal;

d. Deposition witnesses; however, prior to disclosure of any Attorneys Only Information, such witnesses must agree to be bound by this Agreement in the form attached hereto as Exhibit A and, at least 10 days in advance of the deposition, the attorneys for Ms. Kim must notify the attorneys for the other Parties of the specific information and documents to be provided to the deponent, and such Attorney Only Information may only be provided to the deponent if a Party does not, within the 10-day period, file a motion for protective order;

e. Court reporters involved in taking depositions in this lawsuit; and

f. Any person who is an author, addressee, or recipient of or who previously had access to, the Attorneys Only Information.

2. HANDLING OF ATTORNEYS ONLY INFORMATION

No Attorneys Only Information may be disclosed, either directly or indirectly, except by prior written approval of the attorneys for Coach or pursuant to an order of the Court (where applicable), except to the persons specified above.

A Party that files with the Court, or seeks to use at trial, materials designated as Attorneys Only Information, must seek to have the record containing such information sealed. Therefore, in addition to filing such materials under seal, that Party must simultaneously file with the Court a motion to seal and request appropriate findings supporting the need for the material to be maintained under seal, in full compliance with all applicable filing rules.

A Party that files with the Court, or seeks to use at trial, materials designated as Attorneys Only Information, and who does not seek to have the record containing such information sealed, must comply with one of the following requirements:

(a) At least 10 business days prior to the filing or use of the Attorneys Only Information, the submitting Party must give notice to all other parties of the submitting Party's intention to file or use the Attorneys Only Information, including specific identification (by reference to Bates number or other identifier) of the Attorneys Only Information. Any affected Party or non-party may then file with the Court a motion, in full compliance all applicable filing rules, and request appropriate findings supporting the need for the material to be maintained under seal; or

(b) At the time of filing or using the Attorneys Only Information, the submitting Party must file the materials with the Court pursuant to the following procedure: (i) the document(s) containing Attorneys Only Information must be filed under seal, in full compliance with all applicable filing rules; (ii) the document(s) must be labeled "CONDITIONALLY UNDER SEAL"; and (iii) the Party submitting the document(s) must include as part of each document filed under seal a statement that the document may be unsealed pending Court order. Any affected Party or non-party may then file a motion to seal, in full compliance with all applicable filing rules, and request appropriate findings supporting the need

for the material to be maintained under seal, within 10 business days after the document(s) are filed. If no Party or non-party files a motion to seal before the expiration of 10 business days, the Parties must file a stipulated motion to unseal the document in question. For the convenience of the Court, a full hardcopy of the Attorneys Only Information may be provided directly to the Court, for the Court's use only.

To the extent practicable, Attorneys Only Information to be filed with the Court must be filed separately or in severable portions of filed papers, so that the non-confidential portions may freely be disseminated.

3. AMENDMENT OF AGREEMENT

This Agreement may be amended by the written agreement of counsel for all the Parties to this Agreement, and any pertinent third parties.

4. RETURN OF ATTORNEYS ONLY MATERIAL

Once participation in this lawsuit by any person obtaining Attorneys Only Information has been concluded, all Attorneys Only Information must be returned by such person within 30 days to the counsel from whom he or she obtained such Attorneys Only Information.

5. MISCELLANEOUS

If Attorneys Only Information is disclosed to any person other than in the manner authorized by this Agreement, the person responsible for the disclosure must immediately bring all the pertinent facts relating to such disclosure to the attention of counsel for all Parties without prejudice to the rights and remedies of any Party, and must make every effort to prevent further disclosure by it or by the person who was the recipient of such information.

This Agreement does not abrogate, amend, enhance, or diminish any contractual, statutory, or other legal right or obligation any Party may have with respect to information disclosed in this lawsuit.

Nothing herein prevents a designating Party from using or disclosing its own Attorneys Only Information.

AGREED TO this _____ day of March, 2011.

DLA Piper (US) LLP

By _____

Stellman Keehnel, WSBA No. 9309
R. Omar Riojas, WSBA No. 35400
Patrick Eagan, WSBA No. 42679
DLA Piper LLP (US)
701 Fifth Avenue, Suite 7000
Seattle, WA 98104
Tel: 206.839.4800
Fax: 206.839.4801
E-mail: stellman.keehnel@dlapiper.com
E-mail: omar.riojas@dlapiper.com
E-mail: patrick.eagan@dlapiper.com

Attorneys for defendants
Coach, Inc. and Coach Services, Inc.

AGREED TO this _____ day of March, 2011

Van Eyk & Moore, PLLC

By _____
Jason Moore, WSBA No. 41324
100 West Harrison Street, N440
Seattle, WA 98119

On behalf of themselves and as attorneys for plaintiff Gina Kim

AGREED TO this _____ day of March, 2011

Carlson Legal

By _____
Jay Carlson, WSBA No. 30411

On behalf of themselves and as attorneys for plaintiff Gina Kim

AGREED TO this _____ day of March, 2011

Carney Gillespie & Isitt PLLC

By _____
Christopher Carney, WSBA No. 30325

On behalf of themselves and as attorneys for plaintiff Gina Kim

EXHIBIT D

Eagan, Patrick

From: Eagan, Patrick
Sent: Tuesday, March 08, 2011 2:33 PM
To: Christopher Carney
Cc: jaycarlson.legal@gmail.com; jason@vaneyk-moore.com; Keehnel, Stellman
Subject: RE: Kim v. Coach -- Meet and Confer Confirmation

Gentlemen,

Regarding the short confidentiality agreement I sent you yesterday (substituting for the proposed confidentiality agreement you rejected last week), please let me know as soon as possible the following:

(1) Whether you believe that we have fulfilled our meet and confer obligation on this matter, and, if not, what more you think we need to do; and
(2) Whether you intend to oppose our motion for a protective order, assuming you will not sign the confidentiality agreement.

Please let me know the answers to these questions today. If we can't work out a confidentiality agreement, we will have to file a motion for protective order.

Thanks,

Patrick

From: Christopher Carney [mailto:christopher.carney@cgi-law.com]
Sent: Monday, March 07, 2011 7:38 PM
To: Eagan, Patrick
Cc: jaycarlson.legal@gmail.com; jason@vaneyk-moore.com; Keehnel, Stellman
Subject: Re: Kim v. Coach -- Meet and Confer Confirmation

Mr. Eagan -

Thank you for your proposal. We will review it in due time and get back to you with our position on your suggestion.

On Mon, Mar 7, 2011 at 7:20 PM, Eagan, Patrick <Patrick.Eagan@dlapiper.com> wrote:

Gentlemen,

Attached, please see a pared-down confidentiality agreement that addresses the potential disclosure of the following information:

(1) Descriptions of the online counterfeiting detection program by Gibney Anthony & Flaherty or Coach; and
(2) Documents relating to the online counterfeiting detecting program by Gibney Anthony & Flaherty or Coach.

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information. In substance, our proposed protective order will seek the same protections described in the attached agreement.

We anticipate filing a motion for a protective order relatively soon. If you believe that we have not fulfilled our obligation to meet and confer on the motion, please immediately let me know why. Also, please let me know if you intend to oppose the motion.

Yours very truly,

Patrick Eagan

Patrick Eagan
DLA Piper LLP (US)
701 Fifth Avenue, Suite 7000
Seattle, Washington 98104
T 206.839.4840
F 206.494.1830
Patrick.Eagan@dlapiper.com
www.dlapiper.com

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--

Christopher Carney, Attorney at Law
Carney Gillespie Isitt PLLP
100 W. Harrison Street, Suite N440
Seattle, WA 98119
Tel (206) 445-0212
Fax (206) 260-2486

EXHIBIT E

Eagan, Patrick

From: Jay Carlson [jaycarlson.legal@gmail.com]
Sent: Tuesday, March 08, 2011 7:42 PM
To: Eagan, Patrick
Cc: Christopher Carney; jason@vaneyk-moore.com
Subject: Re: Kim v. Coach -- Meet and Confer Confirmation

Patrick:

I believe you sent us a proposed confidentiality agreement last night. We will review it in due time and respond to your proposal after we have had a chance to do that review. Otherwise, no, we don't agree you've fulfilled any meet and confer obligation as to this proposal, as we had never seen it before last night, and we have never discussed it.

We will get back to you when time permits. Thanks.

Jay

On Tue, Mar 8, 2011 at 2:32 PM, Eagan, Patrick <Patrick.Eagan@dlapiper.com> wrote:

Gentlemen,

Regarding the short confidentiality agreement I sent you yesterday (substituting for the proposed confidentiality agreement you rejected last week), please let me know as soon as possible the following:

(1) Whether you believe that we have fulfilled our meet and confer obligation on this matter, and, if not, what more you think we need to do; and
(2) Whether you intend to oppose our motion for a protective order, assuming you will not sign the confidentiality agreement.

Please let me know the answers to these questions today. If we can't work out a confidentiality agreement, we will have to file a motion for protective order.

Thanks,

Patrick

From: Christopher Carney [mailto:christopher.carney@cgi-law.com]
Sent: Monday, March 07, 2011 7:38 PM
To: Eagan, Patrick
Cc: jaycarlson.legal@gmail.com; jason@vaneyk-moore.com; Keehnel, Stellman
Subject: Re: Kim v. Coach -- Meet and Confer Confirmation

Mr. Eagan -

Thank you for your proposal. We will review it in due time and get back to you with our position on your suggestion.

On Mon, Mar 7, 2011 at 7:20 PM, Eagan, Patrick <Patrick.Eagan@dlapiper.com> wrote:

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We anticipate filing a motion for a protective order relatively soon. If you believe that we have not fulfilled our obligation to meet and confer on the motion, please immediately let me know why. Also, please let me know if you intend to oppose the motion.

Yours very truly,

Patrick Eagan

Patrick Eagan
DLA Piper LLP (US)
701 Fifth Avenue, Suite 7000
Seattle, Washington 98104
T 206.839.4840
F 206.494.1830
Patrick.Eagan@dlapiper.com
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--
Christopher Carney, Attorney at Law
Carney Gillespie Isitt PLLP
100 W. Harrison Street, Suite N440
Seattle, WA 98119

Tel (206) 445-0212
Fax (206) 260-2486

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--

Jay Carlson
Carlson Legal
100 West Harrison Street
Suite N440
Seattle, WA 98119
P: (206) 445-0214
F: (206) 260-2486

EXHIBIT F

Eagan, Patrick

From: Eagan, Patrick
Sent: Tuesday, March 08, 2011 10:16 PM
To: Jay Carlson
Cc: Christopher Carney; jason@vaneyk-moore.com; Keehnel, Stellman; Riojas, Omar
Subject: RE: Kim v. Coach -- Meet and Confer Confirmation

Jay,

You, Stellman, and I discussed at length the subject of a limited confidentiality agreement covering these issues in our February 28 telephone conference. We indicated at that time that we were preparing to make a motion for a protective order in order to be able to share this information with you and the Court, if you would not consent to a confidentiality agreement. We asked then whether you felt that we had fulfilled our meet and confer obligation, and you said that we had not. You refused to explain why not, despite our willingness to continue to discuss the matter with you during that call.

Yesterday, in an effort to redundantly meet our obligation to try to reach agreement, I sent you a proposed confidentiality agreement that includes the terms of the protective order we discussed on February 28.

I understand your need to have time to consider this issue, but you have already had more than a week to consider it. If you do not believe that we have met our obligation to confer, then I am available to discuss the proposed confidentiality agreement at your convenience at any time tomorrow. Please let me know when would be a good time to discuss.

Thanks,
Patrick

From: Jay Carlson [mailto:jaycarlson.legal@gmail.com]
Sent: Tuesday, March 08, 2011 7:42 PM
To: Eagan, Patrick
Cc: Christopher Carney; jason@vaneyk-moore.com
Subject: Re: Kim v. Coach -- Meet and Confer Confirmation

Patrick:

I believe you sent us a proposed confidentiality agreement last night. We will review it in due time and respond to your proposal after we have had a chance to do that review. Otherwise, no, we don't agree you've fulfilled any meet and confer obligation as to this proposal, as we had never seen it before last night, and we have never discussed it.

We will get back to you when time permits. Thanks.

Jay

On Tue, Mar 8, 2011 at 2:32 PM, Eagan, Patrick <Patrick.Eagan@dlapiper.com> wrote:

Gentlemen,

Regarding the short confidentiality agreement I sent you yesterday (substituting for the proposed confidentiality agreement you rejected last week), please let me know as soon as possible the following:

(1) Whether you believe that we have fulfilled our meet and confer obligation on this matter, and,

if not, what more you think we need to do; and
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From: Christopher Carney [mailto:christopher.carney@cgi-law.com]
Sent: Monday, March 07, 2011 7:38 PM
To: Eagan, Patrick
Cc: jaycarlson.legal@gmail.com; jason@vaneyk-moore.com; Keehnel, Stellman
Subject: Re: Kim v. Coach -- Meet and Confer Confirmation

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We anticipate filing a motion for a protective order relatively soon. If you believe that we have not fulfilled our obligation to meet and confer on the motion, please immediately let me know why. Also, please let me know if you intend to oppose the motion.

Yours very truly,

Patrick Eagan

Patrick Eagan
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701 Fifth Avenue, Suite 7000
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Admitted to practice in Washington, Virginia, and the District of Columbia.

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--

Christopher Carney, Attorney at Law
Carney Gillespie Isitt PLLP
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Fax (206) 260-2486

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Jay Carlson
Carlson Legal
100 West Harrison Street
Suite N440
Seattle, WA 98119
P: (206) 445-0214
F: (206) 260-2486

EXHIBIT G

Eagan, Patrick

From: Jay Carlson [jaycarlson.legal@gmail.com]
Sent: Wednesday, March 09, 2011 12:07 PM
To: Eagan, Patrick
Cc: Christopher Carney; jason@vaneyk-moore.com; Riojas, Omar
Subject: Re: Kim v. Coach -- Meet and Confer Confirmation

From only a cursory and incomplete review (which is all we've had time to do), I can tell you that the confidentiality proposal you sent Tuesday night is unacceptable in several respects. We would be happy to discuss those, and other discovery issues that we need to discuss, at the Rule 26 initial conference. We also have no idea what documents you intend to produce and what you therefore want treated as attorney eyes only, and sealed, so we are unable to fairly judge whether and under what circumstances we would agree to an attorneys eyes only designation for those documents. I would also note that your request to treat substantially all discovery documents in this case as attorney eyes only is a non-starter. The Judge will never approve a protective order of such unlimited scope.

We never saw your proposed confidentiality agreement before Tuesday night, and again, we have not had time to fully review it and determine our reaction. The confidentiality agreement is an integral part of a broader discussion that the parties need to have about a discovery plan. So, we will be happy to discuss this and other discovery issues with you when you are ready to have the Rule 26 initial conference, which we have repeatedly requested.

Let us know when you are ready to schedule the Rule 26 initial conference, and we can start making progress on these issues in a coherent way.

Thanks.

Jay

On Tue, Mar 8, 2011 at 10:15 PM, Eagan, Patrick <Patrick.Eagan@dlapiper.com> wrote:

Jay,

You, Stellman, and I discussed at length the subject of a limited confidentiality agreement covering these issues in our February 28 telephone conference. We indicated at that time that we were preparing to make a motion for a protective order in order to be able to share this information with you and the Court, if you would not consent to a confidentiality agreement. We asked then whether you felt that we had fulfilled our meet and confer obligation, and you said that we had not. You refused to explain why not, despite our willingness to continue to discuss the matter with you during that call.

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Thanks,
Patrick

From: Jay Carlson [mailto:jaycarlson.legal@gmail.com]
Sent: Tuesday, March 08, 2011 7:42 PM
To: Eagan, Patrick
Cc: Christopher Carney; jason@vaneyk-moore.com
Subject: Re: Kim v. Coach -- Meet and Confer Confirmation

Patrick:

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We will get back to you when time permits. Thanks.

Jay

On Tue, Mar 8, 2011 at 2:32 PM, Eagan, Patrick <Patrick.Eagan@dlapiper.com> wrote:

Gentlemen,

Regarding the short confidentiality agreement I sent you yesterday (substituting for the proposed confidentiality agreement you rejected last week), please let me know as soon as possible the following:

(1) Whether you believe that we have fulfilled our meet and confer obligation on this matter, and, if not, what more you think we need to do; and
(2) Whether you intend to oppose our motion for a protective order, assuming you will not sign the confidentiality agreement.

Please let me know the answers to these questions today. If we can't work out a confidentiality agreement, we will have to file a motion for protective order.

Thanks,

Patrick

From: Christopher Carney [mailto:christopher.carney@cgi-law.com]
Sent: Monday, March 07, 2011 7:38 PM
To: Eagan, Patrick
Cc: jaycarlson.legal@gmail.com; jason@vaneyk-moore.com; Keehnel, Stellman
Subject: Re: Kim v. Coach -- Meet and Confer Confirmation

Mr. Eagan -

Thank you for your proposal. We will review it in due time and get back to you with our position on your suggestion.

On Mon, Mar 7, 2011 at 7:20 PM, Eagan, Patrick <Patrick.Eagan@dlapiper.com> wrote:

Gentlemen,

Attached, please see a pared-down confidentiality agreement that addresses the

potential disclosure of the following information:

(1) Descriptions of the online counterfeiting detection program by Gibney Anthony & Flaherty or Coach; and
(2) Documents relating to the online counterfeiting detecting program by Gibney Anthony & Flaherty or Coach.

If you are amenable to executing this agreement, please do so and return a signed copy. If not, this message is to confirm that we have fulfilled our obligation to meet and confer before filing a motion for a protective order obligating all plaintiffs to protect as confidential and file under seal evidence relating to or disclosing any of the above information. In substance, our proposed protective order will seek the same protections described in the attached agreement.

We anticipate filing a motion for a protective order relatively soon. If you believe that we have not fulfilled our obligation to meet and confer on the motion, please immediately let me know why. Also, please let me know if you intend to oppose the motion.

Yours very truly,

Patrick Eagan

Patrick Eagan
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Please consider the environment before printing this email.

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--

Christopher Carney, Attorney at Law
Carney Gillespie Isitt PLLP
100 W. Harrison Street, Suite N440

Seattle, WA 98119
Tel (206) 445-0212
Fax (206) 260-2486

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--

Jay Carlson
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100 West Harrison Street
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Seattle, WA 98119
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--

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EXHIBIT H

Eagan, Patrick

From: Eagan, Patrick
Sent: Wednesday, March 09, 2011 5:23 PM
To: Jay Carlson
Cc: Christopher Carney; jason@vaneyk-moore.com; Riojas, Omar; Keehnel, Stellman
Subject: RE: Kim v. Coach -- Meet and Confer Confirmation
Attachments: Coach -- Short Form Confidentiality Agreement.DOC

Jay,

In your below email, you meant to address our proposed short-form confidentiality agreement that we sent Monday, not Tuesday.

In addition, to clarify the record, we sent you a proposed broader confidentiality agreement on February 28. That confidentiality agreement covered the narrow topic of the short-form agreement, plus other areas. At the time, you refused to discuss the broader agreement, stating flatly that you would not consider the subject unless in the setting of a (premature) omnibus Rule 26(f) conference, despite the central importance to the lawsuit of Coach's highly confidential information about anti-counterfeiting efforts.

In an effort to address your assertion that the broader confidentiality agreement was inappropriate before an omnibus Rule 26(f) conference, and to clarify the documents and information that must be kept confidential, we sent you a short-form confidentiality agreement on Monday, March 7. The confidentiality agreement would apply only to the following information:

(1) Descriptions of the online counterfeiting detection program; and
(2) Documents relating to that online counterfeiting detecting program.

Such documents and information are highly confidential. Disclosure of such documents and information would severely impair the efforts to combat counterfeiting of Coach products. We are attempting, one final time, to obtain from you an agreement not to disclose (1) descriptions of the online counterfeiting detection program run by Coach's law firm Gibney Anthony & Flaherty, and (2) documents relating to such program that are marked "ATTORNEYS ONLY" and that describe or reveal the subject counterfeit detection program.

As we have repeatedly explained to you, the number of potential class members in this case is extremely small, such that your proposed class cannot possibly meet the numerosity requirement under Rule 23. We are willing to share the above information with you, to permit you to determine whether to pursue or drop the class claims. We may share that information as part of a motion to strike class allegations if we cannot get your agreement to drop the class claims. We cannot, however, share any information at this point unless you will agree not to disclose the information that we share with you.

Moreover, Coach is contemplating a motion for sanctions under Rule 11. Again, we must disclose information about anti-counterfeiting efforts in order to make that motion. You have informed us that we must make such a motion, and that our letter alerting you to your violation of Rule 11 is not sufficient. You cannot insist on a formal Rule 11 motion, and refuse to agree to maintain confidentiality of documents that are critical to such motion. In short, as is clear, we cannot disclose the online counterfeiting detection program to you unless you will agree not to

disclose the information that we share with you.

We are necessarily proposing a *pre-discovery* confidentiality agreement. If you believe that documents obtained under this confidentiality agreement are improperly marked "ATTORNEYS ONLY," you are free to request such documents in discovery and to follow the procedure with respect to challenging confidentiality under the confidentiality agreement or protective order in place once discovery commences. At this point, all we are asking is that you agree to treat this one category of highly confidential documents and information – which will be filed under seal with a proper motion to seal and, if not sealed, will be withdrawn – as Attorneys Only. If you will not agree to do that, then we will have to file a motion for a protective order limiting your disclosure of documents marked "ATTORNEYS ONLY."

I understand that you would like to conduct a Rule 26(f) conference. I can only assume that is because you would like to begin serving discovery requests on Coach, Inc. as soon as possible. I have never conducted and would not advocate conducting a Rule 26(f) conference before the pleadings are closed and all parties have been served. At the conference, we are to discuss "the nature and basis of [our] claims and defenses . . ." and we are to submit a discovery plan to the Court shortly thereafter. Considering that all claims and defenses have not be finally stated (for example, with Coach Services, Inc. not having been served, it has not answered; nor have the counterclaim defendants answered), considering that the First Amended Complaint was filed less than a week ago, and considering that we cannot be prepared to submit a discovery plan in the near future under the circumstances, holding a Rule 26(f) conference at this point would be premature.

We are willing to conduct a Rule 26(f) conference when practicable, but that time has not yet arrived.

Failing a change of mind on your part regarding the confidentiality agreement, please let me know if you will oppose our motion for a protective order directing Plaintiffs' Counsel to limit disclosure of documents and information designated as "ATTORNEYS ONLY" under terms substantially similar to the attached proposed confidentiality agreement (which clarifies the covered documents/information, but is otherwise identical to what you have already seen). I know that you would rather discuss this in a Rule 26(f) conference, but I have explained to you why a Rule 26(f) conference is not practicable at this time.

Thanks,

Patrick

From: Jay Carlson [mailto:jaycarlson.legal@gmail.com]
Sent: Wednesday, March 09, 2011 12:07 PM
To: Eagan, Patrick
Cc: Christopher Carney; jason@vaneyk-moore.com; Riojas, Omar
Subject: Re: Kim v. Coach -- Meet and Confer Confirmation

From only a cursory and incomplete review (which is all we've had time to do), I can tell you that the confidentiality proposal you sent Tuesday night is unacceptable in several respects. We would be happy to discuss those, and other discovery issues that we need to discuss, at the Rule 26 initial conference. We also have no idea what documents you intend to produce and what you therefore want treated as attorney eyes only, and sealed, so we are unable to fairly judge whether and under what circumstances we would agree to an attorneys eyes only designation for those documents. I would also note that your request to treat substantially all discovery documents in this case as

attorney eyes only is a non-starter. The Judge will never approve a protective order of such unlimited scope.

We never saw your proposed confidentiality agreement before Tuesday night, and again, we have not had time to fully review it and determine our reaction. The confidentiality agreement is an integral part of a broader discussion that the parties need to have about a discovery plan. So, we will be happy to discuss this and other discovery issues with you when you are ready to have the Rule 26 initial conference, which we have repeatedly requested.

Let us know when you are ready to schedule the Rule 26 initial conference, and we can start making progress on these issues in a coherent way.

Thanks.

Jay

On Tue, Mar 8, 2011 at 10:15 PM, Eagan, Patrick <Patrick.Eagan@dlapiper.com> wrote:

Jay,

You, Stellman, and I discussed at length the subject of a limited confidentiality agreement covering these issues in our February 28 telephone conference. We indicated at that time that we were preparing to make a motion for a protective order in order to be able to share this information with you and the Court, if you would not consent to a confidentiality agreement. We asked then whether you felt that we had fulfilled our meet and confer obligation, and you said that we had not. You refused to explain why not, despite our willingness to continue to discuss the matter with you during that call.

Yesterday, in an effort to redundantly meet our obligation to try to reach agreement, I sent you a proposed confidentiality agreement that includes the terms of the protective order we discussed on February 28.

I understand your need to have time to consider this issue, but you have already had more than a week to consider it. If you do not believe that we have met our obligation to confer, then I am available to discuss the proposed confidentiality agreement at your convenience at any time tomorrow. Please let me know when would be a good time to discuss.

Thanks,
Patrick

From: Jay Carlson [mailto:jaycarlson.legal@gmail.com]
Sent: Tuesday, March 08, 2011 7:42 PM
To: Eagan, Patrick
Cc: Christopher Carney; jason@vaneyk-moore.com
Subject: Re: Kim v. Coach -- Meet and Confer Confirmation

Patrick:

I believe you sent us a proposed confidentiality agreement last night. We will review it in due time and respond to your proposal after we have had a chance to do that review. Otherwise, no, we don't agree you've fulfilled any meet and confer obligation as to this proposal, as we had never seen it before last night, and we have never discussed it.

We will get back to you when time permits. Thanks.

Jay

On Tue, Mar 8, 2011 at 2:32 PM, Eagan, Patrick <Patrick.Eagan@dlapiper.com> wrote:

Gentlemen,

Regarding the short confidentiality agreement I sent you yesterday (substituting for the proposed confidentiality agreement you rejected last week), please let me know as soon as possible the following:

(1) Whether you believe that we have fulfilled our meet and confer obligation on this matter, and, if not, what more you think we need to do; and
(2) Whether you intend to oppose our motion for a protective order, assuming you will not sign the confidentiality agreement.

Please let me know the answers to these questions today. If we can't work out a confidentiality agreement, we will have to file a motion for protective order.

Thanks,

Patrick

From: Christopher Carney [mailto:christopher.carney@cgi-law.com]
Sent: Monday, March 07, 2011 7:38 PM
To: Eagan, Patrick
Cc: jaycarlson.legal@gmail.com; jason@vaneyk-moore.com; Keehnel, Stellman
Subject: Re: Kim v. Coach -- Meet and Confer Confirmation

Mr. Eagan -

Thank you for your proposal. We will review it in due time and get back to you with our position on your suggestion.

On Mon, Mar 7, 2011 at 7:20 PM, Eagan, Patrick <Patrick.Eagan@dlapiper.com> wrote:

Gentlemen,

Attached, please see a pared-down confidentiality agreement that addresses the potential disclosure of the following information:

(1) Descriptions of the online counterfeiting detection program by Gibney Anthony & Flaherty or Coach; and
(2) Documents relating to the online counterfeiting detecting program by Gibney Anthony & Flaherty or Coach.

If you are amenable to executing this agreement, please do so and return a signed copy. If not, this message is to confirm that we have fulfilled our obligation to meet and confer before filing a motion for a protective order obligating all plaintiffs to protect as confidential and file under seal evidence relating to or disclosing any of the above information. In substance, our proposed protective order will seek the same protections described in the

attached agreement.

We anticipate filing a motion for a protective order relatively soon. If you believe that we have not fulfilled our obligation to meet and confer on the motion, please immediately let me know why. Also, please let me know if you intend to oppose the motion.

Yours very truly,

Patrick Eagan

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F: (206) 260-2486

Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GINA KIM, on behalf of a class consisting of herself and all other persons similarly situated, Plaintiffs, v. COACH, INC., a Maryland corporation, and COACH SERVICES, INC., a Maryland corporation, Defendants	No. 2:11-CV-00214-RSM **CONFIDENTIALITY AGREEMENT**

Plaintiffs Gina Kim, Jay Carlson, Carlson Legal, Christopher Carney, Carney Gillespie & Isitt PLLC, Jason B. Moore, and Van Eyk & Moore, PLLC (together "Plaintiffs"), defendants Coach, Inc. and Coach Services, Inc. (collectively "Coach"), and the undersigned counsel for all Parties hereby agree to the following Confidentiality Agreement (the "Agreement"). Plaintiffs and Coach shall be referred to herein as the "Parties." This Agreement shall bind Plaintiffs, and employees, agents, and attorneys of Plaintiffs, including counsel of record, experts and consultants (collectively, the "Bound Persons").

ATTORNEYS ONLY INFORMATION

Plaintiff Ms. Kim alleges that Coach or its agents acted improperly in communicating with eBay and with Ms. Kim on the subject of whether an item Ms. Kim listed for sale on eBay

is a counterfeit Coach product. The actions of which Ms. Kim complains were taken as part of the counterfeiting detection program run by Coach's law firm, Gibney Anthony & Flaherty. Because information and documents concerning that counterfeiting detection program are relevant to this lawsuit, and because public disclosure of information and documents concerning the counterfeiting detection program would enable counterfeiters and potential counterfeiters to attempt to evade detection of their counterfeiting activities, the Bound Persons agree to preserve the confidentiality of the following information:

(1) Descriptions of the online counterfeiting detection program run by Gibney Anthony & Flaherty or Coach; and

(2) Documents relating to the online counterfeiting detection program run by Gibney Anthony & Flaherty or Coach that describe or reveal the counterfeit detection program.

The above-listed information will be designated "Attorneys Only Information." Such designation may be made by stamping the documents "CONFIDENTIAL – ATTORNEYS ONLY." Other forms of designation are acceptable provided that they make clear that information is to be shared only among attorneys.

1. WHO MAY RECEIVE ATTORNEYS ONLY INFORMATION

No Bound Person may disclose Attorneys Only Information to any other person, other than as provided below. No Bound Person may use Attorneys Only Information for any purpose other than the prosecution or defense of this lawsuit. The attorneys of record for Ms. Kim must make the terms of this Agreement known to all Bound Persons and, together with their clients, are responsible for compliance with this Agreement.

The only persons to whom Attorneys Only Information may be disclosed are the following:

a. Attorneys of record for Ms. Kim, including paralegal, stenographic, contract, and administrative personnel associated with the attorneys;

b. Experts, consultants and investigators who are assisting the attorneys in this lawsuit; however, prior to disclosure of any Attorneys Only Information, such third parties must agree to be bound by this Agreement by executing the form attached hereto as Exhibit A;

c. The Court, judges, and Court personnel receiving pleadings or testimony related to this lawsuit, if filed under seal;

d. Deposition witnesses; however, prior to disclosure of any Attorneys Only Information, such witnesses must agree to be bound by this Agreement in the form attached hereto as Exhibit A and, at least 10 days in advance of the deposition, the attorneys for Ms. Kim must notify the attorneys for the other Parties of the specific information and documents to be provided to the deponent, and such Attorney Only Information may only be provided to the deponent if a Party does not, within the 10-day period, file a motion for protective order;

e. Court reporters involved in taking depositions in this lawsuit; and

f. Any person who is an author, addressee, or recipient of or who previously had access to, the Attorneys Only Information.

2. HANDLING OF ATTORNEYS ONLY INFORMATION

No Attorneys Only Information may be disclosed, either directly or indirectly, except by prior written approval of the attorneys for Coach or pursuant to an order of the Court (where applicable), except to the persons specified above.

A Party that files with the Court, or seeks to use at trial, materials designated as Attorneys Only Information, must seek to have the record containing such information sealed. Therefore, in addition to filing such materials under seal, that Party must simultaneously file with the Court a motion to seal and request appropriate findings supporting the need for the material to be maintained under seal, in full compliance with all applicable filing rules.

A Party that files with the Court, or seeks to use at trial, materials designated as Attorneys Only Information, and who does not seek to have the record containing such information sealed, must comply with one of the following requirements:

(a) At least 10 business days prior to the filing or use of the Attorneys Only Information, the submitting Party must give notice to all other parties of the submitting Party's intention to file or use the Attorneys Only Information, including specific identification (by reference to Bates number or other identifier) of the Attorneys Only Information. Any affected Party or non-party may then file with the Court a motion, in full compliance all applicable filing rules, and request appropriate findings supporting the need for the material to be maintained under seal; or

(b) At the time of filing or using the Attorneys Only Information, the submitting Party must file the materials with the Court pursuant to the following procedure: (i) the document(s) containing Attorneys Only Information must be filed under seal, in full compliance with all applicable filing rules; (ii) the document(s) must be labeled "CONDITIONALLY UNDER SEAL"; and (iii) the Party submitting the document(s) must

include as part of each document filed under seal a statement that the document may be unsealed pending Court order. Any affected Party or non-party may then file a motion to seal, in full compliance with all applicable filing rules, and request appropriate findings supporting the need for the material to be maintained under seal, within 10 business days after the document(s) are filed. If no Party or non-party files a motion to seal before the expiration of 10 business days, the Parties must file a stipulated motion to unseal the document in question. For the convenience of the Court, a full hardcopy of the Attorneys Only Information may be provided directly to the Court, for the Court's use only.

To the extent practicable, Attorneys Only Information to be filed with the Court must be filed separately or in severable portions of filed papers, so that the non-confidential portions may freely be disseminated.

3. AMENDMENT OF AGREEMENT

This Agreement may be amended by the written agreement of counsel for all the Parties to this Agreement, and any pertinent third parties.

4. RETURN OF ATTORNEYS ONLY MATERIAL

Once participation in this lawsuit by any person obtaining Attorneys Only Information has been concluded, all Attorneys Only Information must be returned by such person within 30 days to the counsel from whom he or she obtained such Attorneys Only Information.

5. MISCELLANEOUS

If Attorneys Only Information is disclosed to any person other than in the manner authorized by this Agreement, the person responsible for the disclosure must immediately bring all the pertinent facts relating to such disclosure to the attention of counsel for all Parties without prejudice to the rights and remedies of any Party, and must make every effort to prevent further

disclosure by it or by the person who was the recipient of such information.

This Agreement does not abrogate, amend, enhance, or diminish any contractual, statutory, or other legal right or obligation any Party may have with respect to information disclosed in this lawsuit.

Nothing herein prevents a designating Party from using or disclosing its own Attorneys Only Information.

AGREED TO this _____ day of March, 2011.

DLA Piper (US) LLP

By _____

Stellman Keehnel, WSBA No. 9309
R. Omar Riojas, WSBA No. 35400
Patrick Eagan, WSBA No. 42679
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E-mail: omar.riojas@dlapiper.com
E-mail: patrick.eagan@dlapiper.com

Attorneys for defendants
Coach, Inc. and Coach Services, Inc.

AGREED TO this _____ day of March, 2011

Van Eyk & Moore, PLLC

By _____
Jason Moore, WSBA No. 41324
100 West Harrison Street, N440
Seattle, WA 98119

On behalf of themselves and as attorneys for plaintiff Gina Kim

AGREED TO this _____ day of March, 2011

Carlson Legal

By _____
Jay Carlson, WSBA No. 30411

On behalf of themselves and as attorneys for plaintiff Gina Kim

AGREED TO this _____ day of March, 2011

Carney Gillespie & Isitt PLLC

By _____
Christopher Carney, WSBA No. 30325

On behalf of themselves and as attorneys for plaintiff Gina Kim