

15-3775

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

MELISSA ZARDA AND DONALD MOORE AS INDEPENDENT CO-EXECUTORS OF THE ESTATE OF DONALD ZARDA,

Plaintiff-Appellant,

— against —

ALTITUDE EXPRESS dba SKYDIVE LONG ISLAND and RAYMOND MAYNARD,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX – VOLUME I

GREGORY ANTOLLINO
Attorney for Plaintiff-Appellant
725 Seventh Avenue, Suite 705
New York, New York 10001
(212) 334-7397

SAUL ZABELL & ASSOCIATES, P.C.,
Attorney for Defendants-Appellees
One Corporate Drive
Bohemia, New York 11736
(631) 589-7242

March, 2015

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**U.S. District Court
Eastern District of New York (Central Islip)
CIVIL DOCKET FOR CASE #: 2:10-cv-04334-JFB-AYS**

Zarda v. Altitude Express, Inc. et al
Assigned to: Judge Joseph F. Bianco
Referred to: Magistrate Judge Anne Y. Shields
Cause: 28:1331 Fed. Question: Fair Labor Standards

Date Filed: 09/23/2010
Date Terminated: 10/28/2015
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Melissa Zarda
*co-independent executors of the estate of
Donald Zarda*

represented by **Gregory S. Antollino**
Gregory Antollino, Esq.
275 Seventh Avenue
Suite 705
New York, NY 10001
212-334-7397
Fax: 212-334-7399
Email: gantollino@nyc.rr.com
ATTORNEY TO BE NOTICED

Richard J. Cardinale
The Law Firm of Richard J. Cardinale
26 Court Street
Suite 1815
Brooklyn, NY 11242
718-624-9391
Fax: 718-624-4748
Email: richcardinale@gmail.com
ATTORNEY TO BE NOTICED

Plaintiff

William Allen Moore, Jr.
*co-independent executor of the estate of
Donald Zarda*

represented by **Gregory S. Antollino**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Altitude Express, Inc.
*doing business as
Skydive Long Island*

represented by **Saul D. Zabell**
Zabell & Associates, P.C.
4875 Sunrise Highway
Suite 300
Bohemia, NY 11716
631-589-7242
Fax: 631-563-7475
Email: SZabell@laborlawsny.com
ATTORNEY TO BE NOTICED

Defendant

Ray Maynard

represented by **Saul D. Zabell**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/23/2010	<u>1</u>	COMPLAINT against Altitude Express, Inc., Ray Maynard Disclosure Statement on Civil Cover Sheet completed -NO,, filed by Donald Zarda. (Attachments: # <u>1</u>)

JA0001

		Civil Cover Sheet) (Serret, Liliana) (Entered: 09/29/2010)
09/23/2010		FILING FEE: \$ 350.00, receipt number 4653019994 (Serret, Liliana) (Entered: 09/29/2010)
09/23/2010		Summons Issued as to Altitude Express, Inc., Ray Maynard. (Serret, Liliana) (Entered: 09/29/2010)
09/30/2010		Case Ineligible for Arbitration (Bollbach, Jean) (Entered: 09/30/2010)
10/21/2010	<u>2</u>	SUMMONS Returned Executed by Donald Zarda. Altitude Express, Inc. served on 9/27/2010, answer due 10/18/2010. (Antollino, Gregory) (Entered: 10/21/2010)
10/21/2010	<u>3</u>	WAIVER OF SERVICE Returned Executed by Donald Zarda. Ray Maynard waiver sent on 9/24/2010, answer due 11/23/2010. (Antollino, Gregory) (Entered: 10/21/2010)
11/01/2010	<u>4</u>	NOTICE of Appearance by Saul D. Zabell on behalf of Altitude Express, Inc., Ray Maynard (aty to be noticed) (Zabell, Saul) (Entered: 11/01/2010)
11/23/2010	<u>5</u>	Letter MOTION for pre motion conference re <u>1</u> Complaint by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 11/23/2010)
11/23/2010		ORDER granting <u>5</u> Motion for Pre Motion Conference. The Court has received the defendants' letter, dated November 23, 2010, requesting a pre-motion conference in anticipation of moving to dismiss. IT IS HEREBY ORDERED that the parties shall participate in a telephone pre-motion conference on Wednesday, December 8, 2010 at 2:00 p.m. At that time, counsel for defendants shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712 5670. Prior to the date of the conference, plaintiff may submit a letter pursuant to Individual Rule III.A explaining why the proposed motion is likely to be unsuccessful. SO ORDERED. Ordered by Judge Joseph F. Bianco on 11/23/2010. (Cooney, John) (Entered: 11/23/2010)
11/30/2010	<u>6</u>	Letter <i>in response to request for premotion conference</i> by Donald Zarda (Attachments: # <u>1</u> Exhibit cited case) (Antollino, Gregory) (Entered: 11/30/2010)
11/30/2010	<u>7</u>	MOTION to Adjourn Conference <i>to an earlier or later time the same day</i> by Donald Zarda. (Antollino, Gregory) (Entered: 11/30/2010)
12/01/2010		ORDER granting <u>7</u> Motion to Adjourn Conference. By letter dated November 30, 2010, plaintiff requested to reschedule the December 8, 2010 pre-motion conference. IT IS HEREBY ORDERED that plaintiff's request is granted. The pre-motion conference is rescheduled for Thursday, December 9, 2010 at 1:30 p.m. SO ORDERED. Ordered by Judge Joseph F. Bianco on 12/1/2010. (Cooney, John) (Entered: 12/01/2010)
12/09/2010	<u>8</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Telephone pre motion Conference held on 12/9/2010; motion to be filed by 1/10/11; response by 2/10/11; reply by 2/24/11; oral argument 3/11/11 at 1:30 pm; submit the proposed schedule to the court by 12/17/10 (Court Reporter ftr 1:38 - 1:51.) (Bollbach, Jean) (Entered: 12/09/2010)
12/09/2010		ORDER. IT IS HEREBY ORDERED that the automatic referral to the Magistrate Judge for non-dispositive pretrial matters under Local Civil Rule 72.2 is withdrawn in this case and all proceedings, including discovery conferences and all other non-dispositive pre-trial matters, will occur before the District Judge, unless a specific referral is made to the Magistrate Judge at some future time. SO ORDERED. Ordered by Judge Joseph F. Bianco on 12/9/2010. (Cooney, John) (Entered: 12/09/2010)
12/10/2010	<u>9</u>	Proposed Scheduling Order by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 12/10/2010)
12/10/2010	<u>10</u>	SCHEDULING ORDER: deadline for commencement of motion for joinder of additional parties or amendment of pleadings: March 4, 2011; discovery by Sept. 9, 2011; dispositive motion by Oct. 7, 2011; final conf. Oct 21, 2011 at 10:00 am. Ordered by Judge Joseph F. Bianco on 12/10/2010. (Bollbach, Jean) (Entered: 12/14/2010)

12/16/2010	<u>11</u>	Corporate Disclosure Statement by Altitude Express, Inc. (Zabell, Saul) (Entered: 12/16/2010)
01/10/2011	<u>12</u>	Letter by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 01/10/2011)
01/10/2011	<u>13</u>	ANSWER to <u>1</u> Complaint by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 01/10/2011)
02/04/2011	<u>14</u>	First MOTION for Discovery <i>Hearing or Conference</i> by Donald Zarda. (Antollino, Gregory) (Entered: 02/04/2011)
02/07/2011		ORDER re <u>14</u> : The plaintiff's application must be redirected to Judge Bianco. By order dated December 9, 2010, Judge Bianco withdrew the automatic referral to the undersigned for non-dispositive pretrial matters. Ordered by Magistrate Judge Arlene R. Lindsay on 2/7/2011. c/ecf (Miller, Dina) (Entered: 02/07/2011)
02/07/2011		SCHEDULING ORDER: IT IS HEREBY ORDERED that the parties shall participate in a telephone conference on Wednesday, February 9, 2011 at 4:00 p.m. to discuss plaintiff's letter dated February 4, 2011. At that time, counsel for plaintiff shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712 5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 2/7/2011. (Cooney, John) (Entered: 02/07/2011)
02/07/2011	<u>15</u>	RESPONSE in Opposition re <u>14</u> First MOTION for Discovery <i>Hearing or Conference</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 02/07/2011)
02/09/2011	<u>16</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Telephone status Conference held on 2/9/2011. (Court Reporter Owen Wicker.) (Bollbach, Jean) (Entered: 02/10/2011)
02/11/2011	<u>17</u>	Letter MOTION to Compel <i>Discovery</i> by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 02/11/2011)
02/11/2011	<u>18</u>	RESPONSE to Motion re <u>17</u> Letter MOTION to Compel <i>Discovery</i> filed by Donald Zarda. (Antollino, Gregory) (Entered: 02/11/2011)
02/11/2011	<u>19</u>	Letter MOTION to Compel <i>Discovery</i> by Altitude Express, Inc., Ray Maynard. (Attachments: # <u>1</u> Exhibit) (Zabell, Saul) (Entered: 02/11/2011)
02/15/2011		SCHEDULING ORDER: The Court has received the defendants' letter informing the court of a discovery dispute. IT IS HEREBY ORDERED that the parties shall participate in a telephone conference on Friday, February 25, 2011 at 2:30 p.m. At that time, counsel for defendants shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712 5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 2/15/2011. (Cooney, John) (Entered: 02/15/2011)
02/16/2011	<u>20</u>	Letter MOTION to Adjourn Conference <i>scheduled for February 25, 2011 at 2:30 pm</i> by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 02/16/2011)
02/18/2011		SCHEDULING ORDER: The Court has received the defendants' letter requesting an adjournment of the telephone conference scheduled for February 25, 2011. IT IS HEREBY ORDERED that the telephone conference is rescheduled for Tuesday, March 1, 2011 at 2:30 p.m. At that time, counsel for defendants shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712 5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 2/18/2011. (Cooney, John) (Entered: 02/18/2011)
02/22/2011	<u>21</u>	MOTION to Amend/Correct/Supplement <u>1</u> Complaint by Donald Zarda. (Attachments: # <u>1</u> Exhibit proposed amended complaint) (Antollino, Gregory) (Entered: 02/22/2011)
02/23/2011	<u>22</u>	RESPONSE in Opposition re <u>21</u> MOTION to Amend/Correct/Supplement <u>1</u> Complaint filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 02/23/2011)
02/23/2011	<u>23</u>	REPLY in Support re <u>21</u> MOTION to Amend/Correct/Supplement <u>1</u> Complaint filed by Donald Zarda. (Antollino, Gregory) (Entered: 02/23/2011)

02/28/2011		SCHEDULING ORDER: Due to a conflict in the Court's calendar, the telephone conference concerning the discovery dispute scheduled for March 1, 2011 is rescheduled for Friday, March 4, 2011 at 1:15 p.m. At that time, counsel for defendants shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712 5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 2/28/2011. (Cooney, John) (Entered: 02/28/2011)
02/28/2011	<u>24</u>	Letter MOTION to Adjourn Conference <i>currently scheduled for March 4, 2011 at 1:15 p.m.</i> by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 02/28/2011)
03/02/2011		ORDER granting <u>24</u> Motion to Adjourn Conference. The Court has received the defendants' letter requesting an adjournment of the telephone conference concerning the discovery dispute scheduled for March 4, 2011. IT IS HEREBY ORDERED that the telephone conference is rescheduled for Friday, March 11, 2011 at 9:30 a.m. At that time, counsel for defendants shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712 5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 3/2/2011. (Cooney, John) (Entered: 03/02/2011)
03/09/2011	<u>25</u>	Letter <i>Requesting pre-motion conference</i> by Donald Zarda (Antollino, Gregory) (Entered: 03/08/2011)
03/09/2011		SCHEDULING ORDER: The Court has received the plaintiff's letter, dated March 8, 2011, requesting a pre-motion conference in anticipation of moving to disqualify defendants' counsel. IT IS HEREBY ORDERED that the parties shall discuss this matter at the telephone conference concerning the discovery dispute scheduled for March 11, 2011 at 9:30 a.m. SO ORDERED. Ordered by Judge Joseph F. Bianco on 3/9/2011. (Cooney, John) (Entered: 03/09/2011)
03/10/2011	<u>26</u>	REPLY in Opposition re <u>25</u> Letter filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 03/10/2011)
03/11/2011	<u>27</u>	Minute Order. for proceedings held before Judge Joseph F. Bianco: granting <u>21</u> Motion to Amend/Correct/Supplement; Telephone Conference held on 3/11/2011. Amended complaint to be filed by 3/18/11 (Court Reporter ftr 9:47 – 10:02.) (Bollbach, Jean) (Entered: 03/11/2011)
03/11/2011	<u>28</u>	AMENDED COMPLAINT against Altitude Express, Inc., Ray Maynard, filed by Donald Zarda. (Antollino, Gregory) (Entered: 03/11/2011)
03/11/2011	<u>29</u>	ORDER granting <u>19</u> Motion to Compel; (Amended Pleadings due by 3/18/2011.) The amended complaint shall be filed no later than March 18, 2011. (Signed by: Joseph F. Bianco, United States District Judge, on March 11, 2011). (Fagan, Linda) (Entered: 03/16/2011)
03/22/2011	<u>30</u>	ANSWER to <u>28</u> Amended Complaint by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 03/22/2011)
04/08/2011	<u>31</u>	First MOTION to Compel by Donald Zarda. (Attachments: # <u>1</u> Exhibit Waiver form) (Antollino, Gregory) (Entered: 04/08/2011)
04/12/2011	<u>32</u>	RESPONSE in Opposition re <u>31</u> First MOTION to Compel filed by Altitude Express, Inc., Ray Maynard. (Attachments: # <u>1</u> Exhibit) (Zabell, Saul) (Entered: 04/12/2011)
04/12/2011	<u>33</u>	REPLY in Support re <u>31</u> First MOTION to Compel filed by Donald Zarda. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2) (Antollino, Gregory) (Entered: 04/12/2011)
04/13/2011	<u>34</u>	MOTION to Compel <i>Discovery or Production of Documents under F.R.C.P. 37 et seq.</i> by Altitude Express, Inc., Ray Maynard. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Declaration, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit) (Zabell, Saul) (Entered: 04/13/2011)
04/13/2011	<u>35</u>	MOTION to Strike <u>34</u> MOTION to Compel <i>Discovery or Production of Documents under F.R.C.P. 37 et seq. as excessive and in violation of the local rules and the Court's individual rules</i> by Donald Zarda. (Antollino, Gregory) (Entered: 04/13/2011)

04/13/2011	<u>36</u>	Letter <i>in response to Plaintiff's surreply</i> by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 04/13/2011)
04/14/2011	<u>37</u>	RESPONSE in Opposition re <u>35</u> MOTION to Strike <u>34</u> MOTION to Compel <i>Discovery or Production of Documents under F.R.C.P. 37 et seq. as excessive and in violation of the local rules and the Court's individual rules</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 04/14/2011)
04/14/2011	<u>38</u>	Letter MOTION for pre motion conference by Altitude Express, Inc., Ray Maynard. (Attachments: # <u>1</u> Exhibit) (Zabell, Saul) (Entered: 04/14/2011)
04/18/2011	<u>39</u>	Letter <i>in response to request for premotion conference to quash subpoena</i> by Donald Zarda (Antollino, Gregory) (Entered: 04/18/2011)
05/05/2011	<u>40</u>	Letter <i>concerning new matters in discovery</i> by Donald Zarda (Antollino, Gregory) (Entered: 05/05/2011)
05/05/2011	<u>41</u>	REPLY in Opposition to <i>Plaintiff's 5/5/11 letter concerning new matters in discovery</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 05/05/2011)
05/05/2011	<u>42</u>	Letter <i>in further support of discovery by plaintiff and other relief</i> by Donald Zarda (Antollino, Gregory) (Entered: 05/05/2011)
05/06/2011		ORDER. By letter dated May 5, 2011, plaintiff requests a pre-motion conference on the issue of disqualifying counsel for defendants from representing non-party witnesses. IT IS HEREBY ORDERED that the pre-motion conference requirement is waived. The parties shall adhere to the following briefing schedule for plaintiff's motion. Plaintiff's motion is due June 6, 2011; Defendants' response is due July 6, 2011; Plaintiff's reply is due July 20, 2011. The Court will determine if oral argument is necessary after the matter is fully submitted. IT IS FURTHER ORDERED that plaintiff's pending motion to strike defendants' 176-page discovery motion is denied. IT IS FURTHER ORDERED that the parties abide by the following briefing schedule: plaintiff's opposition is due by May 27, 2011 and defendants' reply is due June 8, 2011. IT IS FURTHER ORDERED that the page limit requirement is waived for plaintiff's opposition. IT IS FURTHER ORDERED that the Court will consider plaintiff's request to compel plaintiff's deposition after the above-referenced matters are decided. SO ORDERED. Ordered by Judge Joseph F. Bianco on 5/6/2011. (Cooney, John) (Entered: 05/06/2011)
05/12/2011	<u>43</u>	Letter <i>regarding Your Honor's May 6, 2011 Order</i> by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 05/12/2011)
05/12/2011	<u>44</u>	Letter <i>in response to defendants' letter of 5/12/11</i> by Donald Zarda (Antollino, Gregory) (Entered: 05/12/2011)
05/27/2011	<u>45</u>	MEMORANDUM in Opposition re <u>34</u> MOTION to Compel <i>Discovery or Production of Documents under F.R.C.P. 37 et seq.</i> filed by Donald Zarda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Antollino, Gregory) (Entered: 05/27/2011)
06/06/2011	<u>46</u>	MOTION to Disqualify Counsel <i>and to hold two witnesses in contempt and for other relief</i> by Donald Zarda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Errata G) (Antollino, Gregory) (Entered: 06/06/2011)
06/06/2011	<u>47</u>	MEMORANDUM in Support re <u>46</u> MOTION to Disqualify Counsel <i>and to hold two witnesses in contempt and for other relief</i> filed by Donald Zarda. (Antollino, Gregory) (Entered: 06/06/2011)
06/06/2011	<u>48</u>	MEMORANDUM in Support re <u>46</u> MOTION to Disqualify Counsel <i>and to hold two witnesses in contempt and for other relief</i> SIGNED LETTER BRIEF (DOCUMENT # 47 IS UNSIGNED) filed by Donald Zarda. (Antollino, Gregory) (Entered: 06/06/2011)
06/08/2011	<u>49</u>	REPLY in Support re <u>34</u> MOTION to Compel <i>Discovery or Production of Documents under F.R.C.P. 37 et seq.</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 06/08/2011)

07/06/2011	<u>50</u>	MEMORANDUM in Opposition re <u>48</u> Memorandum in Support filed by Altitude Express, Inc., Ray Maynard. (Attachments: # <u>1</u> Declaration of Saul Zabell, Esq.) (Zabell, Saul) (Entered: 07/06/2011)
07/13/2011	<u>51</u>	REPLY in Support re <u>46</u> MOTION to Disqualify Counsel <i>and to hold two witnesses in contempt and for other relief</i> filed by Donald Zarda. (Antollino, Gregory) (Entered: 07/13/2011)
08/09/2011	<u>52</u>	Letter MOTION for Extension of Time to Complete Discovery by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 08/09/2011)
08/10/2011		SCHEDULING ORDER: IT IS HEREBY ORDERED that oral argument is scheduled for Wednesday, August 24, 2011 at 2:00 p.m. for plaintiff's motion to disqualify counsel from representing non-party witnesses and defendants' motion to compel. In addition, the Court has received defendants' request for an extension of time to complete discovery. IT IS FURTHER ORDERED that a new discovery deadline will be set following the Court's ruling on the pending motions. SO ORDERED. Ordered by Judge Joseph F. Bianco on 8/10/2011. (Cooney, John) (Entered: 08/10/2011)
08/10/2011	<u>53</u>	Letter MOTION to Adjourn Conference by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 08/10/2011)
08/11/2011		ORDER granting <u>53</u> Motion to Adjourn Conference. By letter dated August 10, 2011, defendants request to adjourn the oral argument scheduled for August 24, 2011 until after Labor Day. IT IS HEREBY ORDERED that, on consent, defendants' request is granted. Oral argument concerning plaintiff's motion to disqualify counsel from representing non-party witnesses and defendants' motion to compel is rescheduled for Monday, September 12, 2011 at 3:00 p.m. SO ORDERED. Ordered by Judge Joseph F. Bianco on 8/11/2011. (Cooney, John) (Entered: 08/11/2011)
08/24/2011	<u>54</u>	Second MOTION to Adjourn Conference <i>for September 12 to September 19</i> by Donald Zarda. (Antollino, Gregory) (Entered: 08/24/2011)
08/24/2011		ORDER granting <u>54</u> Motion to Adjourn Conference. By letter dated August 24, 2011, plaintiff requests to adjourn the oral argument scheduled for September 12, 2011 until September 19, 2011 at 4:30 p.m. IT IS HEREBY ORDERED that, on consent, plaintiff's request is granted. SO ORDERED. Ordered by Judge Joseph F. Bianco on 8/24/2011. (Cooney, John) (Entered: 08/24/2011)
09/19/2011	<u>55</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Oral Argument held on 9/19/2011 at 4:30. Attorney for plaintiff, Gregory Antollino present. Saul Zabell attorney for defendant present. Case called. Conference held. Argument heard. Plaintiff's motion to compel; within 10 days, def's to produce names and addresses of co-workers for 2009 and 2010 summers, names and addresses of two customers at issue and jump log. Defts.' motion to compel plaintiff to produce any facebook communication from 2008-10 that expressed emotional trauma and tax returns. Other financial records related to other company is denied at this juncture. Medical treatment records from 2008-present to be provided to the Court for ex parte in camera review. Denied in all other respects. Plaintiffs' motion to disqualify counsel is denied. Motion for costs denied. Parties to submit deposition schedule, with plaintiff proceeding first, to the Court within two weeks. (Tape #4:41-5:41.) (Padilla, Kristin) (Entered: 10/03/2011)
10/19/2011	<u>56</u>	Letter <i>informing the court as to agreed upon discovery deadline</i> by Donald Zarda (Antollino, Gregory) (Entered: 10/19/2011)
10/20/2011		SCHEDULING ORDER: IT IS HEREBY ORDERED that discovery in this case shall end on March 23, 2012. The parties shall participate in a telephone conference on Wednesday, April 4, 2012 at 11:00 a.m. At that time, counsel for the plaintiff shall initiate the call, and once all parties are on the line, shall contact chambers at (631)712-5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 10/20/2011. (Maxwell, Rita) (Entered: 10/20/2011)
11/15/2011	<u>57</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Telephone status Conference held on 11/15/2011; RE: deposition dispute. Non-party witnesses David Kenglo and Rose Orellana want to be deposed together at the same time.

		Court rules that the non-party witnesses will be deposed separately and will not be present at each other's deposition. (Tape #fr 1:32 - 1:41.) (Bollbach, Jean) (Entered: 11/16/2011)
11/18/2011		Magistrate Judge Gary R. Brown added. Magistrate Judge Arlene R. Lindsay no longer assigned to case. (Bowens, Priscilla) (Entered: 11/18/2011)
12/09/2011		ORDER terminating <u>52</u> Motion for Extension of Time to Complete Discovery. Motion terminated. See Scheduling Order dated October 20, 2011. Ordered by Judge Joseph F. Bianco on 12/9/2011. (Maxwell, Rita) (Entered: 12/09/2011)
12/09/2011		ORDER terminating <u>35</u> Motion to Strike. Motion terminated. See Order dated May 6, 2011. Ordered by Judge Joseph F. Bianco on 12/9/2011. (Maxwell, Rita) (Entered: 12/09/2011)
12/12/2011		ORDER terminating <u>31</u> Motion to Compel; terminating <u>34</u> Motion to Compel; terminating <u>38</u> Motion for Pre Motion Conference; terminating <u>46</u> Motion to Disqualify Counsel. Motions terminated. See Docket Entry 55. Ordered by Judge Joseph F. Bianco on 12/12/2011. (Maxwell, Rita) (Entered: 12/12/2011)
12/15/2011	<u>58</u>	MOTION for Discovery <i>to compel a subpoena</i> by Donald Zarda. (Attachments: # <u>1</u> Exhibit) (Antollino, Gregory) (Entered: 12/15/2011)
12/15/2011		SCHEDULING ORDER: IT IS HEREBY ORDERED that the parties shall participate in a telephone conference on Friday, December 16, 2011 at 9:30 a.m. At that time, counsel for plaintiff shall initiate the call and, once all parties are on the line, contact Chambers at (631) 712 5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 12/15/2011. (Maxwell, Rita) (Entered: 12/15/2011)
12/16/2011	<u>59</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Telephone status Conference held on 12/16/2011 - re: deposition dispute. Deposition to take place 12/21/11 as discussed on the record (Tape #fr 9:40 - 9:46.) (Bollbach, Jean) (Entered: 12/16/2011)
12/16/2011		ORDER terminating <u>58</u> Motion for Discovery, Motion terminated. See docket entry 59. Ordered by Judge Joseph F. Bianco on 12/16/2011. (Maxwell, Rita) (Entered: 12/16/2011)
02/18/2012	<u>60</u>	Letter <i>requesting briefing schedule, etc.</i> by Donald Zarda (Antollino, Gregory) (Entered: 02/18/2012)
02/21/2012		SCHEDULING ORDER: By letter dated February 18, 2012, plaintiff requests a briefing schedule regarding outstanding discovery disputes. IT IS HEREBY ORDERED that the parties shall abide by the following briefing schedule: motions regarding outstanding discovery shall be filed by March 21, 2012; oppositions shall be filed by April 23, 2012; reply briefs shall be filed by May 7, 2012; oral argument shall be held on Wednesday, June 13, 2012 at 2:00 p.m. IT IS FURTHER ORDERED that the page limitations of the Local Rules are waived for this briefing. SO ORDERED. Ordered by Judge Joseph F. Bianco on 2/21/2012. (Maxwell, Rita) (Entered: 02/21/2012)
03/21/2012	<u>61</u>	Second MOTION to Compel , Second MOTION for Sanctions , Second MOTION for Extension of Time to Complete Discovery by Donald Zarda. (Antollino, Gregory) (Entered: 03/21/2012)
03/21/2012	<u>62</u>	DECLARATION re <u>61</u> Second MOTION to Compel Second MOTION for Sanctions Second MOTION for Extension of Time to Complete Discovery by Donald Zarda (Attachments: # <u>1</u> Exhibit A-Maynard Dep., # <u>2</u> Exhibit B-Picture of timer, # <u>3</u> Exhibit C- Winstock Dep, # <u>4</u> Exhibit D-Orellana Dep., # <u>5</u> Exhibit E-Kengle Dep., # <u>6</u> Exhibit F-Callanan Dep., # <u>7</u> Exhibit G- D's response to P's 2d ComBined demand, # <u>8</u> Exhibit H- Apparent Ripoff Report Complaint, # <u>9</u> Exhibit I- Apparent REsponse by Maynard to Ripoff report, # <u>10</u> Exhibit J Declaration of Saul Zabell, # <u>11</u> Exhibit K- emails between Antollino and Zabell, # <u>12</u> Exhibit L - portion of deposition in unrelated case, # <u>13</u> Exhibit M - portion of defendants' amended document response, # <u>14</u> Exhibit N - Letter from Zabell to Antollino, # <u>15</u> Exhibit O - Letter from Zabell to Court, # <u>16</u> Exhibit P - email to defendant regarding Zarda, # <u>17</u> Exhibit Q- Letter of Saul Zabell to Court 4/12/11, # <u>18</u> Exhibit R- Sanchez declaration, # <u>19</u> Exhibit S - portions of deposition of

		Donald Zarda) (Antollino, Gregory) (Entered: 03/21/2012)
03/21/2012	<u>63</u>	MEMORANDUM in Support re <u>61</u> Second MOTION to Compel Second MOTION for Sanctions Second MOTION for Extension of Time to Complete Discovery filed by Donald Zarda. (Antollino, Gregory) (Entered: 03/21/2012)
04/03/2012		ORDER. In light of the on-going briefing and upcoming oral argument regarding the parties' discovery disputes, IT IS HEREBY ORDERED that the conference scheduled for April 4, 2012 is canceled. SO ORDERED. Ordered by Judge Joseph F. Bianco on 4/3/2012. (Maxwell, Rita) (Entered: 04/03/2012)
04/23/2012	<u>64</u>	MEMORANDUM in Opposition to <i>Plaintiff's Motion to Compel</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 04/23/2012)
04/23/2012	<u>65</u>	AFFIDAVIT/DECLARATION in Opposition re <u>61</u> Second MOTION to Compel Second MOTION for Sanctions Second MOTION for Extension of Time to Complete Discovery of <i>Saul Zabell</i> filed by Altitude Express, Inc., Ray Maynard. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6) (Zabell, Saul) (Entered: 04/23/2012)
05/07/2012	<u>66</u>	REPLY in Support re <u>61</u> Second MOTION to Compel Second MOTION for Sanctions Second MOTION for Extension of Time to Complete Discovery filed by Donald Zarda. (Attachments: # <u>1</u> Exhibit A – portion Zarda Dep.) (Antollino, Gregory) (Entered: 05/07/2012)
05/14/2012	<u>67</u>	Letter <i>Regarding Plaintiff's Request for Sanctions</i> by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 05/14/2012)
05/14/2012	<u>68</u>	Letter <i>in response to Mr. Zabell's request to expand the record</i> by Donald Zarda (Antollino, Gregory) (Entered: 05/14/2012)
05/15/2012	<u>69</u>	Letter <i>in further response to Mr. Zabell's May 14 letter</i> by Donald Zarda (Attachments: # <u>1</u> Exhibit documents referenced in letter) (Antollino, Gregory) (Entered: 05/15/2012)
06/12/2012	<u>70</u>	Letter <i>regarding additional information for the June 13 oral argument</i> by Donald Zarda (Attachments: # <u>1</u> Exhibit 1 Transcript, # <u>2</u> Exhibit 2 Subpoena from Zabell 5/24, # <u>3</u> Exhibit 3 Email cancelling deposition) (Antollino, Gregory) (Entered: 06/12/2012)
06/13/2012	<u>71</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Oral Argument held on 6/13/2012 – letter to be submitted to the court by 6/20/12. Letter response to be submitted to the court by 6/17/12. Discovery is extended to 11/30/12 (Bollbach, Jean) (Entered: 06/14/2012)
06/20/2012	<u>72</u>	First MOTION for Protective Order by Altitude Express, Inc., Ray Maynard. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Zabell, Saul) (Entered: 06/20/2012)
06/22/2012	<u>73</u>	REPLY to Response to Motion re <u>72</u> First MOTION for Protective Order and <i>CROSS MOTION for certain relief</i> filed by Donald Zarda. (Antollino, Gregory) (Entered: 06/22/2012)
06/26/2012	<u>74</u>	REPLY to Response to Motion re <u>72</u> First MOTION for Protective Order filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 06/26/2012)
07/17/2012	<u>75</u>	ORDER denying <u>72</u> Motion for Protective Order. ORDERED that plaintiff is entitles to documentation regarding the days in which he worked but did not jump. Ordered by Judge Joseph F. Bianco on 7/17/2012. (Bollbach, Jean) (Entered: 07/18/2012)
07/20/2012	<u>76</u>	MOTION in Limine to admit <i>Professor Kenji Yoshino's Opinion and to make defendant pay for 8.75 hours of preparation time for a deposition</i> by Donald Zarda. (Antollino, Gregory) (Entered: 07/20/2012)
07/20/2012	<u>77</u>	DECLARATION re <u>76</u> MOTION in Limine to admit <i>Professor Kenji Yoshino's Opinion and to make defendant pay for 8.75 hours of preparation time for a deposition declaration of Kenji Yoshino</i> by Donald Zarda (Attachments: # <u>1</u> Exhibit A–Yoshino Report, # <u>2</u> Exhibit B–Yoshino cv, # <u>3</u> Exhibit C– Subpoena & letter from Zabell, # <u>4</u> Exhibit D – Yohsino's hours of preparation before

		cancellation of deposition) (Antollino, Gregory) (Entered: 07/20/2012)
07/20/2012	<u>78</u>	DECLARATION re <u>76</u> MOTION in Limine <i>to admit Professor Kenji Yoshino's Opinion and to make defendant pay for 8.75 hours of preparation time for a deposition Declaration of Gregory Antollino</i> by Donald Zarda (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4) (Antollino, Gregory) (Entered: 07/20/2012)
07/20/2012	<u>79</u>	MEMORANDUM in Support re <u>76</u> MOTION in Limine <i>to admit Professor Kenji Yoshino's Opinion and to make defendant pay for 8.75 hours of preparation time for a deposition</i> filed by Donald Zarda. (Antollino, Gregory) (Entered: 07/20/2012)
07/20/2012	<u>80</u>	Letter <i>regarding motion</i> by Donald Zarda (Antollino, Gregory) (Entered: 07/20/2012)
07/20/2012	<u>81</u>	Letter <i>requesting permission to move it defendants do not produce previously ordeed discovery within a reasonable time</i> by Donald Zarda (Antollino, Gregory) (Entered: 07/20/2012)
07/27/2012	<u>82</u>	Letter <i>responding to Plaintiff's request to move if Defendants do not produce discovery within a reasonable time</i> by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 07/27/2012)
08/06/2012	<u>83</u>	Letter <i>regarding Defendants' Opposition to Plaintiff's Request for the Admission of Expert Testimony and Payment of Fees</i> by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 08/06/2012)
08/06/2012	<u>84</u>	MEMORANDUM in Opposition <i>to Plaintiff's Request for Admission of Expert Testimony and Payment of Preparation Fees</i> filed by All Defendants. (Zabell, Saul) (Entered: 08/06/2012)
08/06/2012	<u>85</u>	DECLARATION re <u>84</u> Memorandum in Opposition <i>to Plaintiff's Request for Admission of Expert Testimony and Payment of Preparation Fees</i> by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 08/06/2012)
08/07/2012	<u>86</u>	MOTION for Extension of Time to File Response/Reply as to <u>79</u> Memorandum in Support, <u>77</u> Declaration, <u>76</u> MOTION in Limine <i>to admit Professor Kenji Yoshino's Opinion and to make defendant pay for 8.75 hours of preparation time for a deposition</i> , <u>81</u> Letter, <u>82</u> Letter, <u>83</u> Letter, <u>84</u> Memorandum in Opposition, <u>80</u> Letter, <u>78</u> Declaration, <u>85</u> Declaration by Donald Zarda. (Antollino, Gregory) (Entered: 08/07/2012)
08/08/2012		ORDER granting <u>86</u> Motion for Extension of Time to File Response/Reply. By letter dated August 7, 2012, plaintiff's counsel requests that he be allowed to file his motion in limine reply brief by August 31, 2012. IT IS HEREBY ORDERED that plaintiff's request is granted. Plaintiff may file his reply brief on or before August 31, 2012. SO ORDERED. Ordered by Judge Joseph F. Bianco on 8/8/2012. (Maxwell, Rita) (Entered: 08/08/2012)
08/31/2012	<u>87</u>	REPLY in Support re <u>76</u> MOTION in Limine <i>to admit Professor Kenji Yoshino's Opinion and to make defendant pay for 8.75 hours of preparation time for a deposition (Reply Declaration & Exhibits)</i> filed by Donald Zarda. (Attachments: # <u>1</u> Exhibit Exhibits A-D, # <u>2</u> Exhibit Exhibit E, # <u>3</u> Exhibit Exhibit F) (Antollino, Gregory) (Entered: 08/31/2012)
08/31/2012	<u>88</u>	REPLY in Support re <u>76</u> MOTION in Limine <i>to admit Professor Kenji Yoshino's Opinion and to make defendant pay for 8.75 hours of preparation time for a deposition REEPLY MEMO</i> filed by Donald Zarda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B) (Antollino, Gregory) (Entered: 08/31/2012)
09/07/2012	<u>89</u>	Letter <i>regarding defendant's continued failure to produce discovery ordered in June</i> by Donald Zarda (Antollino, Gregory) (Entered: 09/07/2012)
09/10/2012	<u>90</u>	Letter <i>application to file surreply</i> by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 09/10/2012)
09/10/2012	<u>91</u>	Letter <i>in opposition to sur-reply</i> by Donald Zarda (Antollino, Gregory) (Entered: 09/10/2012)

09/10/2012	<u>92</u>	Letter <i>in response to Plaintiff's ecf filing Document 89</i> by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 09/10/2012)
09/11/2012		SCHEDULING ORDER: IT IS HEREBY ORDERED that the parties shall participate in oral argument on Thursday, October 4, 2012, at 4:30 p.m., regarding plaintiff's in limine motion filed July 20, 2012 and the recent correspondence of the parties. No oral argument will be held on September 12, 2012. SO ORDERED. Ordered by Judge Joseph F. Bianco on 9/11/2012. (Maxwell, Rita) (Entered: 09/11/2012)
10/03/2012	<u>93</u>	Letter <i>re status of discovery ordered in June</i> by Donald Zarda (Antollino, Gregory) (Entered: 10/03/2012)
10/04/2012	<u>94</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Status Conference/oral argument held on 10/4/2012 – argument heard – decision reserved (Tape #ftr 4:51 – 5:48.) (Bollbach, Jean) (Entered: 10/05/2012)
10/06/2012	<u>95</u>	Letter <i>regarding documents produced and follow up on Sassaman v. Ganache</i> by Donald Zarda (Antollino, Gregory) (Entered: 10/06/2012)
10/17/2012	<u>96</u>	STIPULATION AND PROPOSED ORDER FOR COURT'S SIGNATURE by Donald Zarda (Antollino, Gregory) (Entered: 10/17/2012)
10/19/2012	<u>97</u>	ORDER OF CONFIDENTIALITY: for the protection and exchange of confidential information and documents. See order for full details.. Ordered by Judge Joseph F. Bianco on 10/19/2012. (Bollbach, Jean) (Entered: 10/25/2012)
11/06/2012	<u>98</u>	Second MOTION to Compel <i>additional time to depose Ray Maynard based on new additional factors</i> by Donald Zarda. (Attachments: # <u>1</u> Affidavit of Ray Maynard, # <u>2</u> decision referenced in letter) (Antollino, Gregory) (Entered: 11/06/2012)
11/07/2012	<u>99</u>	RESPONSE in Opposition re <u>98</u> Second MOTION to Compel <i>additional time to depose Ray Maynard based on new additional factors</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 11/07/2012)
11/07/2012	<u>100</u>	REPLY in Support re <u>98</u> Second MOTION to Compel <i>additional time to depose Ray Maynard based on new additional factors</i> filed by Donald Zarda. (Antollino, Gregory) (Entered: 11/07/2012)
11/08/2012		SCHEDULING ORDER: IT IS HEREBY ORDERED that the parties shall participate in a telephone conference on Tuesday, November 13, 2012 at 9:00 a.m. At that time, counsel for plaintiff shall initiate the call and, once all parties are on the line, contact Chambers at (631) 712 5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 11/8/2012.(Samplin, Ilissa) (Entered: 11/08/2012)
11/08/2012	<u>101</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 10/4/2012, before Judge Joseph F. Bianco. Transcriber Terry Gribben's Transcription Service, Telephone number 732-263-0044. Transcript may be viewed at the court public terminal or purchased through the Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/29/2012. Redacted Transcript Deadline set for 12/10/2012. Release of Transcript Restriction set for 2/6/2013. (Russo, Eric) (Entered: 11/08/2012)
11/09/2012	<u>102</u>	Letter MOTION to Adjourn Conference <i>to an alternate time</i> by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 11/09/2012)
11/09/2012		ORDER granting <u>102</u> Motion to Adjourn Conference. By letter dated November 9, 2012, defendants' counsel requests, on consent, an adjournment of the telephone conference scheduled for Tuesday, November 13, 2012 at 9:00 a.m. to a time later in the day. Unfortunately, a time later in the day is not available. IT IS HEREBY ORDERED that the parties shall participate in a telephone conference on Wednesday, November 14, 2012 at 9:00 a.m. At that time, counsel for plaintiff shall initiate the call and, once all parties are on the line, contact Chambers at (631) 712 5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 11/9/2012. (Samplin, Ilissa) (Entered: 11/09/2012)

11/14/2012	<u>103</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco:Telephone pre motion Conference held on 11/14/2012 (Tape #ftr 9:20 – 9:30.) (Bollbach, Jean) (Entered: 11/14/2012)
11/30/2012	<u>104</u>	Letter MOTION for pre motion conference <i>regarding Summary Judgment</i> by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 11/30/2012)
11/30/2012		ORDER granting <u>104</u> Motion for Pre Motion Conference. The Court has received defendants' letter requesting a pre-motion conference in anticipation of moving for summary judgment. IT IS HEREBY ORDERED that the parties shall participate in a telephone pre-motion conference on Monday, December 17, 2012 at 4:30 p.m. At that time, counsel for defendants shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712 5670. Prior to the date of the conference, plaintiff may submit a letter pursuant to Individual Rule III.A explaining why the proposed motion is likely to be unsuccessful. SO ORDERED. Ordered by Judge Joseph F. Bianco on 11/30/2012. (Samplin, Ilissa) (Entered: 11/30/2012)
11/30/2012	<u>105</u>	MOTION to Adjourn Conference <i>Actually to advance the conference would be a more accurate word to characterize my request.</i> by Donald Zarda. (Antollino, Gregory) (Entered: 11/30/2012)
12/03/2012		ORDER granting <u>105</u> Motion to Adjourn Conference. The Court has received plaintiff's letter dated November 30, 2012, requesting that the pre-motion conference be moved. IT IS HEREBY ORDERED that the pre-motion conference is now scheduled for Thursday, December 13, 2012 at 3:00 p.m. At that time, counsel for defendants shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712 5670. Prior to the date of the conference, plaintiff may submit a letter pursuant to Individual Rule III.A explaining why the proposed motion is likely to be unsuccessful. SO ORDERED. Ordered by Judge Joseph F. Bianco on 12/3/2012. (Samplin, Ilissa) (Entered: 12/03/2012)
12/04/2012	<u>106</u>	Letter <i>in response to defendant's pre-motion letter</i> by Donald Zarda (Attachments: # <u>1</u> Exhibit) (Antollino, Gregory) (Entered: 12/04/2012)
12/13/2012	<u>107</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco:Telephone status Conference held on 12/13/2012 – motion to be filed by 1/28/13; response and cross motion by 3/13/13; reply and opposition by 3/27/13; reply by 4/10/13; oral argument 5/29/13 at 4:30 pm (Tape #ftr 3:10 – 3:15.) (Bollbach, Jean) (Entered: 12/13/2012)
12/28/2012	<u>108</u>	First MOTION for Extension of Time to File <i>Summary Judgment</i> by Altitude Express, Inc.. (Zabell, Saul) (Entered: 12/28/2012)
12/28/2012		ORDER granting <u>108</u> Motion for Extension of Time to File: By letter dated December 28, 2012, defendants request on consent an extension of time to file their motion for summary judgment. IT IS HEREBY ORDERED that defendants' request is granted. Motion to be filed by February 11, 2013; Response and cross motion to be filed by March 27, 2013; Reply and opposition to be filed by April 10, 2013; Reply to be filed by May 1, 2013. Oral argument remains on Wednesday, May 29, 2013 at 4:30 p.m. SO ORDERED. Ordered by Judge Joseph F. Bianco on 12/28/2012. (Pilmар, Philip) (Entered: 12/28/2012)
02/11/2013	<u>109</u>	MEMORANDUM in Support of <i>Defendants' Motion for Summary Judgment</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 02/11/2013)
02/11/2013	<u>110</u>	RULE 56.1 STATEMENT <i>in Support of Defendants' Motion for Summary Judgment</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 02/11/2013)
02/11/2013	<u>111</u>	AFFIDAVIT/DECLARATION in Support re <u>104</u> Letter MOTION for pre motion conference <i>regarding Summary Judgment</i> , <i>Defendants' Motion for Summary Judgment</i> filed by Altitude Express, Inc., Ray Maynard. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12, # <u>13</u> Exhibit 13, # <u>14</u> Exhibit 14, # <u>15</u> Exhibit 15, # <u>16</u> Exhibit 16) (Zabell, Saul) (Entered: 02/11/2013)

02/19/2013		SCHEDULING ORDER: IT IS HEREBY ORDERED that the parties shall participate in a telephone conference on Wednesday, February 20, 2013 at 1:30 p.m at which time the Court will rule on plaintiff's expert motion. At that time, counsel for plaintiff shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712 5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 2/19/2013. (Samplin, Ilissa) (Entered: 02/19/2013)
02/19/2013	<u>112</u>	First MOTION to Adjourn Conference <i>for 2/20/13</i> by Donald Zarda. (Antollino, Gregory) (Entered: 02/19/2013)
02/19/2013		ORDER granting <u>112</u> Motion to Adjourn Conference. The Court has received counsel for plaintiff's letter requesting an adjournment of the oral ruling scheduled for Wednesday, February 20, 2013. IT IS HEREBY ORDERED that counsel's request is granted. The telephone conference is rescheduled for Friday, February 22, 2013 at 1:00 p.m. SO ORDERED. Ordered by Judge Joseph F. Bianco on 2/19/2013. (Samplin, Ilissa) (Entered: 02/19/2013)
02/22/2013	<u>113</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco:Status Conference/bench ruling held on 2/22/2013 – decision made on the record (Tape #ftr 1:18 – 1:40.) (Bollbach, Jean) (Entered: 02/22/2013)
02/22/2013	<u>114</u>	ORDER terminating <u>76</u> Motion in Limine – plaintiff's motion to admit the expert testimony of Processor Kenji Yoshino is denied and plaintiff's motion for payment of fees is granted, but modified amount of \$1,837.50. Ordered by Judge Joseph F. Bianco on 2/22/2013. (Bollbach, Jean) (Entered: 02/25/2013)
03/08/2013	<u>115</u>	First MOTION for Extension of Time to File <i>response and cross motion</i> by Donald Zarda. (Antollino, Gregory) (Entered: 03/08/2013)
03/13/2013	<u>116</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 2/22/2013, before Judge Joseph F. Bianco. Transcriber Aria Services, Inc., Telephone number 845-260-1377. Transcript may be viewed at the court public terminal or purchased through the Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/3/2013. Redacted Transcript Deadline set for 4/15/2013. Release of Transcript Restriction set for 6/11/2013. (Russo, Eric) (Entered: 03/13/2013)
03/14/2013		ORDER granting <u>115</u> Motion for Extension of Time to File. The Court has received counsel for plaintiff's letter dated March 8, 2013 requesting, on consent, a one-week extension of time to file a response and cross motion for summary judgment. IT IS HEREBY ORDERED that plaintiff's request is granted. Response and cross motion to be filed by April 3, 2013; Reply and opposition to be filed by April 17, 2013; Reply to be filed by May 8, 2013. Oral argument remains on Wednesday, May 29, 2013 at 4:30 p.m. SO ORDERED. Ordered by Judge Joseph F. Bianco on 3/14/2013. (Samplin, Ilissa) (Entered: 03/14/2013)
03/26/2013	<u>117</u>	Second MOTION for Extension of Time to File <i>SJ/Response to SJ</i> by Donald Zarda. (Antollino, Gregory) (Entered: 03/26/2013)
03/26/2013		ORDER granting <u>117</u> Motion for Extension of Time to File. The Court has received counsel for plaintiff's letter dated March 26, 2013 requesting a one week extension of time to file his response and cross motion for summary judgment. IT IS HEREBY ORDERED that counsel for plaintiff's request is granted. IT IS FURTHER ORDERED that the parties shall abide by the following modified briefing schedule: response and cross motion to be filed by April 10, 2013; reply and opposition to be filed by April 24, 2013; reply to be filed by May 15, 2013. Oral argument remains on Wednesday, May 29, 2013 at 4:30 p.m. SO ORDERED. Ordered by Judge Joseph F. Bianco on 3/26/2013. (Samplin, Ilissa) (Entered: 03/26/2013)
04/03/2013	<u>119</u>	MOTION for Leave to Electronically File Document under Seal <i>documents faxed on 4/3/2013</i> , MOTION to Seal Document by Donald Zarda. (Antollino, Gregory) (Entered: 04/03/2013)
04/04/2013	<u>120</u>	RESPONSE in Opposition re <u>119</u> MOTION for Leave to Electronically File Document under Seal <i>documents faxed on 4/3/2013</i> MOTION to Seal Document filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 04/04/2013)

04/04/2013	<u>121</u>	REPLY in Support re <u>119</u> MOTION for Leave to Electronically File Document under Seal <i>documents faxed on 4/3/2013</i> MOTION to Seal Document filed by Donald Zarda. (Antollino, Gregory) (Entered: 04/04/2013)
04/05/2013		ORDER denying <u>119</u> Motion for Leave to Electronically File Document under Seal. The Court has received counsel for plaintiff's motion to file documents under seal. Having reviewed the documents, the Court sees no basis for them to be filed under seal, other than the social security number referenced in the documents. IT IS HEREBY ORDERED that plaintiff's counsel shall electronically file a redacted version of the documents (with only the social security numbers redacted). SO ORDERED. Ordered by Judge Joseph F. Bianco on 4/5/2013. (Samplin, Ilissa) (Entered: 04/05/2013)
04/07/2013	<u>122</u>	RULE 56.1 STATEMENT <i>in opposition to defendants</i> filed by Donald Zarda. (Antollino, Gregory) (Entered: 04/08/2013)
04/08/2013	<u>123</u>	Third MOTION for Extension of Time to File <i>motion/cross motion for one day because of ecf failure and electrical outage</i> by Donald Zarda. (Attachments: # <u>1</u> Exhibit) (Antollino, Gregory) (Entered: 04/08/2013)
04/08/2013		ORDER granting <u>123</u> Motion for Extension of Time to File. The Court has received counsel for plaintiff's letter dated April 8, 2013 requesting a one day extension to file opposition papers. IT IS HEREBY ORDERED that counsel for plaintiff's request is granted. Plaintiff shall file his opposition papers by April 9, 2013. SO ORDERED. Ordered by Judge Joseph F. Bianco on 4/8/2013. (Samplin, Ilissa) (Entered: 04/08/2013)
04/08/2013	<u>124</u>	Letter <i>regarding continuing problems with ecf and my solution</i> by Donald Zarda (Antollino, Gregory) (Entered: 04/08/2013)
04/08/2013	<u>125</u>	AFFIDAVIT/DECLARATION in Opposition re <u>104</u> Letter MOTION for pre motion conference <i>regarding Summary Judgment IN ACTUAL OPPOSITION TO SUMMARY JUDGMENT AS A RESULT OF ECF PROBLEMS</i> filed by Donald Zarda. (Attachments: # <u>1</u> Exhibit AA Part 1, # <u>2</u> Exhibit AA Part 2, # <u>3</u> Exhibit AA Part 3, # <u>4</u> Exhibit AA Part 4, # <u>5</u> Exhibit AA Part 5, # <u>6</u> Exhibit BB, # <u>7</u> Exhibit CC, # <u>8</u> Exhibit DD, # <u>9</u> Exhibit EE, # <u>10</u> Exhibit FF) (Antollino, Gregory) (Entered: 04/08/2013)
04/08/2013	<u>126</u>	AFFIDAVIT/DECLARATION in Opposition re <u>104</u> Letter MOTION for pre motion conference <i>regarding Summary Judgment IN ACTUAL OPPOSITION TO SUMMARY JUDGMENT AS A RESULT OF ECF PROBLEMS</i> filed by Donald Zarda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F) (Antollino, Gregory) (Entered: 04/08/2013)
04/08/2013	<u>127</u>	RESPONSE in Opposition re <u>104</u> Letter MOTION for pre motion conference <i>regarding Summary Judgment ZARDA DECLARATION CONCERNING WAGES</i> filed by Donald Zarda. (Attachments: # <u>1</u> Exhibit A,B,C,D) (Antollino, Gregory) (Entered: 04/08/2013)
04/08/2013	<u>128</u>	AFFIDAVIT/DECLARATION in Opposition re <u>104</u> Letter MOTION for pre motion conference <i>regarding Summary Judgment BY GREGORY ANTOLLINO IN ACTUAL OPPOSITION TO SUMMARY JUDGMENT AS A RESULT OF ECF PROBLEMS</i> filed by Donald Zarda. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R, # <u>19</u> Exhibit S,T,U,V, # <u>20</u> Exhibit W, # <u>21</u> X,Y,Z) (Antollino, Gregory) (Entered: 04/08/2013)
04/09/2013	<u>129</u>	RULE 56.1 STATEMENT <i>In support of plaintiff's motion and in further opposition under Rule 56.1(b) to defendant's motion</i> filed by Donald Zarda. (Antollino, Gregory) (Entered: 04/09/2013)
04/09/2013	<u>130</u>	Letter <i>regarding 2 errata in plaintiff's counter 56.1 statement in opposition to defendant's motion</i> by Donald Zarda (Antollino, Gregory) (Entered: 04/09/2013)
04/09/2013	<u>131</u>	MEMORANDUM in Support <i>and in opposition to defenendants'</i> filed by Donald Zarda. (Antollino, Gregory) (Entered: 04/10/2013)

04/10/2013	<u>132</u>	MOTION for Partial Summary Judgment by Donald Zarda. Responses due by 4/24/2013 (Antollino, Gregory) (Entered: 04/10/2013)
04/10/2013	<u>133</u>	Letter <i>summarizing materials submitted for and against summary judgment</i> by Donald Zarda (Antollino, Gregory) (Entered: 04/10/2013)
04/12/2013	<u>134</u>	Letter <i>concerning 3 errata in memo of law</i> by Donald Zarda (Antollino, Gregory) (Entered: 04/12/2013)
04/15/2013	<u>135</u>	Letter MOTION for Extension of Time to File <i>Defendants' Reply and Opposition</i> by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 04/15/2013)
04/15/2013		ORDER granting <u>135</u> Motion for Extension of Time to File. The Court has received counsel for defendants' letter dated April 15, 2013 requesting, on consent, an extension of the briefing schedule for the motions for summary judgment. IT IS HEREBY ORDERED that defendants' shall respond no later than May 3, 2013 and plaintiff shall reply no later than May 24, 2013. SO ORDERED. Ordered by Judge Joseph F. Bianco on 4/15/2013. (Samplin, Ilissa) (Entered: 04/15/2013)
05/03/2013	<u>136</u>	RULE 56.1 STATEMENT re <u>132</u> MOTION for Partial Summary Judgment <i>in Opposition</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 05/03/2013)
05/03/2013	<u>137</u>	MEMORANDUM in Opposition re <u>132</u> MOTION for Partial Summary Judgment , REPLY in Support of <i>Defendants' Motion for Summary Judgment</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 05/03/2013)
05/19/2013	<u>138</u>	REPLY to Response to Motion re <u>104</u> Letter MOTION for pre motion conference <i>regarding Summary Judgment</i> , <u>132</u> MOTION for Partial Summary Judgment , REPLY in Support re <u>132</u> MOTION for Partial Summary Judgment filed by Donald Zarda. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2) (Antollino, Gregory) (Entered: 05/19/2013)
05/20/2013	<u>139</u>	Letter MOTION to Strike <i>a portion of Plaintiff's Reply Memorandum</i> by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 05/20/2013)
05/20/2013	<u>140</u>	RESPONSE in Opposition re <u>139</u> Letter MOTION to Strike <i>a portion of Plaintiff's Reply Memorandum or for other relief</i> filed by Donald Zarda. (Antollino, Gregory) (Entered: 05/20/2013)
05/28/2013		SCHEDULING ORDER: IT IS HEREBY ORDERED that, due to a conflict in Chambers, oral argument is rescheduled for Tuesday, June 4, 2013 at 3:00 p.m. SO ORDERED. Ordered by Judge Joseph F. Bianco on 5/28/2013. (Samplin, Ilissa) (Entered: 05/28/2013)
05/28/2013	<u>141</u>	First MOTION to Adjourn Conference of <i>June 4 to June 6</i> by Donald Zarda. (Antollino, Gregory) (Entered: 05/28/2013)
05/28/2013		ORDER granting <u>141</u> Motion to Adjourn Conference. The Court has received counsel for plaintiff's letter dated May 28, 2013, requesting that oral argument be rescheduled for June 6, 2013. IT IS HEREBY ORDERED that oral argument will now take place on Thursday, June 6, 2013 at 11:30 a.m. SO ORDERED. Ordered by Judge Joseph F. Bianco on 5/28/2013. (Samplin, Ilissa) (Entered: 05/28/2013)
06/06/2013	<u>142</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Oral Argument held on 6/6/2013; decision reserved(Tape #fr 11:51 - 12:50.) (Bollbach, Jean) (Entered: 06/07/2013)
06/15/2013	<u>143</u>	Letter <i>re good faith basis for \$75000 in controversy in the contingency the court dismisses the Title VII claim</i> by Donald Zarda (Antollino, Gregory) (Entered: 06/15/2013)
07/28/2013	<u>144</u>	NOTICE of Change of address by Gregory S. Antollino (Antollino, Gregory) (Entered: 07/28/2013)
03/07/2014		SCHEDULING ORDER: IT IS HEREBY ORDERED that the parties shall participate in a telephone conference with the Court on Friday, March 28, 2014, at 3:00 p.m. At that time, counsel for plaintiff shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712-5670. SO ORDERED.

		Ordered by Judge Joseph F. Bianco on 3/7/2014. (Chipev, George) (Entered: 03/07/2014)
03/28/2014	<u>145</u>	ORDER denying <u>132</u> Motion for Partial Summary Judgment; denying <u>139</u> Motion to Strike; granting in part and denying in part <u>109</u> Memorandum in Support [Defendants' Motion for Summary Judgment]. For the reasons set forth on the record on March 28, 2014, IT IS HEREBY ORDERED that defendants' motion for summary judgment (see D.E. 109) is granted in part and denied in part, that plaintiff's motion for partial summary judgment is denied in its entirety, and that defendants' motion to strike is denied. See Order for additional details. SO ORDERED. Ordered by Judge Joseph F. Bianco on 3/28/2014. (Chipev, George) (Entered: 03/28/2014)
03/28/2014	<u>146</u>	AMENDED COMPLAINT (<i>second</i>) against All Defendants, filed by Donald Zarda. (Antollino, Gregory) (Entered: 03/28/2014)
03/28/2014	<u>147</u>	Letter to Judge Bianco regarding filed Second Amended Complaint and discovery in first amended complaint by Donald Zarda (Antollino, Gregory) (Entered: 03/28/2014)
03/28/2014	<u>149</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco:Telephone Conference held on 3/28/2014; decision made on the record. See court order (Tape #ftr 3:07 – 3:33.) (Bollbach, Jean) (Entered: 03/31/2014)
03/30/2014	<u>148</u>	NOTICE of Appearance by Richard J. Cardinale on behalf of Donald Zarda (aty to be noticed) (Cardinale, Richard) (Entered: 03/30/2014)
04/01/2014	<u>150</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 3/28/2014, before Judge Joseph F. Bianco. Transcriber Tracy Gribben's Transcription Service, Telephone number 732- 263-0044. Email address: TGribben@transcription.com. Transcript may be viewed at the court public terminal or purchased through the Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/22/2014. Redacted Transcript Deadline set for 5/2/2014. Release of Transcript Restriction set for 6/30/2014. (Cox, Dwayne) (Entered: 04/01/2014)
04/03/2014	<u>151</u>	Letter MOTION for pre motion conference (<i>anticipated motion to strike and dismiss</i>) by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 04/03/2014)
04/03/2014	<u>152</u>	RESPONSE in Opposition re <u>151</u> Letter MOTION for pre motion conference (<i>anticipated motion to strike and dismiss</i>) filed by Donald Zarda. (Antollino, Gregory) (Entered: 04/03/2014)
04/04/2014		SCHEDULING ORDER: IT IS HEREBY ORDERED that the parties shall participate in a telephone conference with the Court on Wednesday, April 9, 2014, at 4:00 p.m. to address defendants' request to move to strike and dismiss. At that time, counsel for defendants shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712-5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 4/4/2014. (Chipev, George) (Entered: 04/04/2014)
04/09/2014		ORDER. For the reasons set forth on the record during the telephone conference on April 9, 2014, the Court strikes plaintiff's second amended complaint. The request for a pre-motion conference is terminated as moot. SO ORDERED. Ordered by Judge Joseph F. Bianco on 4/9/2014. (Chipev, George) (Entered: 04/09/2014)
04/09/2014		ORDER terminating <u>151</u> Motion for Pre Motion Conference. Ordered by Judge Joseph F. Bianco on 4/9/2014. (Chipev, George) (Entered: 04/09/2014)
04/09/2014	<u>153</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco:Status telephone Conference held on 4/9/2014 (Tape #ftr 4:40 – 4:44.) (Bollbach, Jean) (Entered: 04/10/2014)
04/15/2014	<u>154</u>	Notice of MOTION to Dismiss for Lack of Jurisdiction (<i>Diversity</i>) by Altitude Express, Inc., Ray Maynard. Responses due by 4/25/2014 (Attachments: # <u>1</u> Declaration Declaration of Saul D. Zabell, # <u>2</u> Exhibit Exhibit 1, # <u>3</u> Memorandum in Support Memorandum of Law in Support) (Zabell, Saul) (Entered: 04/15/2014)

04/15/2014	<u>155</u>	RESPONSE in Opposition re <u>154</u> Notice of MOTION to Dismiss for Lack of Jurisdiction (<i>Diversity</i>) filed by Donald Zarda. (Attachments: # <u>1</u> 2013 Letter) (Antollino, Gregory) (Entered: 04/15/2014)
04/29/2014	<u>156</u>	REPLY in Support re <u>154</u> Notice of MOTION to Dismiss for Lack of Jurisdiction (<i>Diversity</i>) filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 04/29/2014)
04/30/2014		SCHEDULING ORDER: IT IS HEREBY ORDERED that the parties shall participate in a telephone conference with the Court on Thursday, May 8, 2014, at 4:00 p.m. At that time, counsel for defendants shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712-5670. During the conference, the Court intends to issue an oral ruling on the pending motion to dismiss. SO ORDERED. Ordered by Judge Joseph F. Bianco on 4/30/2014. (Chipev, George) (Entered: 04/30/2014)
05/08/2014	<u>157</u>	MINUTE ENTRY/Order for proceedings held before Judge Joseph F. Bianco: Civil Cause for Telephone Conference held on 5/8/14 at 4:21 p.m. FTR: 4:21-4:29. Case called. Counsel for all sides present. Conference held. Motion to dismiss based on amount in controversy denied. Pretrial order due 6/9/14.(Tape #4:21-4:29.) Terminating <u>154</u> Motion to Dismiss for Lack of Jurisdiction as denied. (Tape #4:21-4:29.) (Coleman, Laurie) (Entered: 05/09/2014)
05/08/2014	<u>158</u>	ORDER re <u>154</u> Notice of MOTION to Dismiss for Lack of Jurisdiction (<i>Diversity</i>) filed by Ray Maynard, Altitude Express, Inc. For the reasons set forth on the record during the telephone conference on May 8, 2014, defendants' motion to dismiss is denied.. Ordered by Judge Joseph F. Bianco on 5/8/2014. (Bollbach, Jean) (Entered: 05/13/2014)
06/05/2014	<u>159</u>	MOTION for More Definite Statement <i>as to witness knowledge AND their contact information or to eliminate 50 of the 60 names on defendants' witness list</i> by Donald Zarda. (Antollino, Gregory) (Entered: 06/05/2014)
06/05/2014	<u>160</u>	RESPONSE in Opposition re <u>159</u> MOTION for More Definite Statement <i>as to witness knowledge AND their contact information or to eliminate 50 of the 60 names on defendants' witness list</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 06/05/2014)
06/06/2014		SCHEDULING ORDER: By letter dated June 5, 2014, plaintiff requests an extension of time to file the pretrial order because of issues with defendants' witness list. IT IS HEREBY ORDERED that the parties shall participate in a telephone conference with the Court on Tuesday, June 10, 2014, at 4:30 p.m. to address this issue. At that time, counsel for plaintiff shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712-5670. The Court shall set a new date for filing the pretrial order during the conference. SO ORDERED. Ordered by Judge Joseph F. Bianco on 6/6/2014. (Chipev, George) (Entered: 06/06/2014)
06/06/2014	<u>161</u>	REPLY in Support re <u>159</u> MOTION for More Definite Statement <i>as to witness knowledge AND their contact information or to eliminate 50 of the 60 names on defendants' witness list</i> filed by Donald Zarda. (Antollino, Gregory) (Entered: 06/06/2014)
06/09/2014	<u>162</u>	MOTION for Extension of Time to File <i>JPTO until the court rules on the previous motion</i> by Donald Zarda. (Antollino, Gregory) (Entered: 06/09/2014)
06/09/2014		ORDER finding as moot <u>162</u> Motion for Extension of Time to File. As noted in the Court's scheduling order dated June 6, 2014, the Court shall set a new date to file the pretrial order pending the telephone conference scheduled for June 10, 2014. Accordingly, plaintiff's motion for an extension of time is denied as moot. SO ORDERED. Ordered by Judge Joseph F. Bianco on 6/9/2014. (Chipev, George) (Entered: 06/09/2014)
06/09/2014	<u>163</u>	Letter <i>explaining confusion as to previous motion</i> by Donald Zarda (Antollino, Gregory) (Entered: 06/09/2014)
06/10/2014		ORDER terminating <u>159</u> Motion for More Definite Statement. As set forth on the record during the telephone conference on June 10, 2014, IT IS HEREBY

		ORDERED that the pretrial order, which should include information about the proposed defense witnesses, shall be due by June 17, 2014. IT IS FURTHER ORDERED that plaintiff submit a letter to the Court by August 5, 2014, detailing any disputed objections to the designations. SO ORDERED. Ordered by Judge Joseph F. Bianco on 6/10/2014. (Chipev, George) (Entered: 06/10/2014)
06/10/2014	<u>164</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco:Telephone Conference held on 6/10/2014; pretrial order due by 6/7/14; letter to Mr. Antollino by 7/7/14; letter to be submitted to the court by 8/5/14 (Tape #ftr 4:41 – 5:01.) (Bollbach, Jean) (Entered: 06/11/2014)
06/17/2014	<u>165</u>	Letter <i>regarding Joint Pre–Trial Order</i> by Altitude Express, Inc., Ray Maynard (Attachments: # <u>1</u> Proposed Order Partially Executed Pre–Trial Order) (Zabell, Saul) (Entered: 06/17/2014)
06/18/2014	<u>166</u>	Letter <i>objecting to unilateral filing of JPTO simply because defendants didn't like what I put truthfully in my portion of the document</i> by Donald Zarda (Antollino, Gregory) (Entered: 06/18/2014)
06/19/2014	<u>167</u>	Letter <i>regarding plaintiff's 6–17–14 letter</i> by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 06/19/2014)
06/19/2014		ORDER. IT IS HEREBY ORDERED that counsel for plaintiff may submit a pretrial order signed by him including the disputed statement. No conference is necessary at this time. Ordered by Judge Joseph F. Bianco on 6/19/2014. (Chipev, George) (Entered: 06/19/2014)
06/19/2014	<u>168</u>	Letter <i>documenting Mr. Zabell's second homophobic remark toward me in the recent letter to the court, his history of boorish behavior towards me, and insisting that I be treated civilly in this litigation in the future.</i> by Donald Zarda (Antollino, Gregory) (Entered: 06/19/2014)
06/20/2014	<u>169</u>	Proposed Pretrial Order by Donald Zarda (Antollino, Gregory) (Entered: 06/20/2014)
07/15/2014	<u>170</u>	Fully Briefed MOTION in Limine <i>to overrule defendants' objections to deposition designations</i> by Donald Zarda. (Attachments: # <u>1</u> Declaration, # <u>2</u> Exhibit 1 Zabell Letter, # <u>3</u> Exhibit 2 Antollino Response, # <u>4</u> Exhibit 3 Google Map, # <u>5</u> Exhibit 4 Maynard Deposition Designations, # <u>6</u> Exhibit 5 Cheat Sheet, # <u>7</u> Exhibit 6 Callanan Designations, # <u>8</u> Exhibit 7 Callanan Letter) (Antollino, Gregory) (Entered: 07/15/2014)
07/16/2014	<u>171</u>	RESPONSE in Opposition re <u>170</u> Fully Briefed MOTION in Limine <i>to overrule defendants' objections to deposition designations</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 07/16/2014)
07/16/2014	<u>172</u>	REPLY in Opposition re <u>171</u> Response in Opposition to Motion <i>objecting to another round of the same motion</i> filed by Donald Zarda. (Antollino, Gregory) (Entered: 07/16/2014)
10/06/2014	<u>173</u>	SUGGESTION OF DEATH Upon the Record as to Donald Zarda (Plaintiff) by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 10/06/2014)
10/07/2014	<u>174</u>	Letter <i>regarding the death of Don Zarda</i> by Donald Zarda (Antollino, Gregory) (Entered: 10/07/2014)
11/19/2014	<u>175</u>	MOTION to Substitute Party (<i>estate for deceased plaintiff</i>), MOTION to Amend/Correct/Supplement <u>28</u> Amended Complaint (<i>caption only</i>) by Donald Zarda. (Attachments: # <u>1</u> Declaration of Gregory Antollino, # <u>2</u> Exhibit Probate Documents, # <u>3</u> Proposed Order) (Antollino, Gregory) (Entered: 11/19/2014)
11/19/2014	<u>176</u>	MEMORANDUM in Support re <u>175</u> MOTION to Substitute Party (<i>estate for deceased plaintiff</i>) MOTION to Amend/Correct/Supplement <u>28</u> Amended Complaint (<i>caption only</i>) filed by Donald Zarda. (Antollino, Gregory) (Entered: 11/19/2014)
11/21/2014	<u>177</u>	Letter by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 11/21/2014)

12/01/2014	<u>178</u>	RESPONSE to Motion re <u>175</u> MOTION to Substitute Party (<i>estate for deceased plaintiff</i>) MOTION to Amend/Correct/Supplement <u>28</u> Amended Complaint (<i>caption only</i>) filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 12/01/2014)
12/02/2014	<u>179</u>	REPLY in Support re <u>175</u> MOTION to Substitute Party (<i>estate for deceased plaintiff</i>) MOTION to Amend/Correct/Supplement <u>28</u> Amended Complaint (<i>caption only</i>) in response to points raised in Mr. Zabell's "consent" letter filed by Donald Zarda. (Antollino, Gregory) (Entered: 12/02/2014)
12/03/2014	<u>180</u>	ORDER granting <u>175</u> Motion to Substitute Party. Donald Zarda terminated; granting <u>175</u> Motion to Amend Caption. Accordingly, IT IS HEREBY ORDERED that the motion for substitution of the plaintiff's estate for the deceased plaintiff is granted. The Court does not believe an in-person conference is necessary at this time. A telephone conference will be scheduled to address potential trial dates and a schedule for in limine motions.. Ordered by Judge Joseph F. Bianco on 12/3/2014. (Bollbach, Jean) (Entered: 12/04/2014)
01/20/2015	<u>181</u>	MOTION for pre motion conference <i>and/or pre-trial conference</i> by William Allen Moore, Jr, Melissa Zarda. (Antollino, Gregory) (Entered: 01/20/2015)
01/21/2015		ORDER granting <u>181</u> Motion for Pre Motion Conference. By letter dated January 20, 2015, counsel for the plaintiff requests a telephone conference to address the status the case and outstanding motions, in light of the death of Mr. Zarda. IT IS HEREBY ORDERED that a telephone conference is scheduled for Monday, February 2, 2015 at 4:30 P.M. At that time, plaintiff's counsel shall initiate the call, and, once all parties are on the line, shall telephone Chambers at 631-712-5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 1/21/2015. (Street, Caitlin) (Entered: 01/21/2015)
02/02/2015		SCHEDULING ORDER: Telephone Status Conference set for February 2, 2015 is rescheduled to February 6, 2015 at 4:15 p.m. before Judge Joseph F. Bianco. Ordered by Judge Joseph F. Bianco on 2/2/2015. (Savona, Michele) (Entered: 02/02/2015)
02/05/2015	<u>182</u>	Consent MOTION to Adjourn Conference by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 02/05/2015)
02/05/2015		ORDER granting <u>182</u> Motion to Adjourn Conference. By letter dated February 5, 2015, counsel for defendants requests on consent an adjournment of the telephone conference scheduled for Friday, February 6. IT IS HEREBY ORDERED that the request is granted. The telephone conference is adjourned to Wednesday, February 11 at 2:30 PM. SO ORDERED. Ordered by Judge Joseph F. Bianco on 2/5/2015. (Street, Caitlin) (Entered: 02/05/2015)
02/11/2015		SCHEDULING ORDER: Due to a conflict in the Court's calendar, IT IS HEREBY ORDERED that the telephone conference scheduled for today is adjourned to Thursday, February 12 at 2:30 PM. SO ORDERED. Ordered by Judge Joseph F. Bianco on 2/11/2015. (Street, Caitlin) (Entered: 02/11/2015)
02/12/2015	<u>183</u>	MOTION to Adjourn Conference (<i>telephonic</i>) <i>scheduled for February 12, 2015 at 2:30 pm</i> by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 02/12/2015)
02/12/2015		ORDER granting <u>183</u> Motion to Adjourn Conference. IT IS HEREBY ORDERED that defendants counsel's request to adjourn the telephone conference scheduled for today is granted. IT IS FURTHER ORDERED that the conference is rescheduled for Tuesday, February 17, 2015 at 2:30 PM. SO ORDERED. Ordered by Judge Joseph F. Bianco on 2/12/2015. (Street, Caitlin) (Entered: 02/12/2015)
02/17/2015		Motions terminated: <u>170</u> Fully Briefed MOTION in Limine <i>to overrule defendants' objections to deposition designations</i> filed by Melissa Zarda. Ordered by Judge Joseph F. Bianco on 2/17/2015. (Street, Caitlin) (Entered: 02/17/2015)
02/17/2015	<u>184</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Telephone Conference held on 2/17/2015 – Letter to be submitted to the court by 3/6/15. Objections to be filed by 3/20/15. Letter reply by 4/3/15. (Court Reporter Owen Wicker.) (Bollbach, Jean) (Entered: 02/18/2015)

02/28/2015	<u>185</u>	MOTION for Extension of Time to File <i>deposition designations and to note another issue</i> by William Allen Moore, Jr, Melissa Zarda. (Antollino, Gregory) (Entered: 02/28/2015)
03/02/2015	<u>186</u>	RESPONSE in Opposition re <u>185</u> MOTION for Extension of Time to File <i>deposition designations and to note another issue</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 03/02/2015)
03/02/2015	<u>187</u>	REPLY in Support re <u>185</u> MOTION for Extension of Time to File <i>deposition designations and to note another issue</i> filed by William Allen Moore, Jr, Melissa Zarda. (Antollino, Gregory) (Entered: 03/02/2015)
03/03/2015	<u>188</u>	REPLY in Opposition re <u>185</u> MOTION for Extension of Time to File <i>deposition designations and to note another issue</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 03/03/2015)
03/04/2015	<u>189</u>	Letter <i>re availability for either July 6 or July 23</i> by William Allen Moore, Jr, Melissa Zarda (Antollino, Gregory) (Entered: 03/04/2015)
03/05/2015	<u>190</u>	MOTION in Limine <i>regarding deceased plaintiff's pretrial testimony</i> by William Allen Moore, Jr, Melissa Zarda. (Attachments: # <u>1</u> Deposition of Donald Zarda with trial designations in highlighted yellow) (Antollino, Gregory) (Entered: 03/05/2015)
03/18/2015		Case Reassigned to Magistrate Judge Anne Y. Shields. Magistrate Judge Gary R. Brown no longer assigned to the case. (Mahoney, Brenna) (Entered: 03/18/2015)
03/18/2015		ORDER finding as moot <u>185</u> Motion for Extension of Time to File. Given that counsel for plaintiff filed his letter within the deadline, IT IS HEREBY ORDERED the Court terminates his motion for an extension of time to file as moot. SO ORDERED. Ordered by Judge Joseph F. Bianco on 3/18/2015. (Street, Caitlin) (Entered: 03/18/2015)
03/18/2015		SCHEDULING ORDER: IT IS HEREBY ORDERED that a telephone conference is scheduled for Monday April 13, 2015 at 2:15 p.m. At the time of the conference, plaintiff's counsel shall initiate the call, and, once all parties are on the line, shall telephone Chambers at 631-712-5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 3/18/2015. (Street, Caitlin) (Entered: 03/18/2015)
03/19/2015	<u>191</u>	RESPONSE in Opposition re <u>190</u> MOTION in Limine <i>regarding deceased plaintiff's pretrial testimony</i> filed by Altitude Express, Inc., Ray Maynard. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C) (Zabell, Saul) (Entered: 03/19/2015)
03/23/2015		SCHEDULING ORDER: Due to a conflict in the Court's calendar, IT IS HEREBY ORDERED that the telephone conference scheduled for Monday, April 13 at 2:15 PM is rescheduled to 12:00 PM on the same day. SO ORDERED. Ordered by Judge Joseph F. Bianco on 3/23/2015. (Street, Caitlin) (Entered: 03/23/2015)
03/23/2015	<u>198</u>	ORDER IN RE CASES RE-ASSIGNED. Ordered by Magistrate Judge Anne Y. Shields on 3/23/2015. (Attachments: # <u>1</u> AYS Rules) (Torres, Jasmine) (Entered: 04/16/2015)
03/28/2015	<u>192</u>	REPLY in Support re <u>190</u> MOTION in Limine <i>regarding deceased plaintiff's pretrial testimony</i> filed by All Plaintiffs. (Antollino, Gregory) (Entered: 03/28/2015)
03/28/2015	<u>193</u>	Second MOTION in Limine <i>regarding defense deposition designations of Don Zarda's deposition</i> by William Allen Moore, Jr, Melissa Zarda. (Antollino, Gregory) (Entered: 03/28/2015)
03/30/2015	<u>194</u>	MOTION to Adjourn Conference of April 13 by William Allen Moore, Jr, Melissa Zarda. (Antollino, Gregory) (Entered: 03/30/2015)
04/02/2015		ORDER granting <u>194</u> Motion to Adjourn Conference. IT IS HEREBY ORDERED that the request is granted and the telephone conference is now scheduled for Monday, April 27 at 4:30 PM. SO ORDERED. Ordered by Judge Joseph F. Bianco on 4/2/2015. (Street, Caitlin) (Entered: 04/02/2015)

04/15/2015	<u>195</u>	Letter by Altitude Express, Inc., Ray Maynard (Attachments: # <u>1</u> Exhibit A) (Zabell, Saul) (Entered: 04/15/2015)
04/15/2015	<u>196</u>	Letter <i>re July 6 is not a good date for anyone now</i> by William Allen Moore, Jr, Melissa Zarda (Antollino, Gregory) (Entered: 04/15/2015)
04/15/2015	<u>197</u>	Letter <i>concerning Mr. Zabell's misrepresentation to Judge Wexler concerning this case</i> by William Allen Moore, Jr, Melissa Zarda (Attachments: # <u>1</u> Letter from Zabell to Wexler) (Antollino, Gregory) (Entered: 04/15/2015)
04/21/2015	<u>199</u>	Letter <i>from March 28 with corrections</i> by William Allen Moore, Jr, Melissa Zarda (Antollino, Gregory) (Entered: 04/21/2015)
04/24/2015	<u>200</u>	Third MOTION in Limine <i>regarding an additional exhibit and proposed demonstrative demonstration</i> by William Allen Moore, Jr, Melissa Zarda. (Antollino, Gregory) (Entered: 04/24/2015)
04/27/2015		SCHEDULING ORDER: IT IS HEREBY ORDERED that the telephone conference scheduled for today is adjourned to Thursday, April 30 at 2:30 PM. SO ORDERED. Ordered by Judge Joseph F. Bianco on 4/27/2015. (Street, Caitlin) (Entered: 04/27/2015)
04/30/2015	<u>201</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco:Telephone Conference held on 4/30/2015, (Trial set for 7/27/2015 09:30 AM in Courtroom 1040 before Judge Joseph F. Bianco.) (Tape #ftr 2:42 – 3:02.) (Bollbach, Jean) (Entered: 04/30/2015)
06/02/2015	<u>202</u>	Letter <i>requesting adjournment</i> by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 06/02/2015)
06/08/2015		SCHEDULING ORDER: IT IS HEREBY ORDERED that the parties shall participate in a telephone conference Friday, June 12, 2015 at 4:00 p.m. to discuss defendants' request for an adjournment of the trial. At that time, counsel for defendants shall initiate the call and, once all the parties are on the line, contact Chambers at 631-712-5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 6/8/2015. (Street, Caitlin) (Entered: 06/08/2015)
06/12/2015	<u>203</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco:Telephone Conference held on 6/12/2015, Defendant will provide letter from doctor. Trial set for 7/27/2015 is adjourned to 10/13/15. (Jury Selection set for 10/13/2015 09:30 AM in Courtroom 1040 before Judge Joseph F. Bianco.) (Tape #ftr 4:05 – 4:15.) (Bollbach, Jean) (Entered: 06/15/2015)
07/21/2015	<u>206</u>	MOTION for pre motion conference re <u>145</u> Order on Motion for Partial Summary Judgment, Order on Motion to Strike,,,, <i>to reconsider based on new authority to which the court must grant deference</i> by William Allen Moore, Jr, Melissa Zarda. (Attachments: # <u>1</u> Exhibit A Anonymous v. Foxx) (Antollino, Gregory) (Entered: 07/21/2015)
07/24/2015	<u>207</u>	RESPONSE in Opposition re <u>206</u> MOTION for pre motion conference re <u>145</u> Order on Motion for Partial Summary Judgment, Order on Motion to Strike,,,, <i>to reconsider based on new authority to which the court must grant deference</i> filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 07/24/2015)
07/24/2015	<u>208</u>	REPLY in Support of <i>pre-motion conference</i> filed by William Allen Moore, Jr, Melissa Zarda. (Antollino, Gregory) (Entered: 07/24/2015)
07/27/2015		ORDER granting <u>206</u> Motion for Pre Motion Conference. IT IS HEREBY ORDERED that a telephone pre-motion conference is scheduled for Thursday, August 6 at 12:15 p.m. At that time, plaintiff's counsel shall initiate the call, and, once all parties are on the line, shall telephone Chambers at 631-712-5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 7/27/2015. (Street, Caitlin) (Entered: 07/27/2015)
08/06/2015	<u>209</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco:Telephone Conference held on 8/6/2015; motion for reconsideration to be filed (Tape #ftr 12:27 – 12:37.) (Bollbach, Jean) (Entered: 08/06/2015)

08/07/2015	<u>210</u>	MOTION for Reconsideration re <u>145</u> Order on Motion for Partial Summary Judgment, Order on Motion to Strike,,,, by William Allen Moore, Jr, Melissa Zarda. (Antollino, Gregory) (Entered: 08/07/2015)
08/07/2015	<u>211</u>	MEMORANDUM in Support re <u>210</u> MOTION for Reconsideration re <u>145</u> Order on Motion for Partial Summary Judgment, Order on Motion to Strike,,,, filed by William Allen Moore, Jr, Melissa Zarda. (Antollino, Gregory) (Entered: 08/07/2015)
08/21/2015	<u>212</u>	RESPONSE in Opposition re <u>210</u> MOTION for Reconsideration re <u>145</u> Order on Motion for Partial Summary Judgment, Order on Motion to Strike,,,, filed by Altitude Express, Inc., Ray Maynard. (Attachments: # <u>1</u> Declaration of SDZ, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E) (Zabell, Saul) (Entered: 08/21/2015)
08/24/2015	<u>213</u>	REPLY to Response to Motion re <u>210</u> MOTION for Reconsideration re <u>145</u> Order on Motion for Partial Summary Judgment, Order on Motion to Strike,,,, filed by All Plaintiffs. (Cardinale, Richard) (Entered: 08/24/2015)
09/22/2015	<u>214</u>	Letter by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 09/22/2015)
09/23/2015	<u>215</u>	Motion to Appear by Telephone <i>on Friday if possible to ascertain more information about the defendant's condition</i> by William Allen Moore, Jr, Melissa Zarda. (Antollino, Gregory) (Entered: 09/23/2015)
09/24/2015		ORDER granting <u>215</u> Motion to Appear by Telephone. IS HEREBY ORDERED that the parties shall participate in a telephone conference with the Court on Monday, September 28, 2015 at 11:30 a.m. At the time of the conference, counsel for plaintiff shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712 5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 9/24/2015. (Street, Caitlin) (Entered: 09/24/2015)
09/25/2015	<u>216</u>	Letter by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 09/25/2015)
09/25/2015	<u>217</u>	Letter <i>regarding withdraw of motion for conference unless otherwise requested</i> by William Allen Moore, Jr, Melissa Zarda (Antollino, Gregory) (Entered: 09/25/2015)
09/25/2015		SCHEDULING ORDER: In light of the parties' letters filed today, IT IS HEREBY ORDERED that the telephone conference scheduled for Monday is cancelled. SO ORDERED. Ordered by Judge Joseph F. Bianco on 9/25/2015. (Street, Caitlin) (Entered: 09/25/2015)
09/29/2015	<u>218</u>	Proposed Voir Dire by William Allen Moore, Jr, Melissa Zarda, TRIAL BRIEF <i>regarding attorney voir dire</i> by William Allen Moore, Jr, Melissa Zarda (Attachments: # <u>1</u> Questionnaire/questions for the court) (Antollino, Gregory) (Entered: 09/29/2015)
10/01/2015	<u>219</u>	Proposed Jury Instructions by William Allen Moore, Jr, Melissa Zarda (Antollino, Gregory) (Entered: 10/01/2015)
10/02/2015	<u>220</u>	Letter <i>requesting a Certificate of Engagement</i> by Altitude Express, Inc., Ray Maynard (Attachments: # <u>1</u> Proposed Certificate of Engagement) (Zabell, Saul) (Entered: 10/02/2015)
10/02/2015	<u>222</u>	ORDER : certificate of engagement filed for Mr. Zabell for jury selection and trial commencing 10/13/15. Ordered by Judge Joseph F. Bianco on 10/2/2015. (Bollbach, Jean) (Entered: 10/06/2015)
10/05/2015	<u>221</u>	MOTION for Extension of Time to File <i>document binder</i> by William Allen Moore, Jr, Melissa Zarda. (Antollino, Gregory) (Entered: 10/05/2015)
10/06/2015		ORDER granting <u>221</u> Motion for Extension of Time to File The Court has received Plaintiff's letter dated October 5, 2015. IT IS HEREBY ORDERED that Plaintiff's request for an extension to provide an exhibit binder on October 7, 2015 is granted. SO ORDERED. Ordered by Judge Joseph F. Bianco on 10/6/2015. (Shea, Zoe) (Entered: 10/06/2015)

10/06/2015	<u>223</u>	TRIAL BRIEF by Altitude Express, Inc., Ray Maynard (Attachments: # <u>1</u> Declaration of Saul D. Zabell, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G) (Zabell, Saul) (Entered: 10/06/2015)
10/06/2015	<u>224</u>	Proposed Jury Instructions by Altitude Express, Inc., Ray Maynard (Zabell, Saul) (Entered: 10/06/2015)
10/06/2015	<u>225</u>	Letter <i>with Defendants' Proposed Trial Exhibits</i> by Altitude Express, Inc., Ray Maynard (Attachments: # <u>1</u> Exhibit List, # <u>2</u> Exhibit A(1), # <u>3</u> Exhibit A(2), # <u>4</u> Exhibit B, # <u>5</u> Exhibit C, # <u>6</u> Exhibit D, # <u>7</u> Exhibit E, # <u>8</u> Exhibit F, # <u>9</u> Exhibit G, # <u>10</u> Exhibit H, # <u>11</u> Exhibit I, # <u>12</u> Exhibit J, # <u>13</u> Exhibit K, # <u>14</u> Exhibit L, # <u>15</u> Exhibit M, # <u>16</u> Exhibit N, # <u>17</u> Exhibit O, # <u>18</u> Exhibit P, # <u>19</u> Exhibit Q, # <u>20</u> Exhibit R, # <u>21</u> Exhibit S, # <u>22</u> Exhibit T, # <u>23</u> Exhibit U, # <u>24</u> Exhibit V, # <u>25</u> Exhibit W, # <u>26</u> Exhibit X, # <u>27</u> Exhibit Y) (Zabell, Saul) (Entered: 10/06/2015)
10/06/2015		SCHEDULING ORDER: IT IS HEREBY ORDERED that the parties shall participate in a telephone conference with the Court on Thursday, October 8, 2015 at 12:45 p.m. At the time of the conference, counsel for plaintiff shall initiate the call and, once all parties are on the line, shall contact Chambers at (631) 712 5670. SO ORDERED. Ordered by Judge Joseph F. Bianco on 10/6/2015. (Shea, Zoe) (Entered: 10/06/2015)
10/07/2015	<u>226</u>	Letter by Altitude Express, Inc., Ray Maynard (Attachments: # <u>1</u> Trial Subpoena – Kengle, # <u>2</u> Affidavit of Service – Kengle, # <u>3</u> Trial Subpoena – Orellana, # <u>4</u> Affidavit of Service – Orellana) (Zabell, Saul) (Entered: 10/07/2015)
10/07/2015	<u>227</u>	Letter <i>regarding premature subpoenas on Kengle and Orellana</i> by William Allen Moore, Jr, Melissa Zarda (Antollino, Gregory) (Entered: 10/07/2015)
10/08/2015	<u>228</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Telephone Conference held on 10/8/2015 (Tape #fr 1:44 – 2:01.) (Bollbach, Jean) (Entered: 10/08/2015)
10/08/2015	<u>229</u>	Proposed Jury Instructions by William Allen Moore, Jr, Melissa Zarda (Antollino, Gregory) (Entered: 10/08/2015)
10/10/2015	<u>230</u>	Letter <i>requesting attorney voir dire and specific question(s) regarding sexual orientation generally and as stated in the workplace</i> by William Allen Moore, Jr, Melissa Zarda (Attachments: # <u>1</u> shortened voir dire, # <u>2</u> page from 10/4/12 conference) (Antollino, Gregory) (Entered: 10/10/2015)
10/13/2015	<u>231</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Jury Selection held and completed on 10/13/2015, Voir Dire held on 10/13/2015, Voir Dire Completed; Jury Trial held on 10/13/2015, witnesses sworn, exhibits entered; plaintiff and deft opens (Jury Trial set for 10/14/2015 09:30 AM in Courtroom 1020 before Judge Joseph F. Bianco.) (Court Reporter Owen Wicker.) (Bollbach, Jean) (Entered: 10/14/2015)
10/14/2015	<u>232</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Jury Trial held on 10/14/2015, witnesses sworn and exhibits entered(Jury Trial set for 10/15/2015 09:30 AM in Courtroom 1020 before Judge Joseph F. Bianco.) (Court Reporter Owen Wicker.) (Bollbach, Jean) (Entered: 10/15/2015)
10/15/2015	<u>236</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Jury Trial held on 10/15/2015, witnesses sworn, exhibits entered (Jury Trial set for 10/19/2015 09:30 AM in Courtroom 1020 before Judge Joseph F. Bianco.) (Court Reporter Owen Wicker.) (Bollbach, Jean) (Entered: 10/19/2015)
10/16/2015	<u>233</u>	MOTION in Limine <i>to admit portions of plaintiff's declaration as exceptions to the hearsay rule</i> , MOTION for Sanctions <i>in precluding three or at least one for failure to adequately identify witnesses before trial</i> by William Allen Moore, Jr, Melissa Zarda. (Attachments: # <u>1</u> Exhibit 1 Plaintiff's annotated declaration, # <u>2</u> Exhibit Defendant's final amended initial disclosures, # <u>3</u> Exhibit 3 Defendant's produced list of names and addresses of plaintiff's co-workers) (Antollino, Gregory) (Entered: 10/16/2015)

10/17/2015	<u>234</u>	Proposed Findings of Fact by William Allen Moore, Jr, Melissa Zarda (Antollino, Gregory) (Entered: 10/17/2015)
10/19/2015	<u>235</u>	RESPONSE in Opposition re <u>233</u> MOTION in Limine <i>to admit portions of plaintiff's declaration as exceptions to the hearsay rule</i> MOTION for Sanctions in precluding three or at least one for failure to adequately identify witnesses before trial filed by Altitude Express, Inc., Ray Maynard. (Zabell, Saul) (Entered: 10/19/2015)
10/19/2015	<u>237</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Jury Trial held on 10/19/2015, witnesses sworn, exhibits entered (Jury Trial set for 10/20/2015 09:30 AM in Courtroom 1020 before Judge Joseph F. Bianco.) (Court Reporter Ellen Combs and Owen Wicker.) (Bollbach, Jean) (Entered: 10/20/2015)
10/20/2015	<u>238</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: Jury Trial held on 10/20/2015, witnesses sworn, exhibits entered; plaintiff rests, deft rests(Jury Trial set for 10/21/2015 09:30 PM in Courtroom 1020 before Judge Joseph F. Bianco.) (Court Reporter Ellen Combs and Owen Wicker.) (Bollbach, Jean) (Entered: 10/20/2015)
10/20/2015	<u>239</u>	Letter <i>regarding one additional jury instruction</i> by William Allen Moore, Jr, Melissa Zarda (Antollino, Gregory) (Entered: 10/20/2015)
10/20/2015	<u>240</u>	Proposed Jury Instructions by William Allen Moore, Jr, Melissa Zarda (Antollino, Gregory) (Entered: 10/20/2015)
10/20/2015	<u>241</u>	Court's Proposed Jury Instructions (Shea, Zoe) (Entered: 10/20/2015)
10/20/2015	<u>242</u>	Court's Proposed Verdict Sheet (Shea, Zoe) (Entered: 10/20/2015)
10/21/2015	<u>243</u>	Minute Entry for proceedings held before Judge Joseph F. Bianco: jury trial held; plaintiff summation; deft summation, plaintiff rebuttal, jury trial ends, jury charged; deliberations begin; defts verdict. Jury Trial completed on 10/21/2015 (Court Reporter Ellen Combs and Owen Wicker.) (Bollbach, Jean) (Entered: 10/22/2015)
10/21/2015	<u>244</u>	Order of Sustenance/Lodging/Transportation – lunch 8 jurors. Ordered by Judge Joseph F. Bianco on 10/21/2015. (Bollbach, Jean) (Entered: 10/26/2015)
10/21/2015	<u>245</u>	JURY TRIAL COURT EXHIBITS 1–2, A–F (3 is verdict sheet which is separate) (Bollbach, Jean) (Entered: 10/26/2015)
10/21/2015	<u>246</u>	JURY VERDICT SHEET (Bollbach, Jean) (Entered: 10/26/2015)
10/28/2015	<u>247</u>	JUDGMENT : IT IS ORDERED AND ADJUDGED that the plaintiff, estate of Donald Zarda, take nothing of the defendants, Altitude Express Inc. and Raymond Maynard, and that the action be dismissed on the merits. (Bollbach, Jean)cm (Entered: 10/29/2015)
11/17/2015	<u>248</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 10/20/15, before Judge Joseph F. Bianco. Court Reporter/Transcriber E Combs. Email address: ellencombs@hotmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. File redaction request using event "Redaction Request – Transcript" located under "Other Filings – Other Documents". Redaction Request due 12/8/2015. Redacted Transcript Deadline set for 12/18/2015. Release of Transcript Restriction set for 2/15/2016. (Combs, Ellen) (Entered: 11/17/2015)
11/17/2015	<u>249</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 10/21/15, before Judge Joseph F. Bianco. Court Reporter/Transcriber E Combs. Email address: ellencombs@hotmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. File redaction request using event "Redaction Request – Transcript" located under "Other Filings – Other Documents". Redaction Request due 12/8/2015. Redacted Transcript Deadline set for 12/18/2015. Release of Transcript Restriction set for 2/15/2016. (Combs, Ellen) (Entered: 11/17/2015)

11/17/2015	<u>250</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 10/19/15, before Judge Joseph F. Bianco. Court Reporter/Transcriber E Combs. Email address: ellencombs@hotmail.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. File redaction request using event "Redaction Request – Transcript" located under "Other Filings – Other Documents". Redaction Request due 12/8/2015. Redacted Transcript Deadline set for 12/18/2015. Release of Transcript Restriction set for 2/15/2016. (Combs, Ellen) (Entered: 11/17/2015)
11/19/2015	<u>251</u>	Order of Transportation. Ordered by Judge Joseph F. Bianco on 11/19/2015. (Bollbach, Jean) (Entered: 11/20/2015)
11/20/2015	<u>252</u>	NOTICE OF APPEAL as to <u>247</u> Judgment by William Allen Moore, Jr, Melissa Zarda. (Antollino, Gregory) (Entered: 11/20/2015)
11/20/2015		Electronic Index to Record on Appeal sent to US Court of Appeals. <u>252</u> Notice of Appeal Documents are available via Pacer. For docket entries without a hyperlink or for documents under seal, contact the court and we'll arrange for the document(s) to be made available to you. (Cox, Dwayne) (Entered: 11/20/2015)
11/20/2015		APPEAL FILING FEE DUE re <u>252</u> Notice of Appeal Please either come to the clerks office or mail the filing fee in the amount of \$505.00. (Cox, Dwayne) (Entered: 11/20/2015)
11/24/2015		USCA Appeal Fees received \$ 505 receipt number 19002 re <u>252</u> Notice of Appeal filed by William Allen Moore, Jr., Melissa Zarda (Shatinsky, Michael) (Entered: 11/24/2015)
12/09/2015	<u>253</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on 6/10/2014, before Judge Joseph F. Bianco. Transcriber Tracy Gribben Transcription LLC, Telephone number 732-263-0044. Email address: Tracy@tgribbentranscription.com. Transcript may be viewed at the court public terminal or purchased through the Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/30/2015. Redacted Transcript Deadline set for 1/11/2016. Release of Transcript Restriction set for 3/8/2016. (Cox, Dwayne) (Entered: 12/09/2015)
12/09/2015	<u>254</u>	Mail Returned as Undeliverable. Mail sent to Gregory Antollino – receipt returned unable to forward (Bollbach, Jean) (Entered: 12/10/2015)
12/10/2015	<u>255</u>	NOTICE of Change of Address by Gregory S. Antollino (Antollino, Gregory) (Entered: 12/10/2015)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

DONALD ZARDA,

Plaintiff,

-against-

**ALTITUDE EXPRESS, INC.,
dba Skydive Long Island, and RAY MAYNARD,**

Defendants.

-----X

**AMENDED
COMPLAINT**

10-cv-04334-JFB -ARL

**JURY TRIAL
DEMANDED**

Plaintiff hereby alleges upon personal knowledge and information and belief as follows:

NATURE OF THIS ACTION

1. This action is brought by Plaintiff, a gay man, to recover damages for Defendants' discriminatory and otherwise illegal conduct in, among other things, discharging him because of a homophobic customer.

THE PARTIES

2. Plaintiff is a citizen of the State of Missouri.

3. Defendants Altitude Express, Inc., operating as "Skydive Long Island" in Calverton, New York is a corporation organized under the laws of the State of New York, located in Suffolk County, and operates as a "drop zone," i.e., a place

where individuals can come to Skydive under the close supervision of experienced Skydive instructors.

4. Defendant Ray Maynard is the Chief Executive Officer of Skydive Long Island and, upon information and belief, its sole shareholder. Upon information and belief he is a citizen of New York.

5. Plaintiff is an experienced Tandem and Freefall (i.e., Skydive) instructor, who was an employee at Skydive Long Island for various summers in the last decade until his termination in July 2010.

JURISDICTION AND VENUE

6. Jurisdiction is proper pursuant to 28 U.S.C. § 1331 in that this action arises under the Constitution and laws of the United States, among them Title VII of the Civil Rights Act of 1964 as amended and the Fair Labor Standards Act. Jurisdiction is also independently predicated on diversity of citizenship.

7. Venue is properly placed in this district pursuant to 28 U.S.C. § 1391(c) in that Defendants Skydive Long Island is deemed to reside in this judicial district.

FACTUAL ALLEGATIONS UNDERLYING PLAINTIFF'S CLAIMS

8. Plaintiff repeats and realleges the allegations set forth in all previous paragraphs as if fully set forth herein.

9. Plaintiff was employed at Altitude Express, Inc., dba Skydive Long Island (hereinafter "Skydive Long Island") as a Tandem & Accelerated Freefall Instructor in the summers of 2001, 2009 and 2010. Altitude Express has approximately 20-30 employees.

10. Plaintiff is has been a licensed instructor in this field since 1995. He has participated in 3500 jumps over the course of his distinguished career.

11. He worked for the defendants in the summers of 2001, 2009 and 2010. Skydiving is a seasonal sport and defendants operate mostly in the warmer weather, although not exclusively so.

12. While employed by Skydive Long Island, plaintiff was expected to be at work, seven days a week, until released.

13. The hours of operation were either 7:30 AM to sunset or 9:30 AM to sunset.

14. Plaintiff was expected not to leave the premises in case a potential customer came, unless it was raining.

15. Although expected to be on the premises approximately twelve (or more) hours per day, plaintiff was only paid per jump.

16. Some days went by when he would be there all day and not make a dime, not even minimum wage for the hours he spent at work at his employer's insistence.

17. A skydive is a forcibly intimate experience, for the safety of the passenger. Novices who yearn for the thrill of a skydive cannot do so on their own, and thus the instructor must strap himself hip-to-hip and shoulder-to-shoulder with the client.

18. Because of this, before they dive, students at Skydive Long Island must sign a release that contains the following language:

If I am making a student jump, I understand that I will be wearing a harness which will need to be adjusted by the jumpmaster. If my jump is a tandem jump, I understand that the tandem master will attach my harness to his and that this will put my body in close proximity to that of the tandem master. I specifically agree to this physical contact between the tandem master and myself.

19. Before the client and the instructor jump out of the plane, the client is typically sitting on the instructor's lap. The experience is typically tense for a novice, who is about to jump out of the plane with a stranger strapped to him or her.

20. Notwithstanding the waiver, in order to break the ice and make the client more comfortable, instructors often make light of the intimate situation by making a joke about it.

21. For example, when a man is strapped to another man, plaintiff witnessed instructors saying something like, "I bet you didn't know you were going to be strapped so close to a man." Plaintiff also heard instructors state, in reference to a budge protruding from the equipment, "That's the straps you're feeling."

22. On more than one occasion, plaintiff heard straight instructors say, jokingly, when strapped to male clients, "Don't worry, I'm a lesbian." Or, when a straight man was strapped to a straight man (especially when his girlfriend was present), the instructor might say, "Does your girlfriend know that you're gay?"

23. This was an openly tolerated form of banter. Plaintiff, as an openly gay man was often the butt of jokes about his sexual orientation. He had mixed feelings about that, but was not troubled when sexual banter was a way of breaking the ice in a tense situation. On occasion, over the years, when he was tightly strapped to a woman he might say something like, "You don't have to worry about us being so close because I'm gay."

24. This was never a problem until one homophobic customer complained about it. On June 18, 2010, plaintiff was suspended for

making this remark to a woman whose name, upon information and belief, is Rosanna.

25. It was known at work that plaintiff is gay and he was open about it. Notwithstanding this, however, the terms and conditions of employment were not the same as compared between plaintiff and other similarly situated employees.

26. Ray Maynard was hostile to any expression of sexual orientation that did not conform to sex stereotypes. Plaintiff has a typically masculine demeanor, but as one example, he criticized plaintiff's wearing of the color pink at work. Women at the workplace were allowed to wear pink, and did without criticism.

27. On one occasion, for example, plaintiff broke his ankle and had to wear a cast. It so happened that the color of the cast plaintiff chose was pink. When Ray saw the pink cast for the first time he scoffed at it and said, "That looks gay!" Later, at a staff meeting he said, "If you're going to remain here for the day, you're going to have to paint that black," pointing to plaintiff's cast. It was not a joke.

28. Plaintiff's toenails were also painted pink, which at the time was plaintiff's preference. Women often wore open-toed sandals to work, as well as pink toenail polish.

29. Additionally, many other instructors were barefoot at the drop zone. When Ray saw plaintiff's pink toenail polish, however, he insisted that plaintiff wear a sock and cover up his foot.

30. Plaintiff would have begrudgingly tolerated these backwards attitudes towards men and their use of certain colors, had plaintiff not been fired for expressing to a customer that he was gay.

31. Ray openly tolerated men discussing women and their physical attributes. Specifically, Ray and the men at the office would ogle at women's breasts, including on videos that the company had procured for passengers who had hired the company for a joy ride skydive with an accompanying video.¹ Men often talked of their sexual exploits, and Ray openly discussed his problematic marriage.

32. Plaintiff mentioning the fact that he is gay to a passenger, however, got him fired.

33. In his termination interview, Ray said that plaintiff was being fired because plaintiff had discussed his "personal escapades" outside of the office with a passenger (Rosanna).

34. This was completely untrue plaintiff merely stated he was gay.

35. Being gay is not an escapade; it is an immutable condition.

¹ Customers who hired Altitude were referred to as "passengers."

36. All of the men at Altitude made light of the intimate nature of being strapped to a member of the opposite sex. Plaintiff was fired, however, because the levity he used honestly referred to his sexual orientation and did not conform to the straight male macho stereotype.

37. Mentioning one's sexual orientation is as much a protected activity as mentioning to someone that one is Catholic, Scottish, or Hispanic.

38. Ray also made other statements in defense of his termination of plaintiff, including that plaintiff had allegedly touched Rosanna inappropriately.

39. It is unknown to plaintiff at this writing whether Rosanna actually made this statement, or whether Maynard made it up. Maynard told plaintiff that Rosanna had made such a statement about touching, however, in a written objection to plaintiff's request for unemployment benefits, a representative of Long Island Skydiving – Maynard, upon information and belief, did not mention the touching, but rather that plaintiff had revealed "personal information" about himself to a customer.

40. The “personal information” revealed was that plaintiff is gay; Maynard argued to the Unemployment Division that this was “misconduct” that should disqualify plaintiff from benefits.

41. Unemployment disagreed and plaintiff was awarded benefits. Neither Maynard nor Unemployment mentioned anything in connection with the alleged touching, either because it did not happen or, in the alternative, even Maynard did not believe it.

42. Again it is unknown at this writing whether Rosanna actually made this complaint of touching. Assuming she did, the fact that Rosanna would simultaneously complain that plaintiff was gay *and* that he touched her inappropriately underscores the facially pretextual manner of the reason for plaintiff’s termination, especially in light of the release that all passengers must sign, acknowledging that they will be in close bodily contact with instructors.

43. Maynard, however, did not even investigate Rosanna’s allegations by inquiring of plaintiff’s side of the story. He did not question plaintiff about the allegations – again, assuming she made them – but decided to accept them as true because, after all, she was a woman, and therefore would give Maynard cover for firing plaintiff since a woman, in general,

would be more likely to be believed in the context of a complaint about inappropriate touching by a man.

44. Even though there was a videotape of the jump that showed no inappropriate touching, Maynard dismissed said evidence and purposely lost custody of the tape so that plaintiff could not use it in his defense.

45. In all, the allegation of touching, if it were even made by Rosanna, was a false pretext for plaintiff's termination, which happened because of one homophobic customer's complaint about being near a gay person and of because of plaintiff's failure to conform to stereotypical gender roles for men.

46. Maynard knew that plaintiff is a homosexual and would have no motive to touch a female passenger in any manner other than to protect her safety in accordance with proper procedures.

47. Maynard knew that Rosanna had signed a release wherein she knew she would in close bodily contact with an instructor.

48. Maynard's reaction to Rosanna's baseless complaint – without even as much as asking for plaintiff's side of the story -- is an instance of sex stereotyping, insofar as it validates a woman's complaint against a man whereas a man's complaint against a woman – gay or straight –

would never have been accorded any credence in similar circumstances. Ray knew this, yet he was more than happy to use what he knew to be a patently false touching complaint against a man as a pretext for firing for being – and saying – that plaintiff is gay.

49. In the alternative, if Maynard made up the allegation of touching, it was meant to bolster his justification for terminating plaintiff for stating he is gay. Maynard's invoking a sex stereotype – i.e., that a woman who complains of being touched by a man must be believed without investigation – in order to justify an unlawful termination is just as bad as if the sex stereotype originated in Rosanna's mind in order to give credence to her frivolous complaint about being told that someone is gay. Plaintiff now sues for relief.

FIRST CAUSE OF ACTION
DISCRIMINATION UNDER TITLE VII

50. Plaintiff repeats and realleges the allegations set forth in all previous allegations as if fully set forth herein.

51. Plaintiff was fired because his behavior did not conform to sex stereotypes.

52. Such actions were in violation of Title VII.

53. By virtue of the foregoing, Plaintiff has been damaged.

SECOND CAUSE OF ACTION
SEXUAL ORIENTATION DISCRIMINATION UNDER THE NEW YORK
STATE HUMAN RIGHTS LAW

54. Plaintiff repeats and realleges the allegations set forth in all previous allegations as if fully set forth herein.

55. Plaintiff was fired because of his sexual orientation.

56. Such actions were in violation of the Executive Law of the State of New York.

57. By virtue of the foregoing, Plaintiff has been damaged.

THIRD CAUSE OF ACTION
GENDER DISCRIMINATION UNDER THE NEW YORK STATE HUMAN
RIGHTS LAW

58. Plaintiff repeats and realleges the allegations set forth in all previous allegations as if fully set forth herein.

59. Plaintiff was fired because his behavior did not conform to sex stereotypes.

60. Such actions were in violation of Title VII.

61. By virtue of the foregoing, Plaintiff has been damaged.

FOURTH CAUSE OF ACTION
VIOLATION OF THE FLSA

62. Plaintiff repeats and realleges the allegations set forth in all previous allegations as if fully set forth herein.

63. At all times mentioned herein, as limited by the applicable statutes of limitation, Defendants failed to comply with the FLSA, in that Defendants frequently required and permitted Plaintiff to work more than 40 hours per week, but provision was not made by Defendants to pay Plaintiff at the rate of one and one-half times the regular rate for the hours worked in excess of the hours provided for in the FLSA.

64. Additionally, and even assuming defendant was not required to pay time and a half, plaintiff was entitled to a minimum wage at all times he was at the premises waiting for customers.

65. Plaintiff was not paid minimum wage for the time he was required to sit and wait around for potential skydive clients to appear and was illegally paid by the job, as if he were an independent contractor.

66. However, plaintiff was not an independent contractor and was entitled to a minimum wage in addition to whatever fee he would earn for each dive that he took.

67. Most of the records concerning the number of hours and excess hours worked by Plaintiff, are in the exclusive possession and under the sole custody and control of the Defendants.

68. Plaintiff is unable to state at this time the exact amount owing to them at this time, and proposes to obtain such information by

appropriate discovery proceedings to be taken promptly in this cause.

69. Upon information and belief, Defendants is and was at all relevant times herein aware that overtime pay is mandatory for non-exempt employees who work more than 40 hours per week.

70. Upon information and belief, Defendants are and were at all material times herein fully aware that Plaintiff worked more than 40 hours per week without receiving overtime compensation for such additional work and that plaintiff was entitled to a minimum wage for hours not compensated by diving customers.

71. Based upon the foregoing, Defendants, for violating the FLSA, are liable on Plaintiff's first cause of action in an amount to be determined at trial, plus liquidated damages, attorney's fees and costs.

FIFTH CAUSE OF ACTION
VIOLATION OF THE NEW YORK STATE OVERTIME LAW

72. Plaintiff repeats and realleges the allegations set forth in all previous allegations as if fully set forth herein.

73. At all material times herein Defendants failed to comply with, *inter alia*, NYLL § 663(1) and 12 NYCRR § 142-2.2 in that Plaintiff consistently worked for Defendants in excess of the maximum hours provided by state and federal law, but provision was not made by

Defendants to pay Plaintiff at the rate of one and one-half times the regular rate for the hours worked in excess of the hours provided for by state and federal law.

74. Upon information and belief, Defendants were at all material times herein aware that overtime pay is mandatory for non-exempt employees who work more than 40 hours per week.

75. Upon information and belief, Defendants' non-payment of overtime pay to Plaintiff was willful.

76. Based upon the foregoing, Defendants, for consistently violating New York's Labor Law and its implementing regulations are liable on Plaintiff's second cause of action in an amount to be determined at trial, plus a 25% statutory penalty, attorney's fees and costs.

SIXTH CAUSE OF ACTION
VIOLATION OF THE NEW YORK MINIMUM WAGE LAW

77. Plaintiff repeats and realleges the allegations set forth in all previous allegations as if fully set forth herein.

78. At all material times herein Defendants failed to comply with, *inter alia*, NYLL § 663(1) and 12 NYCRR § 142-2.1 in that Plaintiff consistently worked for Defendants without being paid even a minimum wage for hours in which there were no paying customers.

79. Upon information and belief, Defendants were at all material times herein aware that minimum wage is mandatory.

80. Upon information and belief, Defendants' non-payment of minimum wages to Plaintiff was willful.

81. Based upon the foregoing, Defendants, for consistently violating New York's Labor Law and its implementing regulations are liable on Plaintiff's second cause of action in an amount to be determined at trial, plus a 25% statutory penalty, attorney's fees and costs.

WHEREFORE, Plaintiff demands as follows:

- A. Compensatory damages in excess of the jurisdictional amount required of this court;
- B. Punitive damages;
- C. Cost of suit and attorneys fees;
- D. Liquidated damages;
- E. Such other relief as the Court may deem just and proper.

Dated: New York, New York
February 22, 2011

/s/
GREGORY ANTOLLINO GA 5950
Attorney for Plaintiff
18-20 West 21st Street, Suite 802
New York, NY 10010

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

DONALD ZARDA,

Plaintiff,

– against –

**ALTITUDE EXPRESS, INC., d/b/a SKYDIVE
LONG ISLAND, and RAY MAYNARD,**

Defendants.

Case No.: CV 10-4334 (JFB)(ARL)

**ANSWER TO AMENDED
COMPLAINT**

Defendants, **ALTITUDE EXPRESS, INC., d/b/a SKYDIVE LONG ISLAND** and **RAY MAYNARD** by and through their counsel, **ZABELL & ASSOCIATES, P.C.**, answer the Complaint as follows:

1. Defendants deny the allegations set forth in paragraph “1” of the Complaint.
2. Defendants are without knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in paragraph “2” of the Complaint.
3. Defendants admit the allegations set forth in paragraph “3” of the Complaint.
4. Defendants deny the allegations set forth in paragraph “4” of the Complaint, but admit that Defendant Ray Maynard is the President of Skydive Long Island.
5. Defendants admit the allegations set forth in paragraph “5” of the Complaint.
6. Defendants deny the allegations set forth in paragraph “6” of the Complaint.
7. Defendants deny the allegations set forth in paragraph “7” of the Complaint.
8. Defendants repeat and replead each of their responses to the foregoing allegations as if fully set forth at length herein.
9. Defendants admit the allegations set forth in paragraph “9” of the Complaint.

10. Defendants deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations set forth in paragraph “10” of the Complaint.
11. Defendants admit that Plaintiff worked for Defendants during parts of 2001, 2009, and 2010, and that skydiving is a seasonal sport, but deny the remaining allegations contained within paragraph “11” of the Complaint.
12. Defendants deny the allegations as set forth in paragraph “12” of the Complaint.
13. Defendants deny the allegations as set forth in paragraph “13” of the Complaint.
14. Defendants deny the allegations as set forth in paragraph “14” of the Complaint.
15. Defendants deny the allegations as set forth in paragraph “15” of the Complaint.
16. Defendants deny the allegations as set forth in paragraph “16” of the Complaint.
17. Defendants deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations set forth in paragraph “17” of the Complaint.
18. Defendants admit the allegations as set forth in paragraph “18” of the Complaint.
19. Defendants admit the allegations as set forth in paragraph “19” of the Complaint.
20. Defendants admit the allegations as set forth in paragraph “20” of the Complaint.
21. Defendants deny the allegation set forth in paragraph “21” of the Complaint.
22. Defendants deny the allegations as set forth in paragraph “22” of the Complaint.
23. Defendants deny the allegations as set forth in paragraph “23” of the Complaint.
24. Defendants deny the allegations as set forth in paragraph “24” of the Complaint.
25. Defendants admit the allegation set forth in paragraph “25” of the Complaint that “it was known at work that Plaintiff is gay and open about it,” but deny remaining allegations set forth within the paragraph.
26. Defendants deny the allegations as set forth in paragraph “26” of the Complaint.

27. Defendants deny the allegations as set forth in paragraph “27” of the Complaint.
28. Defendants deny the allegations as set forth in paragraph “28” of the Complaint.
29. Defendants deny the allegations as set forth in paragraph “29” of the Complaint.
30. Defendants deny the allegations as set forth in paragraph “30” of the Complaint.
31. Defendants deny the allegations as set forth in paragraph “31” of the Complaint.
32. Defendants deny the allegations as set forth in paragraph “32” of the Complaint.
33. Defendants deny the allegations as set forth in paragraph “33” of the Complaint.
34. Defendants deny the allegations as set forth in paragraph “34” of the Complaint.
35. Defendants deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations set forth in paragraph “35” of the Complaint.
36. Defendants deny the allegations as set forth in paragraph “36” of the Complaint.
37. Defendants deny the allegations set forth in paragraph “37” of the Complaint.
Further, Defendants leave all conclusion of law to the Court.
38. Defendants deny the allegations as set forth in paragraph “38” of the Complaint.
39. Defendants deny the allegations as set forth in paragraph “39” of the Complaint.
40. Defendants deny the allegations as set forth in paragraph “40” of the Complaint.
41. Defendants deny the allegations as set forth in paragraph “41” of the Complaint.
42. Defendants deny the allegations as set forth in paragraph “42” of the Complaint.
43. Defendants deny the allegations as set forth in paragraph “43” of the Complaint.
44. Defendants deny the allegations as set forth in paragraph “44” of the Complaint.
45. Defendants deny the allegations as set forth in paragraph “45” of the Complaint.
46. Defendants admit that Defendant Maynard knew Plaintiff was gay, but deny the remaining allegations contained within paragraph “46” of the Complaint.

47. Defendants deny knowledge or information sufficient to form a belief as to the truth or veracity of the allegations set forth in paragraph “47” of the Complaint.
48. Defendants deny the allegations as set forth in paragraph “48” of the Complaint.
49. Defendants deny the allegations as set forth in paragraph “49” of the Complaint.
50. Defendants repeat and replead each of their responses to the foregoing allegations as if fully set forth at length herein.
51. Defendants deny the allegations as set forth in paragraph “51” of the Complaint.
52. Defendants deny the allegations as set forth in paragraph “52” of the Complaint.
53. Defendants deny the allegations as set forth in paragraph “53” of the Complaint.
54. Defendants repeat and replead each of their responses to the foregoing allegations as if fully set forth at length herein.
55. Defendants deny the allegations as set forth in paragraph “55” of the Complaint.
56. Defendants deny the allegations as set forth in paragraph “56” of the Complaint.
57. Defendants deny the allegations as set forth in paragraph “57” of the Complaint.
58. Defendants repeat and replead each of their responses to the foregoing allegations as if fully set forth at length herein.
59. Defendants deny the allegations as set forth in paragraph “59” of the Complaint.
60. Defendants deny the allegations as set forth in paragraph “60” of the Complaint.
61. Defendants deny the allegations as set forth in paragraph “61” of the Complaint.
62. Defendants repeat and replead each of their responses to the foregoing allegations as if fully set forth at length herein.
63. Defendants deny the allegations as set forth in paragraph “63” of the Complaint.
64. Defendants deny the allegations as set forth in paragraph “64” of the Complaint.

65. Defendants deny the allegations as set forth in paragraph “65” of the Complaint.
66. Defendants deny the allegations as set forth in paragraph “66” of the Complaint.
67. Defendants deny the allegations as set forth in paragraph “67” of the Complaint.
68. Defendants deny the allegations as set forth in paragraph “68” of the Complaint.
69. Defendants deny the allegations as set forth in paragraph “69” of the Complaint.
70. Defendants deny the allegations as set forth in paragraph “70” of the Complaint.
71. Defendants deny the allegations as set forth in paragraph “71” of the Complaint.
72. Defendants repeat and replead each of their responses to the foregoing allegations as if fully set forth at length herein.
73. Defendants deny the allegations as set forth in paragraph “73” of the Complaint.
74. Defendants deny the allegations as set forth in paragraph “74” of the Complaint.
75. Defendants deny the allegations as set forth in paragraph “75” of the Complaint.
76. Defendants deny the allegations as set forth in paragraph “76” of the Complaint.
77. Defendants repeat and replead each of their responses to the foregoing allegations as if fully set forth at length herein.
78. Defendants deny the allegations as set forth in paragraph “78” of the Complaint.
79. Defendants deny the allegations as set forth in paragraph “79” of the Complaint.
80. Defendants deny the allegations as set forth in paragraph “80” of the Complaint.
81. Defendants deny the allegations as set forth in paragraph “81” of the Complaint.
82. Defendants deny all the allegations contained within the WHEREFORE clause of the Complaint.

AFFIRMATIVE DEFENSES

AS AND FOR THE FIRST AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

AS AND FOR THE SECOND AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff failed to mitigate or otherwise act to lessen or reduce the injuries alleged in the Complaint.

AS AND FOR THE THIRD AFFIRMATIVE DEFENSE

The Complaint, and each of its claims for relief, is barred in whole or in part by all applicable statutes of limitation.

AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff did not suffer any damages attributable to any actions of Defendants.

AS AND FOR THE FIFTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff's claims for relief are barred, in whole or in part, by the doctrine of laches, waiver, estoppel, and/or unclean hands.

AS AND FOR THE SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claim for liquidated damages is barred because Defendants acted in good faith and reasonably believed that their conduct complied with the applicable provision of the Fair Labor Standards Act.

AS AND FOR THE SEVENTH AFFIRMATIVE DEFENSE

Plaintiff is estopped from pursuing the Complaint, and each of its claims for relief, by reason of the Plaintiff's own actions and courses of conduct.

AS AND FOR THE EIGHTH AFFIRMATIVE DEFENSE

The Court lacks jurisdiction over Plaintiff's claims, which are barred, in whole or in part, by his failure to satisfy the statutory and/or administrative prerequisites to the bringing of this action.

AS AND FOR THE NINTH AFFIRMATIVE DEFENSE

Defendants are exempt from the minimum wage and maximum hour requirements of the Fair Labor Standards Act.

AS AND FOR THE TENTH AFFIRMATIVE DEFENSE

Defendants are exempt from the minimum wage and maximum hour requirements of the New York Labor Law.

AS AND FOR THE ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to exhaust his administrative remedies.

AS AND FOR THE TWELFTH AFFIRMATIVE DEFENSE

Plaintiff does not have a contractual right to overtime wages, and therefore, his claims should be dismissed.

AS AND FOR THE THIRTEENTH AFFIRMATIVE DEFENSE

Defendants breached no contractual obligations due and owing to Plaintiff.

AS AND FOR THE FOURTEENTH AFFIRMATIVE DEFENSE

The Court does not have supplemental or subject matter jurisdiction over the Plaintiff's state law claims.

AS AND FOR THE FIFTEENTH AFFIRMATIVE DEFENSE

Upon information and belief, Plaintiff did not suffer any damages attributable to any actions of Defendants.

AS AND FOR THE SIXTEENTH AFFIRMATIVE DEFENSE

Any and all workplace actions taken against Plaintiff were for legitimate, non-discriminatory reasons.

WHEREFORE, the answering Defendants demand judgment dismissing Plaintiff's Complaint with costs, disbursements and attorneys' fees; awarding judgment against Plaintiff and for such other and further relief as this court may deem just and proper.

Defendants expressly reserve the right to amend its Answer and assert additional defenses and/or supplement, alter or change this Answer upon completion of appropriate investigation and discovery.

Dated: Bohemia, New York
March 22, 2011

ZABELL & ASSOCIATES, P.C.
Attorneys for Defendants

By: 

Saul D. Zabell, Esq.
4875 Sunrise Highway, Suite 300
Bohemia, New York 11716
Tel.: (631) 589-7242
Fax: (631) 563-7475
szabell@laborlawsny.com

DONALD ZARDA,

10 Civ 4334 (JFB)

Plaintiff,

**ALTITUDE EXPRESS, INC.,
dba Skydive Long Island, and RAY MAYNARD,**

Defendants.

-----X
Plaintiff responds to defendants' Local Rule 56.1(a) statement and makes such affirmative statements under Local Rule 56.1(b) as to place many misrepresentations and omissions in context:

1. Altitude Express, Inc. d/b/a Skydive Long Island (hereinafter "SDLI") is a domestic business corporation operating under the laws of the State of New York. (New York State Department of State Entity Information for Altitude Express, Inc., Defendants Exhibit 1).

Admitted.

2. Ray Maynard (hereinafter "Maynard") is the owner and chief executive officer of SDLI. (Maynard Dep. pg. 10:7-9; Def. Ex. 1).

Admitted upon information and belief.

3. Maynard has been skydiving for over forty (40) years. (Maynard Dep. pg. 11:9).

Admitted however pursuant to local rule 56(b), plaintiff avers that Maynard admits that he has less experience diving than Zarda. Maynard Dep. 249:10-11.

4. Skydiving is a seasonal sport, as such, the skydiving season runs from approximately March to November each year. (Zarda Dep. pg. 286:4-14, 316:13-16). Skydiving can only be performed in good weather: "the sky must be clear, you must have visibility of

three statute miles, you must be 500 feet below clouds, there must be 1,000 feet above the clouds, and 2,000 feet separation from the clouds to be able to jump.” (Zarda Dep. pg. 288:9-14). Additionally, skydivers cannot “jump from planes while it's raining.” (Zarda Dep. pg. 288:2-4).

Admitted.

5. In 2009, SDLI's average gross receipts for the slowest six months are less than 33 1/3 % of the average gross receipts for the busiest six months. (SDLI's Gross Receipts for 2009 (Defendants Exhibit 2)).

This immaterial allegation is admitted upon information and belief.

6. In 2010, SDLI's average gross receipts for the slowest six months are less than 33 1/3 % of the average gross receipts for the busiest six months. (SDLI's Gross Receipts for 2010 (Defendants Exhibit 3)).

This immaterial allegation is admitted upon information and belief.

7. A typical skydive takes between ten (10) and twenty (20) minutes to complete. (Zarda Dep. pg. 317:20-25). However, a tandem skydive generally takes anywhere from 15 to 20 minutes. (Zarda Dep. pg. 318:20-22).

Admitted.

8. The first priority for the instructor on a tandem jump is safety, the next is making the jump enjoyable for the customer. (Zarda Dep. pg. 140-141:18-6; Winstock Dep. pg. 91 :20-22).

Admitted.

9. While the airplane is loud, the instructors “can hear each other speak, it's not deafening.” (Winstock Dep. pg. 50:22-24).

Admitted but averred that once people are in free fall in the air, “You can't even speak,” the only way to communicate is through “hand signals.” Id. at 50-51.

10. Often jokes are made during the skydive to loosen the tension. (Maynard Dep. pg. 35:2-14, 38:13-18; Winstock Dep. pg. 30:9-12, 31:3-15).

Admitted, and averred that the jokes are sometimes obscene, bawdy and sexual in nature. Maynard dep. 34:21-35:14.

11. These jokes are made to make the situation less tense, “the calmer a passenger is to exiting, generally the safer the skydive will be.” (Winstock Dep. pg. 30: 16-22).

Admitted, but it is averred that the sexual jokes permitted at SDLI can cause embarrassment and discomfort. Zarda Dec. at ¶¶ 12, 22.

12. Plaintiff Donald Zarda (hereinafter “Zarda” or “Plaintiff”) resides in Richmond, Missouri. (Zarda Dep. pg. 129:11-12).

Admitted that at the time the lawsuit was filed and at his deposition he lived in Richmond, Missouri but now lives in Texas. See Zarda Dec. at p.6, n.1.

13. In 2001, Zarda was an openly gay man, who “came out” sometime between 1999 and 2000. (Zarda Dep. pg. 54:7-12).

Admitted.

14. However, prior to “coming out”, Zarda had relationships with women. (Zarda Dep. pg. 54:18).

Denied: “relationship” is undefined on page 54 and defendant is attempting to characterize these “relationships” with women as romantic when Zarda specifically denied that they were. Zarda Dep. 54:21 – 55:8

15. Zarda was first hired by SDLI in the summer of 2001. (Zarda Dep. pg. 56:2-3).

Admitted, though it might have been spring when the season starts.

16. Mr. Maynard, the ultimate decision maker, was the person who made the decision to hire Zarda. (Zarda Dep. pg. 56:19-20).

Admitted.

17. During his employment with SDLI, Zarda's sexuality "was known" by everyone who worked at SDLI, including Mr. Maynard. (Zarda Dep. pg. 62-63:8-14; Winstock Dep. pg. 18:5-7). Mr. Maynard was aware of Zarda's sexual orientation prior to his hire in 2001, as Zarda disclosed it to Mr. Maynard the first time they met. (Zarda Dep. pg. 78:11-17; Maynard Dep. pg. 135:17-20; Winstock Dep. pg. 18:5-7).

Denied except admitted that at some point during 2001, many, though perhaps not all, employees at SDLI figured out that plaintiff is gay, even though plaintiff did not tell them. Zarda dep. 63:3-14. There is no way of knowing whether "everyone" knew and, indeed, people usually mistake plaintiff as straight. Zarda Dep. at 126-27. Plaintiff denies that he told Maynard that he is gay prior to his having been hired in 2001. Zarda Dec. at ¶ 6.

18. After working most of the skydiving season in 2001, Zarda was then terminated from SDLI in September, because of a customer complaint. (Zarda Dep. pg. 57:10-19, 216-217:20-6, 285:11-16).

Admitted that plaintiff was fired because a customer complained that Don would not do an unsafe maneuver, Zarda Dec. at ¶ 7, which Maynard admitted would not be a legitimate basis for termination, Maynard Dep. 144-45, as well as a violation of state law. See Labor Law § 740.

19. After not working at SDLI for several years, at the end of the skydive season in 2008, Zarda stopped by the drop zone at SDLI to discuss the possibility of his returning to work at SDLI in 2009. (Zarda Dep. pg. 60-61:12-13; Maynard Dep. pg. 148:24).

Admitted.

20. As a result of these discussions, Maynard decided to re-hire Zarda to work at SDLI

for the 2009 summer season (Zarda Dep. pg. 58-59:22-6), as Zarda was a good instructor, a safe instructor, and “a good guy.” (Maynard Dep. pg. 149:9-12).

Characterization denied. Maynard knew that Zarda was a good instructor, a safe instructor, and a good guy; it had nothing to do with the “discussions.”

Maynard Dep. pg. 149:9-12.

21. Like in 2001, Maynard was fully aware of Zarda's sexual orientation when he made the decision to re-hire Zarda. (Zarda Dep. pg. 78:18-22; Winstock Dep. pg. 101:10-12).

Denied in part. Plaintiff was known to be gay during the season in 2001, but Maynard did not know he was gay when he hired Zarda, because Zarda did not tell him. Zarda Dec. at ¶ 6.

22. During the 2009 season at SDLI, Zarda enjoyed working with his coworkers and had a “great relationship” with everyone at SDLI. (Zarda Dep. pg. 72-73 :24-6).

Admitted.

23. However, on July 2, 2009, Zarda fractured his ankle during a landing with a tandem passenger, bringing his jumping season to an early close. (Zarda Dep. pg. 73:7-18, 75:6-22; Maynard Dep. pg. 150:12; Callanan Dep. pg. 44:17-20). 24. After fracturing his ankle, Zarda was put into a cast. (Zarda Dep. pg. 73:19-21). Zarda then showed up at SDLI in a cast. (Winstock Dep. pg. 35:16-20; Callanan Dep. pg. 46:23-24, 47:10-13).

Admitted that plaintiff, non-negligently suffered an accident, Maynard dep. at 150, 152, and showed up at the drop zone because of a “mandatory staff meeting” that Maynard asked him to show up to. Maynard Dep. at 156-57, 159 and Zarda Dec., Exhibit B.

25. Upon noticing the cast, Maynard requested Zarda put a sock over his foot. (Zarda

Dep. pg. 347:12-18).

Denied but admitted that Maynard saw pink toenails while the two were near a coke machine after plaintiff had his cast removed, and Maynard said, “That’s gay,” in a derisive, nasty tone. Zarda dep. at 347, dec. at 18. Earlier in the season, he ask Zarda to paint his cast or leave a staff meeting. Id. at ¶ 17. If you see the cast attached as Exhibit A to the Zarda Dec., you see that there are few socks available that could cover it.

26. Maynard requested the cast be covered up as he did not “appreciate anyone being at the drop zone in a cast and on crutches. The students are nervous enough and if they see someone on crutches with a cast on, it's not going to be very good for the customers.”

(Maynard Dep. pg. 160-161:24-9; Winstock Dep. pg. 96-97:15-14). This request was not specific to Zarda, as Maynard did not “want anybody, if possible, to be there on crutches in a cast.” (Maynard Dep. pg. 162:17-18).

Denied. There were many times that workers showed up at the dropzone in crutches and casts; and, further, why would Maynard not make Zarda go home if he were to be at the drop zone on crutches, even if he were wearing a cast, which would not be hidden as a result of a sock covering it. The request had nothing to do with as if his being on crutches with a black cast would have fooled anyone. Zarda Dec. at ¶ 17. Additionally, a woman named Tara, girlfriend of a dropzone employee, broke her back on a tandem jump and was allowed on the drop zone on crutches. Id.

27. As a result of his injury, Zarda could not work the remainder of the 2009 season.

However, Maynard allowed Zarda to return for the 2010 season, after getting healthy. (Zarda

Dep. pg. 76:22-25, 77:17-22; Maynard Dep. pg. 155-156:23-6, 165:15-18).

Admitted that Maynard is “always looking for workers,” Maynard dep. at 301 and rehired Don for the following season.

28. Like in 2001 and 2009, Maynard was fully aware of Zarda's sexual orientation when he allowed him to return to work at SDLI for the 2010 season. (Zarda Dep. pg. 79:2-6).

Admitted that Maynard probably had not forgotten about Zarda’s sexual orientation in the proceeding year, and at least was reminded of it when he fired him for telling as customer he is gay.

29. After taking the remainder of the 2009 season off, Zarda returned to work at SDLI on May 15, 2010. (Zarda Dep. pg. 78:4-6).

Admitted.

30. During his time at SDLI, Zarda behaved like every other employee in his daily mannerisms, he could not be distinguished from his co-workers based on his actions. Zarda admits that he acted normally, was “just like everybody else,” and didn't do anything special that would distinguish him from his co-workers. (Zarda Dep. pg. 79-80:16-17).

Admitted.

31. Zarda is admittedly masculine in both appearance and actions. (Zarda Dep. pg 121-122:16-6, 365:3-10, 116:21-25, 364:21-23). As an individual who works out frequently and stays in shape (Zarda Dep. pg 87:20-21, 89:10), Zarda has an “athletic” appearance, which he admits often leads others to believe he is heterosexual. (Zarda Dep. pg. 121-122:16-6, 365:3-10). Zarda admits that he does not “look like a lot of gay people might look.” (Zarda Dep. pg. 121:7-8). Zarda also acts masculine, not feminine. (Zarda Dep. pg. 116:21-25, 364:21-23).

Admitted.

32. While masculine in appearance, Zarda would occasionally wear a pink baseball cap during work at SDLI to protect his head from the sun. (Zarda Dep. pg. 120:4-14, 125-126:22-7).

Denied insofar as plaintiff almost always wore his pink cap in the sun and he testified it was viewed as feminine. Zarda dep. at 120.

33. While Zarda claims that his pink cap was viewed as a “feminine thing”, he admits that heterosexual men also occasionally wear pink articles of clothing. (Zarda Dep. pg. 120:15-17, 126-127:13-4).

Admitted that the pink cap was seen as feminine, but denied that the second part of the allegation is often true. In fact, it is rare to see a heterosexual man wear pink. Zarda Dec. at ¶ 15. The portion quoted, Zarda dep. 126-27, refers to plaintiff’s statement, “as long as I don’t have any accessories on, that might lead people ... to ask me if I am gay.” This does not support the proposition stated.

34. Zarda asserts that some employees of SDLI would comment on his pink cap, however when asked, he could not identify any individuals who allegedly made comments, or what comments were made about the cap. (Zarda Dep. pg. 120-121:4-9).

Denied. Plaintiff said “everyone commented on it.” Zarda Dep. pg. 120-121:4.

35. Additionally, Zarda failed to identify Maynard, his boss and the decision maker at SDLI, as one of the individuals who allegedly made comments about his pink cap. (Zarda Dep. pg. 120-128). Nor was Maynard ever heard making comments about Zarda's pink clothing. (Winstock Dep. pg. 36:9-11).

Denied, “everyone commented on it at one point,” Zarda Dep. at 120-121:4,

ipso facto Maynard commented. Plaintiff denies information as to what Winstock heard Maynard saying, but plaintiff did hear Maynard making derogatory comments about his pink clothing and toenails. Zarda Dec. at ¶¶ 17-18.

36. Despite the fact that Zarda claims comments were made about his pink cap, Zarda admits that he “wasn’t offended” by any comments made about his cap. (Zarda Dep. pg. 122:15-19).

Denied. Plaintiff wasn’t offended when “people at work . . . would say, hey nice pink hat,” but when Maynard derisively referred to his pink cast as “gay” and made him cover it up, he was offended. Zarda Dec. ¶¶ 17, 18.

37. Zarda admits that his sexual orientation came up “all the time” at SDLI; it was “routine and so ordinary” for it to come up at work. (Zarda Dep. pg. 48:2-23). However, Zarda was not offended when his sexual orientation was brought up. (Zarda Dep. pg. 51:21-25, 239-240:24-15).

Denied. Defendants continually misquote the depositions. Plaintiff testified that he was not offended when *Winstock* referred to him as “Gay Don” at his *i.e. Winstock’s*] deposition, Zarda Dep. at 51:21-25. Furthermore, Zarda said the following about people speaking about his sexuality at work in an attempt to hurt his feelings:

“In an attempt to hurt my feelings, I can’t remember specifics. I don’t think so. Like we just talked about, some borderline stuff. I think that an attempt to hurt my feelings would imply malice and so that the person was wanting to be malicious, and so I don’t think anybody there was wanting to be malicious to me so they might have done it in error or ignorance, possibly, not knowing what to one was being malicious about it. say or how to say something; *yeah, in that regard possibly but not* – I don’t think anybody was being malicious about it.” Zarda Dep. at 240 (emphasis added).

38. Zarda was open and notorious about his sexual orientation; he even had the nickname

“gay Don” at SDLI. (Zarda Dep. pg. 49:6-15). Zarda “referred to himself as Gay Don” and made jokes about being “gay Don.” (Maynard Dep. pg. 137:14-20). In fact, Winstock was introduced to Zarda as “gay Don.” (Winstock Dep. pg. 25:9-12).

Admitted that plaintiff was open about his sexuality. “Notorious” means infamous, disreputable and dishonorable and is a pejorative, derogatory, bigoted word and demonstrates the defendants’ position. Plaintiff admits that at least Maynard considered Zarda notorious about his sexuality. Denied that plaintiff referred to himself as “Gay Don.” The passage cited, 137-14-20 says nothing whatsoever about the nickname that was foisted upon him. See Zarda dep. 137:14-20. Further, plaintiff does not recall whether someone other than himself introduced him to Winstock as “Gay Don,” but whether or not it happened, it was not to plaintiff’s liking or choice. Zarda Dec. at ¶ 8.

39. Zarda's co-workers would sometimes engage in what he referred to as “gay banter” or “gay fun”, saying things like “easy with gay Don.” (Zarda Dep. pg. 270-271:5-4).

Admitted that all of the employees were culpable of engaging in “gay banter or “gay fun.” Denied that the fun was plaintiff’s, and averred that it was at his expense. Again, he did not choose the name “Gay Don.” Zarda Dec. at ¶ 12-14.

40. However, Zarda concedes he “wasn't offended” when his co-workers referred to him as “gay Don” or engaged in “gay banter”, because they did not intend it to be malicious or derogatory. (Zarda Dep. pg. 51 :21-25). Zarda concedes that no one at SDLI made “gay jokes” to Zarda out of malice. Zarda doesn't believe anyone at SDLI was being malicious toward him when bringing up his sexuality. (Zarda Dep. pg. 239-240:24-15).

Denied that plaintiff wasn’t offended by it; to an extent he was, Zarda dep. at 240, but has a thick skin and wanted not to create tension in the workplace. He did, however, in 2009 have a talk with his employees to tone down the gay jokes. Zarda Dec.

at ¶ 13. Admitted that the employees were not being malicious.

41. Zarda is admittedly not offended by jokes about his sexual orientation, as long as the intention is good. (Zarda Dep. pg. 239:17-23).

Admitted.

42. Furthermore, it is common for Skydivers to pick on each other; all of the instructors at SDLI got picked on. (Zarda Dep. pg. 342:6-16).

Admitted.

43. Zarda concedes he was treated just like everyone else at SDLI; he was not treated differently, or picked on more, because of his sexual orientation. (Zarda Dep. pg. 341:10-15, 343:8-16; Winstock Dep. pg. 87:6-9, 97:22-25).

Denied. Plaintiff admits as he testified to, i.e., that “for the most part,” 342-43, he was treated as others. “Most part” means at least more than half of the time. Zabell tried again and again at the deposition to get plaintiff to commit to a yes or no that he “was treated like everyone else,” but failed to obtain that admission. Id. Now, having failed to get his admission, he dishonestly foists it upon the court here, as in countless other examples.

44. Rather, Zarda enjoyed positive working relationships with all his coworkers during his employment at SDLI in 2009 and 2010. (Zarda Dep. pg. 81:12-16, 82:6-9).

Plaintiff does not understand the use of the word “rather,” in this context, but admitted only as plaintiff testified, that “for the most part” he had positive working relationships at the dropzone.

45. If any problems arose at SDLI, Zarda could have brought them to the attention of Rich Winstock, the Chief Instructor (hereinafter “Winstock”), or Mr. Maynard. (Zarda Dep. pg. 101:7-16; Winstock Dep. pg. 89:20-23).

Admitted, and insofar as plaintiff was suspended, had his pay docked, he did; though it did no good, because despite Winstock's interventions, he was unable to prevent Don's termination. (Winstock's Dep., pg. 84.)

46. Zarda felt comfortable speaking to Winstock about his problems, enough so that he disclosed a personal problem to Winstock in 2009. (Zarda Dep. pg. 102:18-23, 103 :9-17).

Denied insofar as the testimony cited does not stand for the proposition stated, Zarda Dep. pg. 102:18-23, 103:9-17, and that the personal problem referred to, the death of a cat, plaintiff testified *he did not recall* speaking to Winstock about. Zarda dep. 104:2-8. This is another example of Zabell's blatant misconstruction of the evidence. Despite this, plaintiff avers that plaintiff gets along with Winstock, and vice versa, and they both think Ray is unethical and that plaintiff's termination was wrong. Zarda Dec. at p12., n2, Exhibit E; Winstock dep. at 24 (Winstock strongly recommends a written reprimand) and 83 (Winstock doesn't know what the reprimand would be for, but at least it would have saved Zarda's job).

47. However, Zarda admittedly "didn't make any complaints to the owner, [Maynard], or [Winstock] about" about any gender or sexual orientation discrimination. (Zarda Dep. pg. 335:7-11, 101-102:22-9.

Denied. See ¶ 48, infra.

48. The only complaint Zarda made about SDLI was an oral complaint to Winstock, informing him that he had been suspended. (Winstock Dep. pg. 90:9- 18).

Admitted.

The Jump in Question:

49. On June 18, 2010, David Kengle (hereinafter "Kengle") brought his girlfriend,

Rosana Orellana (hereinafter “Orellana”), to SDLI for a tandem skydive for her birthday. (Zarda Dep. pg. 201-202:24-4).

Plaintiff is not the source of that information, but he has no basis to deny it.

50. Zarda was the assigned instructor on the tandem jump with Orellana. (Zarda Dep. pg. 201-202:24-7).

Admitted.

51. During the skydive, Kengle and Orellana were in close proximity to their respective instructors. (Kengle Dep. pg. 18:13-18; Orellana Dep. pg. 43:13-18, 8; 100:17-22).

Orellana sat in front and Zarda sat directly behind her. (Orellana Dep. pg. 43:13-18).

Kengle was also sitting in front of his instructor. (Kengle Dep. pg.17:17, 23-25). Zarda then attached Orellana's harness to his harness. (Orellana Dep. pg. 41:12-20).

Admitted.

52. Orellana was not bothered by the close proximity to Zarda. (Orellana Dep. pg. 100:17-22).

Plaintiff denies knowledge or information and belief as to how Orellana felt or what she wanted or didn't want. She wanted to go on a skydive, but didn't read the waiver pertaining to what would happen on the skydive. Orellana Dep. at 36-37,

72. All of the visual evidence taken at the time of the jump, including immediately after the jump, shows she had a fantastic time on the jump. Afterwards, she said it was “awesome” and put her face close to Don's and posed for a picture with him.

Antollino Dec at Exhibit B (videographic and photographic evidence) and Kengle's jump, id. (hereinafter “contemporary evidence” or CE). She still shows the video to Kengle's family members. Orellana dep. at 97. She shows no discomfort in the CE,

but testified she was claustrophobic and backed away from me as I approached her with the video. Orellana dep. 93. She believes in gay marriage, id. at 65, yet testified offended by something much less controversial, a person telling her he is gay, suggesting she is making up the whole thing to support her *boyfriend's* complaint. She knows nothing about skydiving, did not read the waiver, id. at 36-37, 72, and thus has no idea what Don was doing in regards to the attachments with regards to her safety. Id. at 41. Therefore, she would have preferred that Don protect her safety even at the expense of her comfort. Id. at 80, 98. She didn't want to make a complaint. Id. She merely made some comments on the way home after the jump, and her boyfriend mulled it over for a day and then called in a complaint. Id. at 69. Ray waited two more to discuss the allegations. Zarda Dec. at 28.

53. During the plane ride up, a joke was made to Kengle by another instructor on the plane, stating: "how do you feel about your girlfriend being strapped to another man." (Zarda Dep. pg. 201-202:7-12; Orellana Dep. pg. 44:10-17; Kengle Dep. pg. 19:18-23).

Admitted that an instructor, not plaintiff, made this "joke."

54. Both Orellana and Kengle laughed at the joke made by the instructor (Orellana Dep. pg. 45:5-6), as it was funny and they can both "take a joke." (Orellana Dep. pg. 58:21-23; Kengle Dep. pg. 43:10).

Denied that it is funny, but admitted that the other instructor stated it as a misplaced form of trying to loosen up a tense atmosphere. Maynard dep. at 39-40. Maynard denies that it is a joke but rather a "statement." Maynard dep. 39-40. Denied that Orellana and Kengle were able to take a joke. Kengle is extremely jealous of other men pursuing her—as he characterized her -- "beautiful" girlfriend.

Kengle Dep. at 24. Further, plaintiff sensed discomfort when this joke or statement was made, and wanted to remove himself from the insinuation that he was sexually attracted to Rosanna. Zarda Dec. at ¶ 23.

55. This type of joke is made often by the skydiving instructors during a tandem jump. (Zarda Dep. pg. 202:13-18). Customers are not usually bothered when this joke is made. (Zarda Dep. pg. 206-207:21-4).

Denied, insofar as plaintiff specifically testified that Kengle was bothered by the joke, Zarda dep. at 202, but admitted that other customers usually do not get upset.

56. During the plane ride, sometime prior to the jump, Orellana believed Zarda was touching her inappropriately. She noticed that “[h]e had his hand on [her] hip” and was “resting his chin on [her] shoulder.” (Orellana Dep. pg. 47:5- 13; 48:15-18, 89:10-20). This contact made her uncomfortable during the jump.(Orellana Dep. pg. 100-101:25-2). During this time, Zarda also “leaned forward to give [Orellana] instructions ... in her ear.” (Zarda Dep. pg. 230-231 :21-7).

Denied. First, Orellana was on notice close that she would be in close contact with the instructor, signed a release wherein she agreed to be in such close contact. Orellana Dep. at 36-37, 72. That she did not read that waiver is not something to hold Zarda liable for, but Orellana. See Maynard dep. at 31 (customer complaint concerning something happening that is in the waiver is not a valid complaint). Second, an instructor is so close to the passenger that he is invading her space. Winstock Dep. at 82-83. Again, plaintiff does not know what Orellana believes – it is likely she is lying to protect her boyfriend’s integrity - but she signed a statement

that she agreed to be touched. *Id.* at 36-37, 72 Third, as a homosexual, he would have no reason or motive to put his hand on her hip in a sexual or inappropriate manner. Zarda Dec. at ¶ 23; yet as Maynard admitted (dep. at 149) he was an good and safe instructor and would have every reason or motive to make sure her safety was protected, and that the hip straps were adjusted appropriately. Maynard dep. at CITE. Fourth, it is a normal place to rest one’s hand while waiting to jump out of a cramped plane. Zarda Dec. at ¶ 24. Fifth, it is loud in the airplane, and the ear is the most natural place to give an instruction, because the instructor is *strapped* to the passenger. See Maynard dep. at 27-28. Sixth, the instructor must put his face on either shoulder or else the instructor’s teeth or perhaps nose will hit the back of the passenger’s head. Winstock dep. at 50, 55, 81; Maynard dep. at 259. Finally – it is unclear what significance “whisper” has in this lawsuit (whispering “sweet nothings,” perhaps?) but insofar as the instructor is so close, and the noise level high, a statement made at a natural octave might be interpreted as a whisper. Zarda Dec. at ¶ 25.

57. Kengle also noticed Zarda touching Orellana inappropriately in the plane. He observed Zarda putting his “hands on her hips” for practically the entire plane ride. (Kengle Dep. pg. 19-20:24-7,22:2-4,23:4-12, 23:16-24, 27:14-23).

Plaintiff has no idea what Kengle saw, but Kengle said nothing at the time. Kengle Dep. at 24, and did not report the alleged touching for a day. *Id.* at 31. The documentary evidence shows Kengle had a fantastic time, and after his drop was over he said that was “fucking awesome,” and admitted that he did not look upset. Kengle Dep. at 49. His lay opinion testimony as to whether plaintiff the homosexual

was trying to make a move on his girlfriend is inadmissible.

58. Kengle observed that no other instructor, including his own instructor, was touching their customer in the same manner Zarda was touching Orellana. (Kengle Dep. pg. 23-24:22-5, 62-63:20-3, 66: 15-18). Kengle felt uncomfortable with the behavior he observed from Zarda based on his observations of the other instructors. (Kengle Dep. pg. 23-24:22-5, 27:2-9, 62-63:20-3, 66:15-18).

Denied. An instructor must constantly make adjustments to straps at the hips inside the plane and out. Maynard dep. at 27-28. The visual evidence as to what happened in the plane, taken by a constant flashing camera shows simply that the complainants were having an excellent time. Maynard dep. at 323-25. Kengle is very jealous of other men because he believes that Orellana is “beautiful” and they are men are always hitting on her. Kengle dep. at 24; Maynard dep. at 198. Kengle is “very vocal,” but he didn’t say anything at the time, Kengle dep. at 24, and didn’t express any disappointment after the jump when he posed with Don. See final moment of video. He only complained when, coming home from the jump, he learned that Don had told Orellana that he was gay, and a day later made a complaint and got his money back. Maynard Dep. 186-87. If the issue had been so pressing, Maynard might have addressed the issue on the spot, but he didn’t speak to Zarda about it *until three days later*. Zarda Dec. at ¶ 28.

59. While touching the customer's hips is required at some point during the tandem jump, it does not require the instructor to touch the customer inappropriately. (Zarda Dep. pg. 173:3-6).

Admitted and plaintiff homosexual did not touch Orellana inappropriately,

and defendants have no evidence that Zarda, the homosexual did anything but “put [his] hands in the location around the hips that's necessary to be able to perform the functions that I am required to do as a tandem instructor.” Zarda dep. at 173.

60. Then, “[a]t some point during the jump, [Zarda] sensed that [Orellana] was uncomfortable.” (Zarda Dep. pg. 174-175:22-6, 173:12-14).

Admitted, and plaintiff believes it was after the tired, “notorious” “joke.” Zarda Dec. at ¶ 21-23.

61. After pulling the parachute (Orellana Dep. pg. 50:11-18), in an attempt to allay Orellana's discomfort, Zarda disclosed his sexual orientation to Orellana. (Zarda Dep. pg. 139-140:22-8, 173:15-19; 228-229:2-10). He told her: “I hope I didn't make you feel uncomfortable on the plane, I'm gay,” that he “had recently broken up with his boyfriend.” (Orellana Dep. pg. 50:14-18).

Admitted, though plaintiff does not recall the statement about breaking up with his boyfriend, and it seems unlikely because it would have been untrue. Zarda Dec. at 23. Plaintiff did this because, in his judgment, it would make the passenger more comfortable, given the “joke” in the plane, id., and Rich Winstock, SDLI’s chief instructor does the same thing, when appropriate, to allay the discomfort of passengers – he tells them that he is married with children. Winstock dep. at 94,109-110.

62. It was only after Zarda noticed Orellana's discomfort with the jump that he disclosed this information to Orellana. (Zarda Dep. pg. 176:6-9, 177:14-16).

See response to ¶ 60 incorporated herein.

63. Orellana felt uncomfortable after Zarda disclosed this information to her. (Orellana

Dep. pg. 52:2-7, 54:11-19, 55:6-9). It made her uncomfortable because she “wanted to learn about the scenery,” and “wanted him to speak about what was going on around” them during the jump. She did not “want to hear about his personal life” during the jump. (Orellana Dep. pg. 52:2-7, 54:11-19, 55:6-9). She wanted information about her tandem jump instead. (Orellana Dep. pg. 52:2-7, 100:4-10).

Admitted this is what she testified to, but denied that, in a ten or fifteen minute jump that she described as “awesome” CE, Antollino Dec. at Exhibit B, and later cozied up to plaintiff, id. at the end, that she did not see any scenery or that she was not told what was going on. Zarda Dec. at ¶ 23. In fact, plaintiff’s talking about the jump and the closeness of their contact was “information about the jump itself.” Id. A one-sentence discussion – even if it took place in the air, which plaintiff remembers differently – could hardly distract from the scenery, Zarda Dec. at ¶ 26, and notwithstanding Orellana’s after-the-fact complaint, Maynard rated the jump at 8 or 9 out of 10, dep. at 280, and Winstock, dep. at 75, rated the jump at 97% and said the landing was outstanding. Id. at 73

64. Orellana felt that Zarda's conduct, putting his hands on her hips and his chin on her shoulder during the jump, had crossed the line. Orellana Dep. pg. 60:4-8. She felt that “he should have been more professional” in his interactions with her. (Orellana Dep. pg. 49:3-5).

Denied, though admitted that she testified to this. As set forth in ¶ 63, Winstock (75) and Maynard (281) gave plaintiff very high grades in the manner in which plaintiff performed in the jump based on the video. Maynard saw not a single unprofessional thing in the pictures the jumpers ordered. Maynard dep. at. 323-25.

Furthermore, Orellana’s opinion is inadmissible because not only does she not know anything about skydiving, but she didn’t even read the waiver before she went on the jump. Orellana dep. at 29, 36-37, 72. She has no basis whatsoever to evaluate what is or is not professional.

65. In her opinion, Zarda's actions ruined the jump for Orellana. (Orellana Dep. pg. 54:20-21, 60:6-8).

Denied. She said it was “awesome” as soon as she got off and cozied up to plaintiff for a picture. See Orellana dep. at 83; see Orellana video at very end.

66. Kengle also felt the overall experience had been tainted because of Zarda's actions. (Kengle Dep. pg. 31:11-12).

Denied. Just as with Orellana, the CE shows that Kengle was having a great time, and he did not complain for a day, at which time he, an unemployed waiter, dep. at 7, was happy to cash his refund money. So he got an experience that he described as “fucking awesome” completely free. Kengle at 49. Orellana didn’t want to complain. Dep. at 69.

67. After leaving SDLI, Orellana told Kengle that she would have liked the experience better if she had a different instructor. (Kengle Dep. pg. 30:8-9).

Denied. The contemporaneous evidence shows that both of them had a fantastic time, Kengle Dep. at 48, Orellana Dep. at 83, and both Winstock and Maynard evaluated plaintiff’s performance on the jump in superlative terms. Kengle’s statement is hearsay and even if not, Orellana’s opinion is sheer speculation.

68. After thinking over the aforementioned events, on about Monday, June 21, 2010, Kengle called the SDLI office to lodge a complaint about Zarda' s behavior on the jump with Orellana. (Maynard Dep. pg. 179:14-22, 180:2-14; Kengle Dep. pg. 31:13-15).

Admitted that after stewing over it , Kengle, an unemployed waiter, dep. at 7, devised a way to get a refund.

69. Kengle believed a complaint was warranted because Zarda's actions were “inappropriate.” (Kengle Dep. pg. 35:13-15).

Denied, and it is unclear what “actions” Kengle is talking about. Kengle wanted his money back. He is a thirty-something unemployed waiting who as recently as 2006 was driving a 1988 car on installment plan. Antollino dec. at Exhibit S (TLO report). This is not to denigrate the lower-middle class, but let’s be real: Kengle wanted to impress his girlfriend with an expensive gift that he couldn’t afford, because men were always hitting on her; then he devised a way to get his money back by making a nonsensical complaint – that a homosexual was hitting on his girlfriend. Further, he has no qualifications for evaluating plaintiff’s performance, thus they are inadmissible; (2) the contemporaneous evidence shows he was having a wonderful time; and (3) it is as legal and proper to state one is gay in the workplace as it is to say one is Cuban, something that Maynard himself believes. Dep. at 256. Forcing an employee to pretend he is heterosexual is akin to forcing a black person to show up to work in white face. See generally, Kenji Yoshino, Covering.

70. When he called SDLI, Kengle spoke to Lauren Callanan (hereinafter “Callanan”), who “took [his] story and let [him] know she would pass the information along.” (Kengle Dep. pg. 31 :15-17; Callanan Dep. pg. 33:21-22).

This immaterial statement is admitted.

71. Callanan relayed to Maynard that a customer complained, and provided him

with Kengle's name and phone number. (Maynard Dep. pg. 181:2-3).

Denied, and this demonstrates how loose the defendant plays with the facts. Maynard was not sure which of his employees told him, Maynard dep. at 180, but surely one of them had to.

72. Maynard then contacted Kengle later that day, telling Kengle “that he was very unhappy” with what Kengle and Orellana experienced during their skydive. (Kengle Dep. pg. 31:9-16).

Admitted.

73. During their phone conversation, Kengle complained to Maynard about what he and Orellana believed to be inappropriate touching by Zarda during the skydive. (Zarda Dep. pg. 156:16-23; Orellana Dep. pg. 69:11-13; Maynard Dep. pg. 181-182:16-12).

Denied. Kengle has no qualifications for evaluating plaintiff’s performance, and his opinion is inadmissible; the contemporaneous evidence, Antollino Dec., Exhibit B, Maynard Dep. 325, shows he was having a wonderful time, and Maynard and Winstock believed the jump to show superlative. Maynard rated it 8 or 9 and Winstock 97/100.

74. Kengle expressed to Maynard “his disappointment” in the company and with what the tandem master, Zarda, did during their jump. (Maynard Dep. pg. 181:16). Kengle explained that the skydive “was a present for [Orellana's] birthday and that her birthday was completely ruined” because of Zarda's behavior, and that he would never recommend SDLI in the future because of it. (Maynard Dep. pg. 181:21-23; Callanan Dep. pg. 33-34:24-4).

Denied. While he might have stated this days later, the contemporaneous

evidence shows that they were having a wonderful time during the jump.

75. Kengle explained to Maynard that, during the jump, Zarda had his hands on Orellana's hips, put his head on her shoulder, and whispered in her ear, which made her feel very uncomfortable during the jump. (Maynard Dep. pg. 182:6-17; Callanan Dep. pg. 34:7-12). He also explained that Zarda tried to justify his behavior by telling her that he was gay. (Maynard Dep. pg. 182:6-17; Callanan Dep. pg. 34:7-12) He told Maynard that Orellana was upset that Zarda discussed his personal life with her. (Maynard Dep. pg. 182-183:22-8, 289:11-15; Callanan Dep. pg. 34:7-12).

Denied. Kengle wanted his money back. Further, he has no qualifications for evaluating plaintiff's performance, which is inadmissible; (2) the contemporaneous evidence shows he was having a wonderful time; and (3) it is legal and proper to state one is gay in the workplace. See Executive Law CITE; Herek, Bauer and Yoshino, supra; Winstock at 109 (discussing personal life where appropriate); Maynard dep. at 254-57 (discussing ethnicity, military status, and familial status at the workplace perfectly ok). Additionally, Maynard's discussing his marital woes and girlfriend is perfectly appropriate for his Facebook page. Antollino Dec. ¶¶ 8-10.

76. In response to Kengle's complaint, Maynard offered to refund the money Kengle paid for the skydives and accompanying video. (Kengle Dep. pg. 32:9-16). Kengle did not request the refund, Mr. Maynard insisted on it. (Kengle Dep. pg. 33:19-22).

Admitted that Maynard gave them a refund and Kengle greedily took it because, despite that the contemporaneous evidence shows he had a wonderful time. Kengle did not testify that Maynard insisted on anything. (Kengle Dep. pg. 33:19-

22).

77. In the course of investigating this complaint from Kengle, Maynard did not speak to Orellana, (Maynard Dep. pg. 185:11-13) nor did he speak to the other individuals present on the plane. (Maynard Dep. pg. 199:7-16). However, Maynard did review the video of Zarda' s jump with Orellana. (Maynard Dep. pg. 199: 17 -22).

Denied that Maynard did any investigation because if all he did was watch the video, that was evidence in plaintiff's favor to show that Kengle was lying because it shows nothing inappropriate. See Orellana video and photographs.

78. In his twenty plus years at the helm of SDLI and the successful completion of thousands of tandem jumps, no one ha~ complained to Maynard about any instructor, other than the complaints made against Zarda by Kengle and the customer complaint in 2001. (Maynard Dep. pg. 66:8-21, 69:9-14, 297:11-21). The only complaints Maynard received about his skydiving instructors were about Zarda. (Maynard Dep. pg. 69:9-14; Winstock Dep. pg. 19:10-13).

Denied. There have been numerous complaints about SDLI and its employees. Maynard dep. at 55. See also Antollino Dec. at ¶¶ 6, 7, 12. One of them was similar to the one made by Kengle – involving improper touching wherein a complainant alleged that the instructors were groping their girlfriends. Maynard in response asked why they didn't say anything, or call the police. Antollino Dec. ¶ 12, Exhibit L.

The Suspension and Termination

79. On the Monday following the July 18, 2010 jump with Orellana, Maynard had a conversation with Zarda regarding the jump, in the course of his investigation of the complaint. (Zarda Dep. pg. 36:10-12, 37:7-14, 39:15-17; Maynard Dep. pg. 183:15-21).

Denied. Maynard did not investigate the complaint. See response to ¶ 77.

Watching a video that exculpates plaintiff from an allegation is not an investigation.

80. During the conversation, Maynard questioned Zarda as to whether he remembered the jump with Rosanna Orellana on June 18, 2010. (Zarda Dep. pg. 36: 19-25). Zarda responded that he did not remember the specific jump. (Zarda Dep. pg. 37:2-5, 362:18-19, 37:8-11). Maynard then told Zarda that he “took a girl named Rosanna” on a tandem jump that day. (Zarda Dep. pg.). “At that time, [Zarda] didn't remember anything specific about that jump.” (Zarda Dep. pg. 37:15-16).

Admitted. Plaintiff asked to see the video to refresh his recollection after thirty customers, but Maynard refused to let him. Maynard dep. at 185; Zarda Dep. at 4.

81. Maynard then informed Zarda “there were some customers that came out and jumped, and it was a boyfriend and a girlfriend, and that [he] had taken the girl, and they had called and made a complaint.” (Zarda Dep. pg. 37:15-22; Maynard Dep. pg. 187:8-22, 196:10-18). Zarda again did not remember anything about the jump. (Zarda Dep. pg. 38: 3-6).

Admitted and in between this meeting and the Rosanna jump, plaintiff had taken up some thirty passengers and would have no reason to remember – especially since the jump was so uneventful and enjoyable for the passengers. Zarda Dec. at ¶ 26-27; Maynard dep. at 323, 325; Orellana video; Kengle video; photographs of the jump.

82. Maynard informed Zarda that the customer complained about how Zarda touched her, that he “touched her in a way that made her feel uncomfortable”, and that he touched her

inappropriately “at the hips.” (Zarda Dep. pg. 43:10-13, 44:3). Maynard explained that Zarda made Orellana feel “very uncomfortable with the way he was touching her on her legs, the way he was putting his head on her shoulder” and that she was “very uncomfortable for the entire jump” and his actions even led her to believe Zarda “was hitting on her”. (Maynard Dep. pg. 196:10-18).

Denied that the issue of the touching came up first – the sexuality issue came up first, and the touching issue second. Zarda Dec. at ¶ 29, 39, Exhibit D. This is similar to the termination interview, Maynard dep. at 224-32, where the touching is barely mentioned until plaintiff brings it up. Of course the unemployment documents do not mention touching at all. Antollino Dec. at ¶ 17, Exh. Q. Other than that, it is admitted that this is what was said, in sum and substance, but denied that what was said actually happened. Orellana video; Kengle video; photographs of the jump; Zarda Dec. at ¶¶ 26-27.

83. Admittedly, this is not a complaint about Zarda's sexual orientation. (Zarda Dep. pg. 360:14-17).

Don admits that Kengle’s fear that his girlfriend was being hit on is not a complaint about his sexual orientation. However, Maynard’s invoking this ridiculous complaint without any investigation is reliance on sex stereotyping, and the other complaint – that plaintiff told Orelana that he is gay – demonstrates homosexual bias. Gregory M. Herek, “Why Tell if You are Not Asked?” Self Disclosure, Intergroup Contract, and Heterosexuals' Attitudes Toward Lesbians and Gay Men, in Out in Force: Sexual Orientation and the Military (Gregory M. Herek, Jared B. Jobe, Ralph M. Carney eds. 1996). Bruce Bawer similarly notes:

“most heterosexuals are constantly alluding to their personal relationships without even realizing it, let alone considering it inappropriate; they only notice it, and consider it inappropriate, when a homosexual does the same thing.” Bruce Bawer, Place at the Table: The Gay Individual in American Society (1994). Kengle’s complaint about homosexual Don’s attempt to hit on his girlfriend is a not in itself a complaint about Zarda’s sexual orientation but it is the pretext that allows Maynard to get rid of plaintiff on the basis of stating his sexual orientation to another customer and offending that customer’s biases. Maynard knew that the touching complaint was a lie. Plaintiff is gay. The video shows no improper touching. Touching is required on the job, and Maynard did not speak to Orellana as to how she was touched and where insofar as to gauge whether it was a form of touching required of the activity. Nowhere in her deposition does she describe how the touch was “inappropriate,” a conclusory term. Maynard knows Zarda is an excellent instructor. Finally, Maynard had the opportunity to invoke the touching allegation to oppose Zarda’s unemployment benefits, something which could increase his premiums. Maynard dep. at 344-45; Antollino Dec Exh.Q. In its misconduct opposition to Zarda’s unemployment application, Maynard says nothing about touching, only the very weak complaint about revealing “personal information.” Antollino Dec. Exhibit Q. The fact that Maynard did not use the touching allegation to oppose unemployment benefits – when he had the financial motive to invoke such an inflammatory charge – shows he knew it not to be true. Id.

84. Maynard also questioned Zarda whether “anything about [his] sexual orientation came up” during the jump, and Zarda responded that he did not know. (Zarda Dep. pg. 38:8-10). He then told Maynard “that that comes up all the time around here,” as it is often joked about

at the drop zone by the SDLI staff. (Zarda Dep. pg. 38:12-15).

Admitted.

85. Maynard then informed Zarda that the customers also complained that Mr. Zarda discussed his sexual orientation with the customer during the jump. (Zarda Dep. pg. 40:2-4). Which, Zarda only did after realizing Orellana was uncomfortable with what occurred during the jump. (Zarda Dep. pg. 176:6-9,177:14-16).

Admitted.

86. Due to the nature of a tandem jump, discussing the instructor's sexual orientation is not recommended during a jump. (Winstock Dep. pg. 95:5-9). As “that pre-jump phase is one of building trust, ... there's better ways to build trust.” (Winstock Dep. pg. 95:11-15).

Denied. Winstock dep. at 109 (“I personally find that women, female passengers, usually older, when they're extremely nervous, and their mothers, I have to calm down my passenger, especially when they're extremely nervous I have to, otherwise it's a safety issue, and like I said earlier, our job is to land safely, and I want to go home to my three kids. Every passenger is different. . . .[D]o I recommend not bringing [one’s sexuality] up[?] Yes, of course I recommend you don't bring it up, but there are situations where it could benefit you.” Plaintiff did no differently, though the circumstances were different only in that plaintiff said he is gay whereas Winstock made clear he is straight. Zarda Dec. at ¶ 40.

87. Following this conversation, Maynard suspended Zarda for a week without pay. (Zarda Dep. pg. 40:6).

Admitted.

88. Zarda's suspension had “nothing to do with him being gay.” (Maynard Dep. pg. 189:4-5) Rather, it was a function of the customer's complaint regarding Zarda's behavior. (Maynard

Dep. pg. 187:18-22, 196:10-18).

Denied. Maynard's testimony on this point pertained to whether plaintiff was gay at work or after work, and that talking about his activities and "escapades" after work was inappropriate. Plaintiff is gay all day and the statement merely reflects Maynard's ignorance that being gay is an "escapade" rather than an immutable condition. Zarda Dec. ¶ 10.

89. After this discussion with Maynard, Zarda "sought Winstock's counsel" to discuss the events that had just occurred. (Zarda Dep. pg. 35:11-22, 207-208:16-6). In response, Winstock notified Zarda he would discuss the matter with Maynard. (Zarda Dep. pg. 208:6-1 0).

Admitted, and during that time, Winstock strongly advocated for plaintiff not to be terminated. Winstock dep. at 84.

90. After his one-week suspension, Maynard terminated Zarda, based on the complaint from Kengle. (Zarda Dep. pg. 218:20-21, Maynard Dep. pg. 282:3).

Denied. Maynard fired plaintiff for telling a customer he is gay. All of the contemporaneous evidence as well as the evidence to unemployment, as well as common sense, shows that Maynard did not believe the touching allegation, but was enraged that he told a customer that he is gay. See ¶¶ 82, 83, supra.

91. The termination conversation between Maynard and Zarda was tape recorded by Zarda. (Maynard Dep. pg. 221:2-25).

Admitted.

92. During the termination conversation, in response to Zarda's inquiry regarding his sexual orientation, Maynard informed him "[i]t wasn't a gay issue. It was a personal issue ... Because if it was a heterosexual thing -- if Ritchie Winstock was telling some chick of his escapades, he would be in the same situation. It's not about gay. It's about your

personal life, talking to people about it ... I don't care what you do and I don't care what those guys do, but what I do care about is that it's not shared with my customers.”

(Maynard Dep. pg. 226:3-16). “It's not a gay thing. It's about your personal escapades and what you're telling people.” (Maynard Dep. pg. 226:19-22).

Admitted, but denied Maynard’s bigoted belief that being gay is an “escapade.” See Herek and Bauer, ¶ 83. Webster’s defines escapade as “a usually adventurous action that runs counter to approved or conventional conduct.” To believe that being gay is an escapade is evidence of bigotry.

93. During the termination meeting, Maynard and Zarda discussed Kengle's complaint. They discussed the fact that Orellana felt Zarda touched her inappropriately, which made her uncomfortable. (Maynard Dep. pg. 227:8-10). Maynard explained that Kengle was upset because Orellana's birthday was ruined because Zarda touched her inappropriately on the hips (Maynard Dep. pg. 24 7: 14-15), put his head on her shoulder, was whispering in her ear, and telling her “Don't worry about me, I'm gay.” (Maynard Dep. pg. 229:3-21).

Admitted except that the tape says nothing about Orellana’s birthday being ruined “because Zarda touched her inappropriately on the hips.” Maynard dep. at 229 (“you were suspended for ruining somebody's birthday because of you talking about your personal life to them.”) In fact, Maynard only brings up the touching allegation when Zarda reminded him about it. Id. at 227.

94. Despite his contention that he could not have touched Orellana inappropriately because of his sexual orientation (Zarda Dep. pg. 43:17-22), Zarda admits that a homosexual man can touch a woman inappropriately. (Zarda Dep. pg. 228:13-15).

Defendants certainly have a weak case to allege in a 56.1 statement that a homosexual could touch a woman in an inappropriate way and therefore the case should be dismissed. Plaintiffs do not deserve to win this motion solely on the utter unlikelihood that plaintiff, who is 100% gay and has never had a romantic relationship with a woman, would touch Orelana in a sexual nature. Zarda Dec. at ¶ 10. Nevertheless, though highly impossible, it is admitted that anything that does not violate the law of physics is possible.

95. Zarda testified that Maynard terminated him because Kengle and Orellana complained about the conduct that occurred on their jump. (Zarda Dep. pg. 235:17-22). Zarda explained that Maynard terminated him because the customers accused him of inappropriately touching a “female passenger in a way that made her feel uncomfortable” and “because the issue of [his] sexuality came up in front of the customers.” (Zarda Dep. pg. 172:13-18, 243:11-14, 227:4-15, 227-228:23-7, 281:21-24).

Denied. Again, defendants misconstrue testimony. Plaintiff testified that, “I can’t superimpose anything on Mr. Maynard’s thought processes, because they’re rather abstract at times, and they don’t always make sense,” 172:3-6, and clarified himself, “No. Let’s be more specific...” Id at 172:22, and testified that he put his “hands in the location around the hips that’s necessary to be able to perform the functions that I am required to do as a tandem instructor.” 174:15-18, and that Maynard knew it was a lie. See Zarda Dep. at 274, 277-78.

96. However, contradictorily, Plaintiff testifies repeatedly that he believes the reason he was terminated is because of his sexual orientation. (Zarda Dep., pg. 116:9-12, 134:12-15, 215:8, 278-279:11-2, 281:21-24).

Denied it is plaintiff's contradiction: It was Kengle's and Maynard's contradiction. Kengle brought up both reasons as complaints against plaintiff to get his refund, and Maynard used both reasons – which essentially cancelled each other out – to terminate plaintiff, though at the termination interview, the touching was barely mentioned. Maynard dep. at 227 (transcription of termination interview wherein plaintiff brings up the touching allegation); see also unemployment misconduct documents, Antollino Dec. at Exhibit Q. Inappropriate touching might be a slam-dunk that might disentitle plaintiff from benefits, and therefore Maynard had a financial motive to pursue that allegation. Maynard dep. at 343. But Maynard dropped the touching allegation in the unemployment papers and plaintiff got his benefits. Antollino Dec. at ¶ 18, Exh. R.

97. If an instructor does something to make a customer uncomfortable, the instructor is responsible for damaging the customer's skydive experience. (Winstock Dep. pg. 92-93:22-4). It is not inappropriate to discipline an employee because of a customer complaint. (Winstock Dep. pg. 93:5-8).

Denied. Not every complaint is legitimate. Maynard dep. at 20, 22, 31. SDLI even makes the customer sign a waiver that if they *die* during a jump, SDLI is not responsible, Antollino Dec., ¶ A Rosana Waiver; Exhibit B, Maynard Safety video, so how can the skydiver be responsible? Rather, skydiving is an inherently dangerous activity, Maynard dep. at 165, and touching is one thing that the customer specifically signs off on in that waiver. ¶ 13. Furthermore, even insofar as an instructor is responsible for doing a good job in general, if there is a complaint, the complaint must be investigated – as this one was not with the mere exception of viewing exculpatory evidence. Furthermore, there are many levels of discipline, and Winstock – without

even knowing what the complaint was about – strongly advocated that plaintiff not be fired. Winstock dep. at 84, but Maynard ignored him. Perhaps that’s one reason why Winstock quit SDLI, despite Maynard’s wanting him to stay on, Maynard dep., at 347; Zarda Dec. at Exhibit E, Winstock writing plaintiff that what happened to Zarda was wrong.

Wage Facts

98. At SDLI, there was no schedule of hours, rather the instructors were “expected to show up at work at a specific time ... and were expected to stay until work was complete.” (Zarda Dep. pg. 291:15-20).

Denied but admitted in part. Zarda Wage Aff. ¶ 4 (the day started at 9 on weekdays and 7:30 on weekends) and ended when the day was called or sun went down. Id. at ¶¶ 6-7.

99. On the weekends the employees are expected “to be there at 7:30 because we try to get wheels up by 8 o'clock.” On the weekdays the employees are expected “to be there at 9:30 to have wheels up by 10 o'clock.” (Maynard Dep. pg. 306:6-10; Callanan Dep. pg. 59:5-10).

Admitted.

100. During any one day, “Skydiving goes on typically all the way until one half hour before sunset.” (Zarda Dep. pg. 301 :5-9).

Admitted.

101. However the workday can end at different times depending “on the day and how much business” SDLI has. (Maynard Dep. pg. 306:14-15).

Admitted.

102. There are days when there is bad weather and no one is required to show up to SDLI.

(Winstock Dep. pg. 61:11-17; Callanan Dep. pg. 57:10-12).

Admitted, and it is the employer's legal obligation to record these events.

103. However, when there was downtime, such as when the weather was bad or there were no scheduled customers, the instructors were permitted to leave SDLI. (Zarda Dep. pg. 293:4-22).

Admitted in part and denied in part, and it is the employer's legal obligation to record these events. The plaintiff was "on call" for the entire day – not "on call" in the sense that he could be called in for the day. He could never be more than 20-30 minutes away, Maynard dep. at 309, and there was nothing nearby to do within twenty minutes. Plaintiff dep. at 292.

104. In such a situation, the skydivers "don't have to be at the drop zone. They can go home. They can go do what they have to do, but they need to be available if there is if work is in." (Maynard Dep. pg. 306-307:22-2; Callanan Dep. pg. 59:17-20).

Admitted, and it is the employer's legal obligation to record these events.

105. Typically, the instructors should "be within 20 to 30 minutes" from SDLI when there are weather delays. (Maynard Dep. pg. 309:4-5; Callanan Dep. pg. 61 :13-22).

Admitted, and it is the employer's legal obligation to record these events.

106. However, in those instances when the instructors could leave, Zarda chose not to leave SDLI because it was "more convenient." (Zarda Dep. pg. 293:4-22). Zarda testified that for him, "once [he] made the trip out there, [he] would stay from where [he] came from ... For some people that live out there ... they could kind of come and go ... but it didn't really work out for [him] that way." (Zarda Dep. pg. 293:9-22). Because Zarda lived "a little bit of a distance" away, it was less convenient for him to "drive all the way back to Coram and then come all the way back to" SDLI. (Zarda Dep. pg. 293-294:23-7, 319:11-20, 322:11-

16).

Admitted.

107. While working at SDLI, Zarda agreed to be compensated on a piecemeal basis, receiving \$40.00 for each tandem jump performed. (Zarda Dep. pg. 301-302:23-8, 309:11-16; Winstock Dep. pg. 61 :2-7). Instructors can also earn \$50 per jump for training tandems, \$55 per jump for advanced free fall, and \$59 per jump for video jumps. (Winstock Dep. pg. 61 :2-7).

Admitted, but that doesn't mean it was a legal hourly wage when plaintiff stayed all day and got no pay. Zarda Wage Aff.

108. Zarda, and other employees, were paid on a W-2 basis, receiving a weekly paycheck from SDLI. (Winstock Dep. pg. 60:20-23). Paychecks at SDLI were issued the week after the wages were earned. (Zarda Paycheck 06/27/10 (Defendants Exhibit 4)).

This immaterial fact is admitted, and it is averred that – unless the employer can meet its burden in proving otherwise – the plaintiff worked 25 days for a total of about 250 hours and got no pay, and that the hourly wage laws require hourly wages, not weekly wages averaged over a period of time depending on the weather. Zarda Wage Aff, pp. 3-4.

109. For the week of May 11, 2009 to May 17, 2009, Zarda worked two days, jumping ten (10) times, and earning \$410.00. (SDLI Jump Log for 2009 (Defendants Exhibit 5); Employee Earnings Record from 11/09 to 12/31/10 for Donald Zarda (Defendants Exhibit 7)).

This immaterial fact is admitted.

110. For the week of May 18, 2009 to May 24, 2009, Zarda worked seven (7)

days, jumping 37 times, and earning \$1510.00. (Def. Ex. 5; Def. Ex. 7).

This immaterial fact is admitted.

111. For the week of May 25, 2009 to May 31, 2009, Zarda worked three (3) days, jumping 29 times, and earning \$1,215.00. (Def. Ex. 5; Def. Ex. 7).

This immaterial fact is admitted.

112. For the week of June 1, 2009 to June 7, 2009, Zarda worked five (5) days, jumping 35 times, and earning \$1,400.00. (Def. Ex. 5; Def. Ex. 7).

This immaterial fact is admitted.

113. For the week of June 8, 2009 to June 14, 2009, Zarda worked four (4) days, jumping 16 times, and earning \$640.00. (Def. Ex. 5; Def. Ex. 7).

This immaterial fact is admitted.

114. For the week of June 15, 2009 to June 21, 2009, Zarda worked five (5) days, jumping 27 times, and earning \$1,112.00. (Def. Ex. 5; Def. Ex. 7).

This immaterial fact is admitted.

115. For the week of June 22, 2009 to June 28, 2009, Zarda worked four (4) days, jumping 37 times, and earning \$1360.00. (Def. Ex. 5; Def. Ex. 7).

This immaterial fact is admitted.

116. For the week of June 29, 2009 to July 5, 2009, Zarda worked two (2) days, jumping 9 times, and earning \$370.00. (Def. Ex. 5; Def. Ex. 7).

This immaterial fact is admitted.

117. For the week of May 10, 2010 to May 16~ 2010, Zarda worked two (2) days, jumping 19 times, and earning \$760.00. (SDLI Jump Log for 2010, (Defendants Exhibit 6); Def. Ex. 7).

This immaterial fact is admitted.

118. For the week of May 17,2010 to May 23,2010, Zarda worked four (4) days, jumping 20 times, and earning \$600.00. (Def. Ex. 6; Def. Ex. 7).

This immaterial fact is admitted.

119. For the week of May 24, 2010 to May 30, 2010, Zarda worked six (6) days, jumping 30 times, and earning \$992.00. (Def. Ex. 6; Def. Ex. 7).

This immaterial fact is admitted.

120. For the week of May 31, 2010 to June 6, 2010, Zarda worked five (5) days, jumping 34 times, and earning \$1,150,00. (Def. Ex. 6; Def. Ex. 7).

This immaterial fact is admitted.

121. For the week of June 7, 2010 to June 13, 2010, Zarda worked six (6) days, jumping 21 times, and earning \$811.00. (Def. Ex. 6; Def. Ex. 7).

This immaterial fact is admitted.

122. For the week of June 14, 2010 to June 20, 2010, Zarda worked three (3) days, jumping 35 times, and earning at least \$772.00. (Def. Ex. 6; Def. Ex. 7).

This immaterial fact is admitted.

123. For the week of June 21, 2010 to June 27, 2010, Zarda worked one (1) day, jumping 9 times, and earning \$370.00. (Def. Ex. 6; Def. Ex. 7).

This immaterial fact is admitted.

124. Zarda “liked being able to make good money” skydiving, as the skydiving “instructors make pretty good money in that short amount of time.” (Zarda Dep. pg. 209-210:24-5).

This immaterial fact is admitted.

125. For the period of January 1, 2007 to July 23, 2009, the minimum wage in the State of New York was \$7.15 per hour. (New York State Department of Labor History of the Hourly Minimum Wage (Def. Ex. 8)).

Admitted.

126. For the period of July 24, 2009 to the present, the minimum wage in the State of New York was \$7.25 per hour. (Def. Ex. 8).

Admitted.

127. Plaintiff withdraws all claims for minimum wage and overtime under the FLSA. (ECF Doc. No. 106 (Defendants' Exhibit 10)).

Admitted.

Dated: New York, New York
April 7, 2013

_____/s/_____
GREGORY ANTOLLINO
Attorney for Plaintiff
18-20 West 21st Street Suite 802
New York, NY 10010
(212) 334-7397

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

DONALD ZARDA,

Plaintiff,

– against –

**ALTITUDE EXPRESS, INC. d/b/a SKYDIVE
LONG ISLAND and RAY MAYNARD,**

Defendants.

Case No.:

CV-10-4334 (JFB)(ARL)

**DECLARATION IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

SAUL D. ZABELL, ESQ., attorney duly admitted to practice before this Court, hereby affirms the following under the penalty of perjury:

1. I am the managing principal of Zabell & Associates, P.C., and counsel for Defendants Altitude Express, Inc. d/b/a Skydive Long Island and Ray Maynard in the above-captioned Action. I submit this Declaration in support of Defendants' Motion for Summary Judgment.

EXHIBITS

2. Attached hereto as "Exhibit 1" is a true and correct copy of the New York State Department of State Entity Information for "Altitude Express, Inc."
3. Attached hereto as "Exhibit 2" are true and correct copies of the 2009 gross receipts for Altitude Express, Inc.
4. Attached hereto as "Exhibit 3" are true and correct copies of the 2010 gross receipts for Altitude Express, Inc.
5. Attached hereto as "Exhibit 4" is a true and correct copy of Donald Zarda's Paycheck from June 27, 2010.

JA0087

6. Attached hereto as “Exhibit 5” is a true and correct copy of Donald Zarda’s Jump Log for 2009 at Altitude Express, Inc.
7. Attached hereto as “Exhibit 6” is a true and correct copy of Donald Zarda’s Jump Log for 2010 at Altitude Express, Inc.
8. Attached hereto as “Exhibit 7” is a true and correct copy of Donald Zarda’s 2009 and 2010 Earnings Report from Altitude Express, Inc.
9. Attached hereto as “Exhibit 8” is a true and correct copy of the “New York State History of the Hourly Minimum Wage,” taken from New York State Department of Labor Website: http://www.labor.ny.gov/stats/minimum_wage.asp
10. Attached hereto as “Exhibit 9” is a true and correct copy of the Calculation of Donald Zarda’s Weekly Wages from 2009 and 2010.
11. Attached hereto as “Exhibit 10” is a true and correct copy of Gregory Antollino’s Letter to U.S. District Judge Bianco, dated December 4, 2012 [ECF Document No.: 106].
12. Attached hereto as “Exhibit 11” is a true and correct copy of the deposition transcript of Donald Zarda.
13. Attached hereto as “Exhibit 12” is a true and correct copy of the deposition transcript of Raymond Maynard.
14. Attached hereto as “Exhibit 13” is a true and correct copy of the deposition transcript of Richard M. Winstock.
15. Attached hereto as “Exhibit 14” is a true and correct copy of the deposition transcript of Lauren Callanan.
16. Attached hereto as “Exhibit 15” is a true and correct copy of the deposition transcript of David Kengle.

17. Attached hereto as "Exhibit 16" is a true and correct copy of the deposition transcript of
Rosana Orellana.

Dated: Bohemia, New York
February 11, 2013

ZABELL & ASSOCIATES, P.C.

By: _____

Saul D. Zabell, Esq.
Zabell & Associates, P.C.
1 Corporate Drive, Suite 103
Bohemia, New York 11716
Tel: (631) 589-7242
Fax: (631) 563-7475
szabell@laborlawsny.com

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through January 22, 2013.

Selected Entity Name: ALTITUDE EXPRESS, INC.

Selected Entity Status Information

Current Entity Name: ALTITUDE EXPRESS, INC.

DOS ID #: 1882009

Initial DOS Filing Date: JANUARY 05, 1995

County: SUFFOLK

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

ALTITUDE EXPRESS, INC.

525JAN WAY

CALVERTON, NEW YORK, 11933

Chairman or Chief Executive Officer

RAYMOND F. MAYNARD

525 JAN WAY

CALVERTON, NEW YORK, 11933

Principal Executive Office

ALTITUDE EXPRESS, INC.

525- JAN WAY

CALVERTON, NEW YORK, 11933

Registered Agent

NONE

This office does not record information regarding

the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by viewing the certificate.

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
200	No Par Value	

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JAN 05, 1995	Actual	ALTITUDE EXPRESS, INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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"Exhibit 2" OMITTED, not relevant FRAP(a)(1)(a)- exhibit concerned withdrawn wage causes of action	97
"Exhibit 3" OMITTED, FRAP(a)(1)(a).	97
"Exhibit 4" Not omitted	
"Exhibit 5" OMITTED, FRAP(a)(1)(a)	97
"Exhibit 6" OMITTED, FRAP(a)(1)(a)	97
"Exhibit 7" OMITTED, FRAP(a)(1)(a)	97
"Exhibit 8" OMITTED, FRAP(a)(1)(a)	97
"Exhibit 9" OMITTED, FRAP(a)(1)(a)	97
"Exhibit 10" Gregory Antollino's Pre-Argument Letter brief OMITTED, FRAP(a)(2)	97

ALTITUDE EXPRESS INC.
D/B/A SKY DIVE LONG ISLAND
4062 GRUMMAN BLVD BLD#24
CALVERTON NY 11933

0018-M104
300 W/2s

06/27/2010 3075
DATE CHECK NO

PAY TO THE
ORDER OF

DONALD J ZARDA
PO BOX 312
RICHMOND MO 64085

Total Net Direct Deposit(s)
****\$629.53****
AMOUNT

VOID THIS IS NOT A CHECK DOLLARS

****NON-NEGOTIABLE****
AUTHORIZED SIGNATURE(S)

TO VERIFY AUTHENTICITY OF THIS DOCUMENT THE BACK CONTAINS HEAT SENSITIVE INK THAT CHANGES FROM BLUE TO CLEAR AND ALSO CONTAINS AN ARTIFICIAL WATERMARK WHICH CAN BE VIEWED WHEN HELD AT AN ANGLE.

FOLD AND REMOVE

FOLD AND REMOVE

PERSONAL AND CHECK INFORMATION

Donald J Zarda
PO Box 312
Richmond, MO. 64085

Soc Sec #: xxx-xx-2464 Employee ID: 78
Home Department: 300 W2s

Pay Period: 06/14/10 to 06/20/10
Check Date: 06/27/10 Check #: 3075

NET PAY ALLOCATIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Check Amount	0.00	2790.58
Chkg 0589	629.53	1286.56
NET PAY	629.53	4077.13

EARNINGS

DESCRIPTION	HOURS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Regular			772.00		5085.00
EARNINGS			772.00		5085.00

WITHHOLDINGS

DESCRIPTION	FILING STATUS	THIS PERIOD (\$)	YTD (\$)
Social Security		47.86	315.26
Medicare		11.19	73.73
Fed Income Tax	S 4	52.03	399.51
NY Income Tax	S 4	30.79	218.77
NY Disability		0.60	3.60
TOTAL		142.47	1007.87

NET PAY

THIS PERIOD (\$)	YTD (\$)
629.53	4077.1

Payrolls by Paychex, Inc.

0018 0018-M104 Altitude Express Inc • D/b/a Sky Dive Long Island • 4062 Grumman Blvd Bld#24 • Calverton NY 11933

ZARDA000010

JA0093

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 -----X
5 DONALD ZARDA,
6
7 Plaintiff,
8
9 -against- Index No.
10 10-CV-04334
11
12 ALTITUDE EXPRESS, INC., d/b/a/ SKYDIVE LONG
13 ISLAND, and RAY MAYNARD,
14
15 Defendants.
16 -----X
17
18 December 9, 2011
19 10:15 a.m.
20
21 4875 Sunrise Highway
22 Bohemia, New York
23
24
25 EXAMINATION BEFORE TRIAL OF DONALD ZARDA,
the Plaintiff herein, taken by the
Defendants, pursuant to Article 31 of the
Civil Practice Law and Rules of Testimony,
and Notice and order, held at the
above-mentioned time and place, before Karen
LaMendola, a Professional Court Reporter and
Notary Public of the State of New York.

1
2 S T I P U L A T I O N S
3
4 IT IS HEREBY STIPULATED AND AGREED by and
5 between the attorneys for the respective
6 parties herein, that filing, sealing and
7 certification be and the same are hereby
8 waived.
9
10 IT IS FURTHER STIPULATED AND AGREED
11 that all objections, except as to the form of
12 the question shall be reserved to the time of
13 the trial.
14
15 IT IS FURTHER STIPULATED AND AGREED
16 that the within deposition may be signed and
17 sworn to before any officer authorized to
18 administer an oath, with the same force and
19 effect as if signed and sworn to before the
20 Court.
21
22
23
24
25

1
2 A P P E A R A N C E S:
3
4 GREGORY ANTOLLINO, ESQ.
5 Attorney for Plaintiff
6 18-20 West 21 Street, Suite 802
7 New York, New York 10010
8
9 ZABELL & ASSOCIATES, P.C.
10 Attorneys for Defendants
11 4875 Sunrise Highway
12 Bohemia, New York 11716
13
14 BY: SAUL ZABELL, ESQ.
15
16
17
18
19
20 ALSO PRESENT:
21 William L. Murphy
22
23
24
25

1
2 DONALD ZARDA, the witness
3 herein, having been first duly sworn
4 by a Notary Public in and of the
5 State of New York, was examined and
6 testified as follows:
7 EXAMINATION BY
8 MR. ZABELL:
9 Q Would you please state your full
10 name for the record.
11 A Donald Zarda.
12 Q What is your current address?
13 A P.O. Box 312, Richmond, Virginia
14 64085.
15 Q Good morning, Mr. Zarda. How
16 are you?
17 A Good morning. How are you?
18 Q Good. You know my name is
19 Saul Zabell. We've met before; correct?
20 A Correct.
21 Q We haven't had much of a
22 conversation before, but we've met in the
23 context of this case; correct?
24 A Correct.
25 Q And you know me to be the

1 D. Zarda 5
2 attorney who represents Altitude Express;
3 correct?
4 A I do.
5 Q You also know me to be the
6 attorney who represents Ray Maynard; is that
7 correct?
8 A Yes.
9 Q Today I am conducting this
10 deposition on behalf of Altitude Express. Do
11 you understand that?
12 A Yes.
13 Q You know that I'm going to be
14 asking you questions; correct?
15 A Correct.
16 Q You're going to be providing
17 answers to those questions; correct?
18 A Yes.
19 Q And you are swearing that the
20 answers that you are providing are truthful
21 and accurate?
22 A Yes.
23 Q Do you understand that?
24 A To the best of my recollection;
25 yes.

1 D. Zarda 7
2 MR. ANTOLLINO: Okay.
3 Q How are you feeling today?
4 A Great.
5 Q Are you currently taking any
6 medications?
7 A None other than prescribed.
8 Q What prescribed medications are
9 you taking?
10 MR. ANTOLLINO: Well, I'm going
11 to object on the grounds that that is
12 not relevant. I'll let you ask him
13 whether there is any medications that
14 he takes that would affect his ability
15 to testify or recall events truthfully.
16 MR. ZABELL: Counsel, what
17 you're doing now is making an improper
18 objection. If you would like, I would
19 be more than happy to provide you with
20 a copy of the Federal Rules of Civil
21 Procedure to familiarize yourself
22 before you continue.
23 I can also tell you that we will
24 allow each other to finish speaking
25 before we interrupt each other. Am I

1 D. Zarda 6
2 Q Do you understand that you took
3 an oath today to swear to tell the truth?
4 A Yes.
5 Q And you understand that if you
6 provide answers that are not truthful, you
7 are subject to charges of perjury?
8 A Yes.
9 Q Giving false answers in this
10 deposition today would be no different than
11 providing false testimony before a Court. Do
12 you understand that?
13 A Yes.
14 Q And have the ramifications of
15 that been explained to you by your Counsel?
16 A Yes.
17 MR. ANTOLLINO: Objection.
18 Anything that you've discussed with me
19 is not going to be asked or answered.
20 MR. ZABELL: I believe the answer
21 is on the record.
22 MR. ANTOLLINO: Motion to
23 strike.
24 MR. ZABELL: To the extent I
25 can, your motion is denied.

1 D. Zarda 8
2 clear on that?
3 MR. ANTOLLINO: Mr. --
4 MR. ZABELL: Am I clear on that?
5 MR. ANTOLLINO: Mr. Zabell,
6 Mr. Zabell, you're not going to
7 denigrate or derisive me or make any
8 more accusations or criticisms about my
9 knowledge of the Federal Rules, or
10 whatever.
11 I'm trying to get through the
12 deposition. I'm not going to let you
13 ask him, generally, what medications he
14 takes, and we can mark that for a
15 ruling if you deem it necessary.
16 MR. ZABELL: No, no, we'll not
17 mark it for a ruling.
18 MR. ANTOLLINO: Okay.
19 MR. ZABELL: We will stop this
20 deposition right now, and we will call
21 the Judge if you feel it is absolutely
22 necessary.
23 MR. ANTOLLINO: I do.
24 MR. ZABELL: If you'd like, I
25 think the prudent thing is to ask me

1 D. Zarda 9
2 why I need to ask him those questions.
3 MR. ANTOLLINO: All right. Do
4 you want to explain why you need to ask
5 those questions?
6 MR. ZABELL: Sure.
7 MR. ANTOLLINO: Okay, go ahead.
8 MR. ZABELL: There are claims
9 for emotional damages. I have an
10 absolute right to explore what
11 medications this individual was taking,
12 A, to ensure that those medications do
13 not affect his ability to testify
14 truthfully and accurately, and, B, to
15 determine if those medications are
16 related to illnesses that have not been
17 disclosed pursuant to discovery, and if
18 any of those medications he's taking
19 can be related in any possible way to
20 emotional distress.
21 If you maintain your position,
22 and I strongly suggest that after I
23 finish explaining this to you that you
24 ask for a short break to discuss it
25 with your client, if you maintain the

1 D. Zarda 11
2 speak to your client. Beyond that, I
3 will call Judge Bianco.
4 MR. ANTOLLINO: Okay. I don't
5 have any reason to speak to my client.
6 I think there's a compromise, there's a
7 compromise. I have sent the Judge the
8 medical records with my objections
9 under that case that came down in the
10 Second Circuit, okay, he hasn't ruled
11 yet. I think there is a compromise
12 here.
13 I'm allowing you to ask those
14 questions more particularly, but to ask
15 a general, open-ended question invades
16 the doctor/patient privilege in a way
17 that hasn't been waived in this
18 lawsuit, so I ask you to compromise on
19 that, and what I'd also ask you to do
20 is let's call the Judge once rather
21 than --
22 MR. ZABELL: No.
23 MR. ANTOLLINO: -- several
24 times.
25 MR. ZABELL: No.

1 D. Zarda 10
2 position that you will not allow him to
3 answer that question, then it is my
4 intention to call Judge Bianco and get
5 a ruling.
6 MR. ANTOLLINO: Why don't you
7 ask him the question that you just
8 asked me. If you ask those questions,
9 those questions would not be
10 objectionable, but to ask him,
11 generally, what medications he's on,
12 that's a violation of what I've
13 asserted in this lawsuit as medical
14 privilege. I have no problems with
15 those questions whatsoever, and if you
16 had asked those questions, I wouldn't
17 have objected, but you asked a very
18 open-ended question which could go into
19 something that is, you know, completely
20 irrelevant and medically privileged.
21 MR. ZABELL: You have my
22 position.
23 MR. ANTOLLINO: All right.
24 MR. ZABELL: Again, I strongly
25 recommend that you take a moment to

1 D. Zarda 12
2 MR. ANTOLLINO: I know you like
3 to do it your way, Mr. Zabell. You
4 don't like to compromise, so let's just
5 call the Judge.
6 (Whereupon, a call was made to
7 Judge Bianco, and the following
8 colloquy was had:)
9 LAW SECRETARY: Judge Bianco's
10 chambers.
11 MR. ZABELL: Good morning. It's
12 Saul Zabell. How are you?
13 LAW SECRETARY: Good. How about
14 you?
15 MR. ZABELL: I'm well, thanks.
16 I'm calling from a deposition
17 with my adversary, Gregory Antollino,
18 in the matter of Zarda against Altitude
19 Express. Do you want the CV Number?
20 LAW SECRETARY: Yes, please.
21 MR. ZABELL: It's 10-04334.
22 We are about four questions into
23 the deposition, and my adversary has
24 objected and advised the deponent not
25 to answer a question.

1 D. Zarda 13
2 LAW SECRETARY: Hold on one
3 second, please.
4 Let me talk to the clerk that's
5 assigned to this case; okay?
6 MR. ZABELL: Thank you.
7 MS. MAXWELL: Hi, this is
8 Ms. Maxwell.
9 MR. ZABELL: Hi. Saul Zabell,
10 and I'm here with my adversary,
11 Gregory Antollino. We're at a
12 deposition, and I'm deposing the
13 Plaintiff, Donald Zarda.
14 As part of my introductory group
15 of questions, I asked him if he's
16 currently taking only prescription
17 medications. He said, only
18 prescription medications, and I asked
19 him to identify them. Counsel gave a
20 speaking objection and advised his
21 client not to answer in what I believe
22 to be a contradiction of the Federal
23 Rules of Civil Procedure, and
24 apparently, I need a ruling on this
25 issue.

1 D. Zarda 15
2 protective order for this type of
3 information. Furthermore, I allowed
4 Mr. Zabell to ask more particularized
5 questions. He explained the reason why
6 he wanted to ask the question. He
7 asked three questions that I thought
8 were reasonable, and then I offered him
9 the opportunity to ask those questions
10 and he refused.
11 I also asked him if we could
12 continue the deposition and go to the
13 Judge once towards the middle of the
14 day because I bet we're going to have
15 more disputes later on, but he refused
16 to do that, as well.
17 Furthermore, since he's insisted
18 on calling the Judge, I want to explain
19 to the Judge that I want Mr. Zabell to
20 be admonished because he has
21 continually been snide, condescending,
22 and rude to me. He has insulted my
23 attire. He has insulted me in front of
24 witnesses. He has insulted the way
25 that I deal with my client. He offered

1 D. Zarda 14
2 MS. MAXWELL: As I recall, there
3 were issues with medical records on
4 this case; correct?
5 MR. ANTOLLINO: Yes.
6 MR. ZABELL: Yes, Counsel
7 refused to provide them and provided
8 them to His Honor for an in camera
9 inspection.
10 MS. MAXWELL: Okay. I
11 understand that you guys are not that
12 far into the deposition; is that right?
13 MR. ZABELL: About three
14 questions.
15 MS. MAXWELL: Would it be
16 possible for you guys to take maybe a
17 ten-minute break while I try to get the
18 Judge's attention?
19 MR. ZABELL: Absolutely.
20 MR. ANTOLLINO: If I could just
21 say something.
22 MS. MAXWELL: Sure.
23 MR. ANTOLLINO: I objected to
24 the question based entirely on the fact
25 that I have made, essentially, a

1 D. Zarda 16
2 me, on the record, a copy of the
3 Federal Rules so I could familiarize
4 myself with them. I'm not going to
5 take any more of this snide,
6 condescending behavior, and I want the
7 Judge to admonish him to not do that
8 anymore.
9 MS. MAXWELL: Well, it sounds
10 like there is a lot going on here, so
11 it may be a little bit longer than ten
12 minutes, so what I would suggest is
13 that you guys take a break. Give me a
14 number where I can reach you.
15 MR. ZABELL: Sure. You can
16 reach my office. It's (631) 589-7242,
17 and I can say that everything that has
18 transpired today is on the record, so
19 we have a transcript, including what
20 we're discussing right now, as well.
21 MS. MAXWELL: All right. We'll
22 be in touch.
23 MR. ZABELL: Thank you.
24 MR. ANTOLLINO: Thank you.
25 MS. MAXWELL: Goodbye.

1 D. Zarda 17
2 MR. ZABELL: Goodbye.
3 Let's take a short break.
4 (Whereupon, a recess was taken
5 from 10:26 a.m. to 10:55 a.m.)
6 (Whereupon, Judge Bianco's
7 chambers called and the following
8 colloquy was had:)
9 MR. ZABELL: Good morning, Saul
10 Zabell here.
11 MS. MAXWELL: I spoke to the
12 Judge, and he asked me to let you know
13 that given that he has not ruled on the
14 medical issue, there should be no
15 medical questions, other than whether
16 the witness is taking any medications
17 that would affect his ability to
18 remember, and the Judge warns both
19 Counsel to be civilized, and also that
20 he will be reviewing the transcript.
21 MR. ZABELL: Very well. I'll
22 ensure that at the conclusion of the
23 transcript, as soon as I receive a
24 copy, to send it on to His Honor.
25 MS. MAXWELL: Okay.

1 D. Zarda 19
2 MR. ANTOLLINO: No, no, no, no,
3 come on. No, no, no. You heard what
4 the Judge said.
5 Q How many are you taking?
6 MR. ANTOLLINO: Don't answer
7 that question. Don't answer that
8 question, Don.
9 Q Are you familiar with the
10 prescription medications that you are taking?
11 A I have some familiarity. I do
12 not --
13 MR. ANTOLLINO: Just answer the
14 question.
15 A -- carry the list with me, so I
16 don't have them all in my head.
17 MR. ANTOLLINO: Answer just the
18 question.
19 Q Are you aware of any of the side
20 effects that are listed for each prescription
21 medication that you're taking?
22 MR. ANTOLLINO: Don't answer the
23 question.
24 Q Do you know if any of the side
25 effects for the prescription medications that

1 D. Zarda 18
2 MR. ZABELL: Thank you kindly.
3 MS. MAXWELL: Thank you.
4 MR. ZABELL: We hope to not have
5 to bother you again.
6 MS. MAXWELL: Okay.
7 MR. ZABELL: Have a good day.
8 MS. MAXWELL: Have a good day.
9 MR. ZABELL: You, as well.
10 MS. MAXWELL: Thank you.
11 (Whereupon, the call was
12 concluded.)
13 MR. ANTOLLINO: I would like you
14 to read back to my client what the
15 Judge ruled.
16 (Whereupon, the requested
17 portion of the record was read by the
18 court reporter.)
19 Q Mr. Zarda?
20 A Yes, sir.
21 Q You just provided testimony that
22 you are currently taking prescription
23 medications; is that correct?
24 A Yes.
25 Q How many prescriptions --

1 D. Zarda 20
2 you're taking impact your ability to
3 remember?
4 A I do not believe that they do.
5 Q Well, do you know from reading
6 the side effects from each medication that
7 they do not affect your memory?
8 A It's been a long time since I've
9 read the side effect information that you get
10 with the medication, so I can't recall at
11 this time.
12 Q So as you're sitting here today,
13 you don't know if any of the side effects of
14 the medications that you're taking would
15 affect your memory; is that correct?
16 A I don't believe they would.
17 Q The question that I asked you
18 is: As you're sitting here today, you don't
19 know if any of the side effects of the
20 medications you're taking affect your memory;
21 is that correct?
22 A I can't say that I have specific
23 knowledge about the medications as I sit
24 here. I'm not a doctor or pharmacist.
25 Q Do you have a memory?

1 D. Zarda 21
2 A Yes, we all have memories.
3 Q How would you characterize your
4 memory?
5 A Good.
6 Q Why would you characterize your
7 memory as good?
8 A My sister says I have a very
9 good memory, and I remember things very well
10 from the past. She reminds me of that all
11 the time, and I think I have a good memory.
12 Q So you have a good memory
13 because you think you have a good memory and
14 because your sister reminds you that you have
15 a good memory --
16 MR. ANTOLLINO: Objection to
17 form.
18 Q -- is that correct?
19 A She tells me I have a good
20 memory, both of them. My friends tell me I
21 remember things quite well from the past; fun
22 events and things we have done together, and
23 I remember things well.
24 Q Have you always had a good
25 memory?

1 D. Zarda 23
2 because sometimes in depositions, people will
3 grunt to signify a yes or a no, and it's
4 difficult for the court reporter to take that
5 down.
6 Do you understand what I'm
7 saying?
8 A Yes.
9 Q If you give a verbal response
10 that is not a word, we're going to prompt you
11 to give a word response; do you understand
12 that?
13 A Yes.
14 Q Have you ever been deposed
15 before?
16 A No.
17 Q Do you know what a deposition
18 is?
19 A Yes.
20 Q Have you prepared for this
21 deposition in any way?
22 A Yes.
23 Q How have you prepared for this
24 deposition?
25 A Well, I discussed how a

1 D. Zarda 22
2 A As far as I know.
3 Q As far as you remember?
4 (Whereupon, the witness's
5 cellphone began ringing and the
6 following colloquy was had:)
7 MR. ZABELL: Let the record
8 reflect that the deponent's cellphone
9 is ringing, and I'm just going to ask
10 that it be put on vibrate, please.
11 THE WITNESS: (Witness
12 complies.) Sorry. Okay, I got it.
13 All right. There we go.
14 Q Everything all right?
15 A Yes.
16 Q Getting back to the procedure of
17 the deposition.
18 I'm going to be asking you
19 questions; do you understand that?
20 A Right, yes.
21 Q You are required to give verbal,
22 word responses to the questions I ask you; do
23 you understand that?
24 A Yes.
25 Q I say verbal, word responses

1 D. Zarda 24
2 deposition would be conducted.
3 Q Okay. I just want to caution
4 you now, as I'm sure your attorney is going
5 to want to caution you, you can tell me when
6 you met with your attorney, how long you met
7 with your attorney, and where you met with
8 your attorney. You cannot discuss with me,
9 or you should not discuss, you can if you'd
10 like, what was said between you and your
11 attorney.
12 Do you understand that?
13 A Okay.
14 Q That is your right to keep
15 private between your attorney and yourself.
16 If you choose to waive that right, you may do
17 so.
18 Do you understand that?
19 A Yes.
20 Q When did you meet with your
21 attorney in preparation for this deposition?
22 A We've met a few times, but
23 coming up here for this trip, prior to this
24 deposition.
25 Q When was the last time you met

1 D. Zarda 25
2 with your attorney to prepare for this
3 deposition?
4 A When we talked about it
5 yesterday.
6 Q For how long did you talk about
7 it yesterday?
8 A We talked about it on and off,
9 here and there. There wasn't one specific
10 sitting. There wasn't one specific session
11 just about the deposition.
12 Q Did you review any documents in
13 preparation for this deposition?
14 A I reviewed the interrogatories
15 that I submitted to you, I believe, and the
16 admissions.
17 THE WITNESS: Can I turn this
18 (indicating) off because that was an
19 alarm?
20 MR. ZABELL: Yes, you may
21 absolutely turn your phone off.
22 THE WITNESS: Thank you.
23 MR. ANTOLLINO: Don, just do it.
24 THE WITNESS: I'm doing it.
25 MR. ZABELL: He's fine. He's

1 D. Zarda 27
2 of a copy of a Supplemental Response to
3 Requests for Admissions was marked as
4 Defendants' Exhibit A, for
5 identification, as of this date.)
6 (Thirteen-page document
7 consisting of a copy of Amended
8 Response to Demand for Interrogatories
9 was marked as Defendants' Exhibit B,
10 for identification, as of this date.)
11 Q We're going to call Supplemental
12 Response to Requests for Admissions as
13 Defendants' Exhibit A, and that is a one,
14 two, three, four-page document, and then we
15 have Amended Response to Demand for
16 Interrogatories, which we've identified as
17 Defendants' Exhibit B. That is a one, two,
18 three, four, five, six, seven, eight, nine,
19 ten, eleven, twelve, thirteen-page document;
20 is it not?
21 A (No verbal response.)
22 MR. ANTOLLINO: Don?
23 THE WITNESS: Yes.
24 (Whereupon, Mr. Antollino took
25 witness's phone off conference table.)

1 D. Zarda 26
2 doing fine. There's no need to caution
3 or yell at him.
4 Q Okay, sir. Are you all set?
5 A Yes.
6 Q When you were explaining to me
7 the documents that you reviewed, you pointed
8 to a folder in front of you; correct?
9 A Yes.
10 Q Are those the documents that you
11 reviewed?
12 A They are.
13 Q May I see them?
14 A Yes. (Handing.)
15 Q I see some notes. Did you
16 review those in preparation for this
17 deposition?
18 A No, I didn't. They're just
19 sitting in the folder.
20 Q What we're going to do is, we're
21 going to take copies of these documents and
22 introduce them as exhibits, and this way I
23 can give you your originals back; okay?
24 A Okay.
25 (Four-page document consisting

1 D. Zarda 28
2 Q Is everything all right?
3 A Yes.
4 Q Do you want a moment to speak to
5 your attorney about him taking your phone
6 away?
7 A I do, yes.
8 Q While you talk to your attorney,
9 we're just going to make copies.
10 A That's perfect. That's perfect
11 timing.
12 (Whereupon, a recess was taken
13 from 11:05 a.m. to 11:10 a.m.)
14 MR. ZABELL: You guys had your
15 moment?
16 MR. ANTOLLINO: We're good.
17 MR. ZABELL: Everything is all
18 right?
19 MR. ANTOLLINO: Yes.
20 Q You have in front of you a
21 document that you reviewed in preparation for
22 today's deposition; is that correct?
23 A I believe they are.
24 Q Are those the only documents
25 that you reviewed in preparation for today's

1 D. Zarda 29
2 deposition?
3 A They are.
4 Q Yesterday you were at a
5 deposition; were you not?
6 A I was.
7 Q Whose deposition was that?
8 A That was for Rich Winstock.
9 Q Is Mr. Winstock someone you
10 would characterize as a friend of yours?
11 A Yes.
12 Q He was also a colleague;
13 correct?
14 A Yes.
15 Q Was he a supervisor, as well?
16 A Yes.
17 Q Where was he a supervisor?
18 A At Skydive Long Island.
19 Q Do you currently maintain a
20 friendly relationship with him?
21 A I would say so.
22 Q And you had an opportunity to
23 hear Mr. Winstock testify yesterday; did you
24 not?
25 A I did.

1 D. Zarda 31
2 perhaps, but I can't say whether he was lying
3 about something or not.
4 Q Are you referring to the grading
5 of the 97 out of 100 that he gave you on your
6 jump?
7 A That would be one item.
8 Q Did that bother you?
9 A It didn't bother me at all.
10 Q Because if I relayed to you that
11 Mr. Winstock, after the deposition, relayed
12 to me that a 97 out of 100 is pretty damn
13 good, would that surprise you?
14 A It wouldn't make any difference
15 either way. We're both highly experienced
16 instructors who've been doing this a really
17 long time. I think we both hold each other
18 in the same regard.
19 Q Do you find that Mr. Winstock is
20 qualified to, essentially, grade your jumps?
21 A Yes, he is.
22 Q In fact, at Long Island Skydive,
23 he was the most qualified person to grade
24 your dives; is that correct?
25 A Well, as he defined what most

1 D. Zarda 30
2 Q Do you think Mr. Winstock lied
3 at all during his deposition?
4 A I have no way to be able to
5 access that. That's only something
6 Mr. Winstock could answer.
7 Q Well, as you were sitting next
8 to Mr. Winstock during his deposition, do you
9 think he was wrong about anything he
10 testified about?
11 MR. ANTOLLINO: Objection to
12 form.
13 Q You may answer.
14 A I can't characterize whether
15 Mr. Winstock was lying or whether -- I don't
16 know what facts that he had, so I was
17 learning what facts that he had at the same
18 time that you were and that everybody was in
19 the room, so that's the first time I was able
20 to hear anything that he's had to say about
21 it, so there is no way for me to really be
22 able to judge that.
23 I think he has maybe some
24 different views about the way things and
25 procedures might be done for doing our job,

1 D. Zarda 32
2 qualified and senior is and was, he's one of
3 the higher qualified people there. He's an
4 examiner, an evaluator for the manufacturers
5 that give the licenses to us for the gear
6 that we use, so I would say a decent,
7 qualified individual to that.
8 Q Other than the 97 out of a 100
9 that he gave you on the jump, did you
10 disagree with anything he said yesterday?
11 MR. ANTOLLINO: Objection to
12 form.
13 A I would have to be able to go
14 over the transcript of everything he said, so
15 I can't, as a blanket statement, say that I
16 don't disagree with anything he said because
17 he said a lot of things over the course of
18 five hours.
19 As far as his characterization
20 of that one jump, a 97 out of a 100, I think
21 the issue that we were discussing was handle
22 checks that are performed when the tandem
23 instructor leaves the aircraft. I just don't
24 think that he was able to see from the
25 vantage point of that camera person that I

1 D. Zarda 33
2 had actually, in fact, done the required
3 handle checks at the appropriate time, so
4 that was the only reason that he gave that
5 assessment.
6 Q I think he'd probably agree with
7 you on that, and, in fact, the videotape of
8 that specific jump that he graded you on
9 where you stuck the landing, and he commented
10 that you stuck the landing perfectly, there
11 were parts of that full jump that you
12 couldn't see; correct?
13 A Yes, that's true.
14 Q It wasn't videotaped; correct?
15 A Well, all the jump is videotaped
16 from the time you leave the plane until the
17 time that you land. It's just that sometimes
18 there's separation in free fall from the time
19 you leave the aircraft, or the cameraman is
20 not close enough to really be able to see
21 some things.
22 Q Okay.
23 A Then it also depends on the
24 camera person. Each individual camera person
25 does things a little differently. Some of

1 D. Zarda 35
2 A Where did Mr. Winstock and I
3 talk about it?
4 Q Yes.
5 A We talked about it in the
6 drop zone classroom, specifically.
7 Q When did you talk about it?
8 A It was, approximately, five
9 minutes after Mr. Maynard had suspended me.
10 Q What did you discuss?
11 A I asked Mr. Winstock outside of
12 the classroom on the way into the classroom,
13 it was dark. He was talking to another
14 instructor. I think that was where he was
15 mentioning that we had discussed it maybe
16 because he doesn't remember it as clearly,
17 you know, it being a year-and-a-half later,
18 if we could discuss the matter, and he said
19 sure, and then we moved over to the left
20 where the drop zone classroom is, and it was
21 a private area, and we went into there, and
22 we discussed it.
23 Q What exactly was discussed?
24 A Everything that Ray had just
25 told me in the video briefing room that the

1 D. Zarda 34
2 them may record all of the footage. Some of
3 them may not, just to save space on their
4 cards or on their tapes, and then they edit
5 it later.
6 Q From your memory from yesterday,
7 was there anything that sticks out in your
8 mind that you disagree with that Mr. Winstock
9 testified about?
10 MR. ANTOLLINO: Objection to
11 form.
12 Q You may disregard the objection
13 and provide an answer.
14 A There were some things. I would
15 have to reflect for a moment.
16 Q Please do.
17 A Yeah, there were some things.
18 Starting at the beginning. When we discussed
19 the matter, Mr. Winstock and I, about what
20 had happened with my employment situation,
21 where that actually took place versus where
22 Mr. Winstock said it took place and some of
23 the details about that. That's one thing.
24 Q Where did that discussion take
25 place?

1 D. Zarda 36
2 passengers sit in, which is also an extension
3 of his office. His office is next door to
4 the video room, and he often holds meetings
5 in that room, as well, when it's not being
6 used for video briefing, and that is where
7 Mr. Maynard and I had the suspension meeting.
8 Q What was discussed at that
9 suspension meeting?
10 A What was discussed was he was
11 asking me questions about a jump that took
12 place on June 18, 2010.
13 Q What questions?
14 A Well, there were a lot of the
15 questions. He was asking me --
16 Q I want you to take your time,
17 and relate to me all the questions that you
18 recall.
19 A He was asking me if I remembered
20 a jump with a Miss Rosanna. I don't
21 recall -- I don't think he provided the last
22 name at that time, and he asked me if I
23 remembered the jump I did on that day on
24 Friday, which was June 18, and I told him
25 that I did several jumps on June 18, so if I

1 D. Zarda 37
2 look back at the records, I did, I think, ten
3 jumps that day. So, no, I didn't remember a
4 specific jump at that time that he was
5 referring to, so it started with that.
6 Q Continue.
7 A Okay. And so after telling him
8 that, he asked me if I remembered the jump.
9 He said I took a girl named Rosanna, and I
10 said okay, and he asked me if I remembered
11 anything about it, and I said no, I did
12 several jumps. This was on a Monday, so this
13 was about three days later after a long
14 weekend of jumping. It was a routine land.
15 At that time, I didn't remember
16 anything specific about that jump, so then he
17 proceeded to tell me what he knew about the
18 jump, and he told me that there were some
19 customers that came out and jumped, and it
20 was a boyfriend and a girlfriend, and that I
21 had taken the girl, and they had called and
22 made a complaint.
23 Q Continue.
24 A I said okay, and so he was going
25 to ask me questions about what the

1 D. Zarda 39
2 A So what am I continuing on
3 again?
4 Q You were telling me all of the
5 questions that Ray Maynard asked you when he
6 was investigating this customer complaint.
7 MR. ANTOLLINO: Objection to the
8 characterization.
9 Q You may disregard the objection
10 and provide an answer.
11 A I think he was -- I don't think
12 he was investigating what I knew about it.
13 Q You don't think he was, or he
14 was?
15 A No. I said I think he was just
16 investigating what I knew about it at that
17 point.
18 Q What other questions did he ask
19 you?
20 A He had asked me, we already
21 covered it, if I remembered anything about
22 the jump, and I said no. Then he went on to
23 tell me what the complaint was, and so -- do
24 you want me to tell you what that was?
25 Q Please.

1 D. Zarda 38
2 complaint -- or about the complaint that was
3 made, and I didn't have any knowledge about
4 anything, because there was nothing out of
5 the ordinary that took place that I could
6 recall at that time.
7 Q What questions did he ask you?
8 A He asked me if anything about my
9 sexual orientation came up or anything about
10 being gay came up, and I said I don't know.
11 Q Continue.
12 A Okay. I remember telling him
13 that that comes up all the time around here,
14 because it was often joked about at the drop
15 zone all the time by staff. It was even by
16 some other customers which are experienced
17 skydivers that were mixed in with the jump
18 operation while the jump operation is going
19 on, and so I said that I don't know how it
20 came up or who brought it up at that time.
21 Q Did you know that it was brought
22 up?
23 A I only knew that because he said
24 it was brought up, Ray Maynard said that.
25 Q Okay, continue.

1 D. Zarda 40
2 A He said the subject of my sexual
3 orientation had come up in front of the
4 customers and that they were offended by it,
5 and he was forced to give them all their
6 money back, and I was off for a week, and he
7 was going to take it out of my paycheck, the
8 full price for two tandem jumps with two
9 video, which he later did take that out of my
10 check, and he was very angry.
11 Q Did he say anything else?
12 A I'm sure he did, if you just
13 give me minute to recall that. I was in a
14 bit of -- I was shocked at the time, so --
15 MR. ANTOLLINO: Just answer the
16 question.
17 A I said that you can't be
18 serious. I might have said something like
19 that. I do remember mentioning to him
20 something about my sexual orientation coming
21 up on the drop zone so frequently, and I
22 can't say whether I brought it up or not. I
23 said, you know, Ray, people bring that up
24 around here all the time, and if you don't
25 want that to come up, I think you should have

1 D. Zarda 41
2 a staff meeting and talk about it with the
3 other staff. And he was very angry, and he
4 said, there will be a staff meeting, all
5 right. He shouted that because he was very
6 angry, and I don't know if he was angry at me
7 or the situation, but that's what he said,
8 and I think he was saying that in reference
9 to while I was gone, having a staff meeting,
10 so that was my response to the issue about me
11 being gay coming up, so I was pretty
12 surprised, and I didn't know how to respond
13 to that.
14 At the very beginning of that
15 entire suspension conversation, for the first
16 few seconds of it, I actually thought it was
17 a gag, they were messing with me. I couldn't
18 believe this could even be real, so I
19 actually thought it was a joke, but it became
20 very clear, very soon that Ray wasn't joking.
21 Q Was that all that was discussed
22 with you --
23 A No.
24 Q -- at that meeting?
25 A No, it was not.

1 D. Zarda 43
2 back to the manifest records since it was
3 just on Friday and look at the records and
4 see who the cameramen were and then go to
5 them and see if we could just look at their
6 footage? And he, again, denied me being able
7 to look at the video. That was the end of
8 the discussion about the video. He wouldn't
9 let me see it, so I said, is that it? And he
10 said, no, there's something else. And I
11 said, what, and he said, she said that you
12 touched her in a way that made her feel
13 uncomfortable. So I said, really, and I
14 said, Ray, did you just tell me that I took
15 the girl or the guy in this, and he said, you
16 took the girl.
17 I said, okay, I said, so what
18 you're telling me is that me, the gay guy
19 that they complained about and they're
20 offended by, touched the girl
21 inappropriately; that's what you're going
22 with? And he said, that's right, and then he
23 was headed towards the door, and he was mad,
24 and I said, where, Ray, where, as in I was
25 wanting him to define to me where on the girl

1 D. Zarda 42
2 Q Please continue.
3 A After we got through the part
4 where I said that you're going to have to
5 have a staff meeting, and he shouted what I
6 just told you, there'd be a staff meeting,
7 all right, I said, Ray, there must be video
8 of the jumps because you just said you're
9 going to take the full price of two tandems
10 and two videos out of my paycheck.
11 He was, you know -- I don't
12 know, and he was flustered and angry, and I
13 said, well, if you're going to charge me for
14 two videos, there must be video. Can I see
15 the video of the jumps? And he said, no,
16 it's irrelevant. And I paused for a moment,
17 and I said, Ray, I think it's relevant
18 because you're taking action against me right
19 now about something that you said happened on
20 a jump, and it sounds to me like there's
21 video of the jump, in fact, both jumps, and I
22 would like to take a look at it, and I think
23 I'm entitled to take a look at it, and he
24 said no.
25 I said, well, can't we just go

1 D. Zarda 44
2 that I had touched her inappropriately, and
3 he said, flustered, like, it was at the hips.
4 I said, ah, okay, and then Ray stormed out of
5 the office, and I was left sitting in there
6 for a minute stunned, and then I sat there
7 for just -- I don't know exactly how long I
8 sat there, but Ray had left, it was dark, he
9 went out of the room, and he went out of the
10 building.
11 I got my composure. It took me
12 a few moments. Then I went out of the room,
13 and when I went out of the room and out of
14 the building, it was dark outside. That was
15 when Rich Winstock was having a conversation
16 with another instructor over to the left, and
17 that's when I said, Rich, I got to see you
18 for a second right now, and he said, okay,
19 just a minute, and I said, it's important;
20 now.
21 I started to get really upset
22 because this was just all hitting me at that
23 moment, what had just happened, it was pretty
24 amazing, if I have to say, and I was in
25 disbelief at what all had just transpired,

1 D. Zarda 45
2 and I'm just getting pretty angry. My anger
3 was building and I was getting really upset.
4 Rich saw that and that's when he pulled me
5 into the classroom, and that's when we began
6 discussing it.
7 Q What started then, this whole
8 line of testimony, was that you believed that
9 Rich testified that this discussion happened
10 in a different location; is that correct?
11 A It sounded to me like yesterday,
12 you know, that this is probably not as
13 important to him. This whole case was just
14 another day at work for him. It sounded like
15 he hasn't really discussed this much, or if
16 at all during this time, and maybe he just
17 doesn't remember the specifics as well, since
18 he's not so closely involved as to where we
19 had the discussion.
20 That's what I believed from what
21 Rich said yesterday, and why there might be a
22 little bit of difference.
23 Q Was there anything else about
24 Rich's testimony that you believe was
25 inaccurate?

1 D. Zarda 47
2 that stuff than I think he let on yesterday
3 or what he was able to recall yesterday.
4 Q Okay, continue.
5 A For instance, when he was asked
6 if the subject of my sexuality came up during
7 work and if he had heard it or knew anything
8 about it, I think that was inaccurate.
9 Q What was his answer, and what
10 about that answer do you believe was
11 inaccurate?
12 MR. ANTOLLINO: Objection.
13 A I believe he said something more
14 close to the fact that it didn't come up that
15 frequently or around him or he didn't
16 remember specific examples, so that's what
17 was inaccurate. I think, if you recall, when
18 he brought up a couple of times about the
19 jokes, you know, there were so many jokes
20 that he couldn't come up with one right then,
21 do you remember that part?
22 Q I do.
23 A It's like that. It's when
24 something happens so frequently, you almost
25 can't remember a specific instance of it at

1 D. Zarda 46
2 MR. ANTOLLINO: Objection.
3 Q You may disregard the objection
4 and provide an answer.
5 MR. ANTOLLINO: You may
6 disregard all my objections, unless I
7 put my hand out and tell you not to
8 answer.
9 THE WITNESS: Got it.
10 A As we go through this
11 conversation and I try to remember the five
12 hours or three hours or so yesterday, I might
13 remember some more things that come up
14 because this is relevant, so I'm just going
15 to try to go chronologically down what was
16 discussed yesterday.
17 There are some things. I've
18 known Rich for quite a long time. I think he
19 had -- some of the facts he may have
20 remembered wrong about how long we've known
21 each other, where we met, his knowledge of me
22 being gay, some of those things because we've
23 talked about some of those things in 2009,
24 2010, in social settings after work, so, you
25 know, he has more knowledge about some of

1 D. Zarda 48
2 that moment. It was like that because it was
3 so routine and so ordinary. It came up all
4 the time that it was just like any other
5 thing that comes up, so I think that that was
6 why he probably might have answered that way.
7 It's not one of those things
8 that somebody, I think, is going to make the
9 highlight of their day of things that they
10 remember about, the joke about Don being gay;
11 it's was just another thing, so that's why I
12 don't think he remembered. Probably if we
13 were able to go back and think about specific
14 jokes at specific times, he'd be like, oh,
15 yeah, I remember that.
16 Maybe then, but there were
17 numerous times when it came up. It came up
18 almost every day, if not every day by various
19 people at various times mixed in with
20 customers and other instructors and other fun
21 jumpers that were around. It's all very
22 close. Especially in the aircraft, it's even
23 closer.
24 Q Continue.
25 A So that characterization or that

1 D. Zarda 49
2 recollection, I think he just didn't remember
3 everything, so that would be another thing.
4 Let me just think for a minute
5 what else was said.
6 The issue or the matter of the
7 nickname, Gay Don and what he said about
8 that. I don't know where exactly the
9 nickname came from, so I don't know if he
10 recalled where it came from exactly or if
11 that was something that was discussed, but
12 that was a name that I heard a lot. I heard
13 it from everybody, and I think I've heard it
14 from him, and I didn't think that he meant it
15 in any kind of derogatory way.
16 I think it just became -- if you
17 were to look at the manifest computer at the
18 drop zone, you would actually see a list of
19 nicknames on the screen when they assign you
20 who your passengers are going to be. Rich
21 Winstock's nickname is Winnie. There's
22 another gentleman that's from Texas, his name
23 was Texas, so I mean, a bunch of people had
24 nicknames that they would go by at the drop
25 zone.

1 D. Zarda 51
2 make sure we're clear about what I was
3 shaking my head about.
4 Q Do you recall Rich testifying
5 yesterday that, yes, he knew you as Gay Don,
6 and he may have referred to you as Gay Don,
7 and he didn't know if you were offended by
8 it, and at that point, I believe you were
9 shaking your head side to side indicating
10 that you were not offended by him referring
11 to you as Gay Don?
12 Is that a fair characterization
13 of what occurred yesterday?
14 A That's pretty close. That's
15 acceptable. What I was shaking my head about
16 was to Rich because Rich is a friend that
17 I've known for a long time. I didn't want
18 him to feel like I felt that he, as a friend
19 of mine, was offending me. That's what I
20 meant.
21 Q When Rich referred to you as Gay
22 Don, you weren't offended by that?
23 A I wasn't offended by that. I
24 know he meant no malice. I know he meant no
25 derogatory meaning towards me. I know that

1 D. Zarda 50
2 In fact, a few people whose
3 names I can't even remember because it was
4 always their nickname, so that sort of became
5 my nickname by a lot of the people, so
6 therefore, that would come up, that would be
7 said in front of customers, it would be said
8 in front of anybody. What does somebody
9 think about that? I don't know, so --
10 Q Well, I think -- go ahead. I'm
11 sorry.
12 A Rich's recollection and
13 characterization of how often Gay Don came
14 up, where it came up, and who said it, I
15 think, was a little light. That's all.
16 Q Do you remember the interaction
17 at the deposition yesterday where I indicated
18 on the record that you were shaking your head
19 side to side?
20 A I do remember that.
21 Q What do you recall from that?
22 A Well, what I'd like for you to
23 do is, for the record, to go ahead and state
24 what it is you would like to ask me about
25 that since that was yesterday, and I want to

1 D. Zarda 52
2 we respect each other, and so he wasn't
3 demeaning me by saying that, and I didn't
4 want him to feel like he was being put on the
5 spot with that question to determine whether
6 or not he was saying that in a demeaning
7 manner to me. I didn't want him to feel that
8 way.
9 Q Did you ever feel that
10 Rich Winstock treated you differently because
11 of your sexuality?
12 A Could you be more specific in
13 what you mean by treated differently?
14 Q Treated differently in the
15 workplace then someone whose sexuality was
16 different than yours.
17 A No, I think Rich Winstock
18 treated me like anybody else.
19 Q You are gay; correct?
20 A I am.
21 Q What is your understanding of
22 the definition of the word gay?
23 A Well, I don't have a dictionary
24 in front of me, but one that is sexually
25 attracted to members of the same sex;

1 D. Zarda 53
2 homosexual, or prefers.
3 Q Well, when you say "prefers,"
4 does that mean that there are or have been
5 times of your life where you've been
6 attracted to someone of the opposite sex?
7 A When I say that, I was trying to
8 define what gay might be in the dictionary.
9 I wasn't necessarily defining what gay is to
10 me, so if you want to ask whether I'm
11 100 percent gay, then I would say that I
12 100 percent prefer males.
13 Q Has that always been the case?
14 A It has always been since my
15 youngest knowledge of an understanding of
16 sexual preferences took place whenever that
17 was back in, you know, when you're a child.
18 Whenever that cognitive or that part of
19 development in your brain takes place, it's
20 been that way since that point.
21 Q Have you, since that point, that
22 early point in your life, have you always
23 expressed to others your preference for
24 same-sex relationships?
25 A No, I have not.

1 D. Zarda 55
2 because I was not heterosexual, so I was just
3 in the paradoxical situation of being a
4 closeted gay person, trying to interact in a
5 heterosexual world which just doesn't work
6 sometimes, and so, no, there was no real
7 romance that could take place in those
8 involvements.
9 Q Were any of the close
10 involvements physical relationships?
11 A There was some physical contact;
12 yes.
13 Q Where were you born?
14 A I was born in Independence,
15 Missouri.
16 Q When did you first start working
17 at Long Island Skydive?
18 A Well, it's Skydive Long Island.
19 I want to make sure we don't get these
20 centers mixed up. Skydive Long Island is
21 Ray Maynard's drop zone while Skydiving
22 Center is down in East Moriches. That was
23 Ray's competitor.
24 Q When did you start working at
25 Skydive Long Island?

1 D. Zarda 54
2 Q Did there come a point in time
3 where you, for lack of a better term,
4 "came out" about your sexuality?
5 A Yes, there was.
6 Q When was that?
7 A There was a transitory phase.
8 There wasn't just one day where I opened the
9 door and said, I'm gay, so that transitory
10 phase began in around 1999 into 2000, and
11 kind of through the course of that year, it
12 came out.
13 Q When were you born?
14 A I was born in 1970.
15 Q Prior to 1999 to 2000, were you
16 involved in any relationships with people of
17 the opposite sex?
18 A I was.
19 Q Do you characterize those
20 relationships as romantic in nature?
21 A I would say that they were
22 friendly in nature, but as far as romantic, I
23 would have to fall short on that because I
24 really couldn't deliver in a romantic way
25 because my heart was not able to do that

1 D. Zarda 56
2 A The first time I came to Skydive
3 Long Island was in the summer of 2001.
4 Q I'm sorry?
5 A It was in the summer of 2001.
6 The summer of the Trade Center.
7 Q Is it safe to say that you
8 started working at Skydive Long Island
9 shortly after your transition period, and I'm
10 going to use the term "came out." Is that
11 offensive?
12 A It's not offensive; no.
13 Q So shortly after you came out in
14 the summer of 2001, you started working at
15 Skydive Long Island; is that correct?
16 A That is correct.
17 Q Who hired you at Skydive Long
18 Island in 2001?
19 A Ray Maynard makes the ultimate
20 decisions in hiring people, so he hired me.
21 Q You worked beginning in the
22 summer of 2001 through what period of time?
23 A It was about midsummer through
24 just before the Trade Center disaster.
25 Q How did your employment come to

1 D. Zarda 57
2 an end in or around September of 2001?
3 A As I recall, from clear back a
4 decade ago, I was terminated by the general
5 manager, then Brian Petretti, who is now one
6 of Ray's part-time employees, and he does,
7 almost exclusively, video work at the drop
8 zone on weekends.
9 Q Why were you terminated?
10 A From the best I can recall,
11 because Ray didn't discuss the matter with
12 me, it had something to do with a customer
13 being unhappy about not being able to do
14 flips out of the airplane, or something to
15 that effect. I wouldn't do something that
16 they wanted me to do out of the aircraft.
17 Q And you were terminated in or
18 around September of 2001; is that correct?
19 A Yes.
20 Q Did you think that you were
21 being discriminated against when you were
22 terminated in September of 2001?
23 A I was confused about that, why I
24 was told that I was being terminated, because
25 Brian, at the time, didn't say a whole lot

1 D. Zarda 59
2 Q You were rehired by Skydive Long
3 Island; correct?
4 A That is correct.
5 Q Who rehired you?
6 A Ray Maynard.
7 Q Can you tell me how you came to
8 be rehired in 2009?
9 A Can you be a little more
10 specific about -- are you asking who I talked
11 to about it?
12 Q What I'm really asking you for
13 is a narrative. At what point did you say,
14 you know what, I'd like to start working
15 there? And explain to me how that all came
16 about.
17 A Okay.
18 MR. ANTOLLINO: Objection. It
19 calls for a narrative.
20 Q And you may go ahead and
21 disregard that objection and provide a
22 narrative.
23 A It wasn't just a one, pick up
24 the phone, call Ray, and ask if I could work
25 there kind of thing. It was something that

1 D. Zarda 58
2 about it because he was doing it on Ray's
3 orders, and again, I'm thinking back on
4 something a decade ago that I thought was old
5 business when Ray rehired me in 2009, so I
6 haven't really thought much about that, so --
7 MR. ANTOLLINO: Just answer the
8 question.
9 Q I think you are. You're doing
10 fine.
11 A Repeat that part of the
12 question, please.
13 Q My question was: On or about
14 September of 2001, did you think you were
15 being discriminated against by your
16 termination?
17 A I'm going to have to say that I
18 don't recall what I thought at that time,
19 2001, about that matter, about being
20 discriminated against or whether I was being
21 discriminated against at that time.
22 Q In your response, you mentioned
23 that you were rehired in 2009; is that
24 correct?
25 A That is correct.

1 D. Zarda 60
2 had built over the course of a few months. I
3 know a lot of the people that work at Skydive
4 Long Island for a long time. Some of those
5 people are there from 2001, like Rich and
6 Curt and a friend from New Zealand, Duncan
7 Shaw, and I had spoken to Duncan in
8 late 2008, about how things were going at
9 Skydive Long Island and that I was working
10 full-time again in the summer and about
11 coming to work there.
12 We discussed it, and he thought
13 that I should go ahead and contact Ray and
14 talk to him about it, and Duncan said that at
15 that time, that he would like to have me come
16 back to work there because he knew that I'm a
17 good instructor, he knew my qualifications,
18 and he said something to the effect of that
19 he didn't know where Ray was getting some of
20 these people, and he was frustrated and tired
21 of working with, what sounded like,
22 unqualified people that were less than up to
23 par to do the job.
24 And so he was trying to prod me
25 to go ahead and talk to Ray about coming back

1 D. Zarda 61
2 to work there, because I think he wanted me
3 to come back and work there. I said, okay,
4 and when I came down from the end of the
5 season in May -- excuse me -- in Maine from
6 working at Jumping Route, the season ends up
7 there just a few weeks earlier because it's
8 so far north.
9 On my way back through to head
10 to Missouri, I came out to Skydive Long
11 Island and made some fun jumps, and then I
12 also talked to Ray in person about that
13 prospect.
14 Q And you spoke to Ray because you
15 thought, you know what, you like the people
16 here, and you wanted to work here; correct?
17 A That is correct.
18 Q This is all in 2009?
19 A This is in 2008.
20 Q Continue.
21 A So, it wasn't an appointment or
22 anything or a specific meeting that I had set
23 up with Ray. I just picked a day that was a
24 nice day to come out, do some fun jumps,
25 socialize a little bit with some of the

1 D. Zarda 63
2 sexuality to your coworkers; is that correct?
3 A It was out. It was known. I
4 don't know if I can -- you know, we're
5 talking about ten years ago. I can't say
6 that I came in and said, I'm gay, or people
7 just figured it out, you know, or could tell
8 because I went to these locations like Fire
9 Island, you know, for the weekend. Oh, you
10 must be gay, or are you gay, you know,
11 whether somebody might have asked me. I
12 can't tell you from a decade ago exactly how
13 the knowledge of my sexuality came out in
14 2001.
15 Q Did you tell people that you
16 went to Fire Island?
17 A People would -- again, I don't
18 know specifics about something a decade ago,
19 you know, like if somebody came up to me and
20 asked, did you go to Fire Island? I can't
21 say for sure. People would ask generally,
22 you know, what did you do this weekend? Oh,
23 we went to the game or we jumped into
24 Neptune's or, you know, I might have said --
25 this is just conjecture. This is speculation

1 D. Zarda 62
2 jumpers I knew, and talk to Ray, if he was
3 there, about it. He just mentioned -- I
4 think I spoke to Lauren, as well, going ahead
5 and sending an e-mail over the winter or
6 something when he puts his advertisement out
7 over the winter for staff to contact.
8 Q When you spoke to Ray in 2008,
9 did the issue of your sexuality come up?
10 A I cannot recall if we spoke
11 in 2008 at that time about my sexuality. I
12 don't know why it would come up because he
13 probably, you know, remembered it, so I don't
14 know. I can't recall if it came up
15 specifically at that time.
16 Q Why would he remember your
17 sexuality?
18 A Well, it was brought up in 2001.
19 Q By whom?
20 A By everybody. It was the same
21 scenario as what we just discussed. It was
22 out and about on the drop zone and joked
23 about.
24 Q In 2001 when you were working at
25 Skydive Long Island, you had disclosed your

1 D. Zarda 64
2 of how it could have come up. I went to
3 Fire Island, or I went to the Pines, that
4 kind of thing.
5 Q So when you discussed Fire
6 Island, you discussed certain communities at
7 Fire Island, not just Fire Island, in
8 general?
9 A More than likely. If I said I
10 went to Fire Island, I probably said I went
11 to the Pines.
12 Q And that was --
13 A I was out. I didn't have
14 anything to hide. I wasn't afraid. I
15 wouldn't have been afraid to tell anybody
16 where I went or what I did, if asked.
17 Jumpers routinely ask each other what you did
18 this weekend or where you're going this
19 weekend or what you did; did you have fun,
20 you know, whatever.
21 Q In 2001, you experienced a
22 certain amount of comradery with your
23 colleagues; is that correct?
24 A There was a lot of comradery.
25 Q That comradery lasted with some

1 D. Zarda 65
2 of those coworkers who actually encouraged
3 you in 2008 to speak to Ray and come back to
4 work in 2009; is that correct?
5 A It did.
6 Q That was Duncan --
7 A Duncan Shaw was the primary
8 person.
9 Q And then there was Rich Winstock?
10 A Yeah, but not so much Rich, but
11 more Curt, Curt Kellinger, who you mentioned
12 yesterday. I've known him for a long time,
13 as well, and I'm trying to think if there is
14 anybody else that -- you know, it was mostly
15 Duncan that I kept in most contact with
16 through those years between 2001 and 2008,
17 where it was pretty quiet.
18 I was involved in other things
19 and wasn't working full-time skydiving, but I
20 still contacted and had some relationship
21 with Duncan during that time.
22 Q Do you remember any of the other
23 coworkers that you worked with in 2001?
24 A I do.
25 Q Who are they?

1 D. Zarda 67
2 Q At some point before the 2009
3 season, Ray Maynard hired you; is that
4 correct?
5 A We discussed it, if I recall, on
6 or about November 15, 2008, which would be
7 preseason 2009.
8 Q What did you discuss with
9 Mr. Maynard?
10 A Just that he had agreed to have
11 me come back to work there.
12 Q Did he put any conditions on
13 you?
14 A Not that I can specifically
15 recall. Any conditions like -- could you be
16 more specific?
17 Q Any behavioral conditions?
18 A Any behavioral conditions, no, I
19 don't think he said anything specific. Are
20 you referring to like, did he ask --
21 MR. ANTOLLINO: Just answer the
22 question.
23 A I don't remember anything
24 specific.
25 Q Did you make any behavioral

1 D. Zarda 66
2 A Well, they don't work there now.
3 Q Who were they?
4 A Brandon Spadero, Orin Perry --
5 gosh, off the top of my head, there was quite
6 a few.
7 Q Just the ones you can remember.
8 A That aren't there anymore, is
9 that what you're asking?
10 Q That are either there currently
11 or aren't there. Anybody you remember
12 working with?
13 A Well, those two that I
14 mentioned, I do remember very well. Brian
15 Petretti, who was the general manager at the
16 time. I remember Curt. I remember Duncan.
17 Who else? Brandon doesn't work there
18 anymore. Don doesn't work there anymore.
19 Off the top of my head, there's so many
20 people who came through there that I can't
21 remember everybody right now.
22 Q In 2001, these were people you
23 worked with that you were looking forward to
24 working with again in 2009; is that correct?
25 A That's right.

1 D. Zarda 68
2 representations to Mr. Maynard in order to
3 obtain your employment in November of 2008?
4 A Behavioral representations...
5 Q Such as, if I'm hired, I will do
6 X, or if hired, I will not do Y.
7 A No, no, I --
8 MR. ANTOLLINO: That's the
9 answer.
10 MR. ZABELL: Counselor, please.
11 You're restricted to just objecting,
12 nothing more.
13 MR. ANTOLLINO: I just want to
14 take a minute break, just one minute.
15 Do you mind?
16 MR. ZABELL: I do mind, but
17 you're entitled to take a break.
18 MR. ANTOLLINO: I'd just like
19 one minute. That's it. Is that all
20 right?
21 MR. ZABELL: That's fine.
22 (Whereupon, a recess was taken
23 from 11:55 a.m. 11:56 to a.m.)
24 Q You just took a break and spoke
25 with Counsel?

1 D. Zarda 69
2 A We had a brief discussion, yes.
3 Q You went back to work for
4 Skydive Long Island in 2009; is that correct?
5 A Correct.
6 Q How was that?
7 A Could you be more specific?
8 Q Sure. How was the work
9 experience in 2009 at Skydive Long Island?
10 A Could you even be more specific?
11 Are you talking about how was the airplane
12 and the equipment, or how were the people, or
13 how was the weather? I mean, what --
14 Q You could start with the
15 equipment, move to people, talk to weather,
16 and then we'll get to your injury.
17 A It sounds like you want to talk
18 about my injuries, so --
19 Q No. I want to talk about
20 everything, including your injury.
21 A I just want to make sure --
22 Q Let's start with the equipment.
23 A The equipment was fine. It was
24 good equipment. I was satisfied with the
25 equipment.

1 D. Zarda 71
2 that you talked about? I believe he's
3 jumping in Utah now.
4 A Oh, Curt Kellinger.
5 Q Yes. How was Curt Kellinger in
6 2009?
7 A Crazy as ever.
8 Q Inappropriate crazy?
9 A Curt has his own category. He
10 was -- inappropriate towards me, no.
11 Q Did you enjoy working with those
12 three individuals?
13 A Yes, yes.
14 Q Was there anybody that you did
15 not enjoy working with in 2009?
16 A There is personalities at all
17 drop zones. There is some people that I
18 didn't enjoy as much as others.
19 Q Who are the people that you did
20 not enjoy?
21 A Ben Lowe.
22 Q Continue.
23 A Well, let me think for just a
24 minute.
25 In general, I got along with

1 D. Zarda 70
2 Q Let's talk about Rich Winstock.
3 In 2008, did you work with Rich?
4 A I did.
5 Q How was Rich in 2009?
6 A He was the same Winnie that he'd
7 always been. He was great.
8 Q Your interactions were
9 completely appropriate?
10 A Yes.
11 Q Duncan Shaw, how was Duncan?
12 A He was just like I remembered
13 him.
14 Q Your interactions were
15 completely appropriate?
16 A It was good.
17 Q Appropriate?
18 A It was -- well, what do you mean
19 by "appropriate"?
20 Q Appropriate for a workplace.
21 A It was -- I will say this. It
22 was appropriate for a drop zone. It was
23 normal as far as the way people act at the
24 drop zone. It was to be expected.
25 Q Who was the other individual

1 D. Zarda 72
2 everybody, so there were just some people
3 that required a little bit more work than
4 others to be able to get along with, and he
5 was one of those people.
6 Q I think I understand that
7 concept.
8 A Yes.
9 Q Ben Lowe required more work to
10 get along with.
11 Were you able to get along with
12 him?
13 A Yes, I was.
14 Q Who else?
15 A At the very beginning, Willie.
16 That's one of those nicknames. For the life
17 of me, I can't remember his full name right
18 now, but I'm sure we have a record of it
19 somewhere. I remember him very well, but
20 this is one of those situations where people
21 go by their nickname. He required a little
22 bit of extra work, as well, and by the end of
23 the season, it was good.
24 Q So your relationship, by the end
25 of the season, was great with everyone; is

1 D. Zarda 73
2 that correct?
3 A I think so.
4 Q So much so that would you
5 characterize you enjoyed working in 2009 at
6 Skydive Long Island?
7 A I enjoyed working in 2009 up
8 until I broke my ankle, so I didn't enjoy
9 that.
10 Q How did you break your ankle?
11 A It was at work, and it was on a
12 landing.
13 Q Do you recall when that was?
14 A The specific date?
15 Q Yes.
16 A Yeah, you don't forget that. It
17 was July 2, 2009 at, approximately, 2 o'clock
18 in the afternoon.
19 Q When you broke your ankle, you
20 were casted; correct?
21 A Eventually.
22 Q How soon after July 2 were you
23 casted?
24 A In a splint, in a cast, or in a
25 boot because there's -- be more specific,

1 D. Zarda 75
2 from various people about that from six weeks
3 on up.
4 Q How long were you --
5 A I was being optimistic.
6 Q Is it safe to say that July 2 landing
7 injury took you out of jumping for the
8 remainder of 2009?
9 A It took me out of -- yeah, it
10 did.
11 Q You didn't work at Skydive Long
12 Island after --
13 A Let me --
14 Q -- you have to let me finish my
15 question, sir.
16 A Fine.
17 Q You didn't work at Skydive Long
18 Island in 2009 after July 2; is that correct?
19 A That is correct. The injury --
20 what I was going to say was that it took me
21 out of work jumping for the remainder of the
22 season, completely.
23 Q You came back in 2010?
24 A I did.
25 Q With a vengeance?

1 D. Zarda 74
2 please.
3 Q Which started first?
4 A The very first thing was a
5 splint.
6 Q When were you splinted?
7 A That was later on that evening
8 after I had drove myself to the hospital.
9 Not sure even what the situation with my
10 ankle was at that point.
11 Q You banged it up, you weren't
12 sure if it was broken or sprained, so they
13 splinted it for you; is that correct?
14 A They confirmed later that
15 evening that, in fact, it was fractured
16 which, since I hadn't broken anything, other
17 than a thumb in my entire life, I thought
18 that just meant it was cracked, and I didn't
19 realize that it was, you know, that it was
20 broken, as in broke.
21 Q How long were you told that you
22 would be out of the jumping business?
23 A That's a good question, because
24 that answer kept changing as things with my
25 ankle changed, and there were just opinions

1 D. Zarda 76
2 MR. ANTOLLINO: Objection to
3 form.
4 A No.
5 Q You came back in 2010 looking
6 forward to jump again; correct?
7 A I did. I came back with a
8 positive, high-spirited attitude ready to go
9 to work.
10 Q When were you cleared to begin
11 jumping in 2010?
12 A By my doctor, I was cleared to
13 begin work jumping on -- now, this may be off
14 a couple of days -- on or around January 22
15 or 24. It was in that range right there.
16 That was -- let me continue so
17 that I make sure I get this straight.
18 Q Please, go ahead.
19 A That was on my doctor's initial
20 orders that I begin work jumping six months
21 following my surgery. That was six months.
22 We had been in contact on the phone, but when
23 I returned to Long Island, because I knew I
24 was coming back to work for Ray because we
25 had already established that, he still wanted

1 D. Zarda 77
2 to have an office visit with me for a final
3 check-up to clear me out, and that was in
4 June.
5 Q The "he" is your doctor, or the
6 "he" is Ray that you just referred to?
7 A My surgeon.
8 Q Your surgeon?
9 A Yeah, that did the work.
10 Q Did you have the surgery done
11 here on Long Island?
12 A It was.
13 Q Good surgeon?
14 A Thank goodness, yes, he was.
15 Q When were you rehired by Skydive
16 Long Island 2010?
17 A Well, Ray and I discussed me
18 coming back before I went back home in 2009
19 just after I started walking again. I asked
20 him about coming back to work in 2010, and he
21 said that would be fine; just get healthy,
22 and I said okay.
23 Q You found that response to be
24 appropriate; correct?
25 A Sure.

1 D. Zarda 79
2 Q Then, in 2010 when you began
3 working again, was he aware of your
4 sexuality?
5 A I would say certainly he would
6 have to have been still aware.
7 Q Let's talk about how you acted
8 at work in 2009.
9 A Okay.
10 Q How did you act?
11 MR. ANTOLLINO: Objection to
12 form.
13 A Could you actually be a little
14 more specific? How did I act in -- just
15 break that down, please.
16 Q In your daily mannerisms, did
17 you act just like every other employee?
18 A I think I did.
19 Q If we were watching a video of
20 you, just a video with no volume and we saw
21 your daily interactions, would we be able to
22 distinguish your interactions from any of
23 your coworkers?
24 A I doubt it.
25 Q Was that the same in 2010?

1 D. Zarda 78
2 Q When did you start working again
3 at Skydive Long Island in 2010?
4 A It was on or about May 15, 2010.
5 That was my report date, and I do believe
6 that was the first day I reported.
7 Q Now, when you started working at
8 Skydive Long Island in 2001, do you know if
9 Ray Maynard was familiar with your sexual
10 orientation when he hired you?
11 A I don't know. I can't remember
12 back that far directly if we discussed it or
13 if he knew about it via Curt or Rich or if he
14 knew about it at all. I think he knew about
15 it possibly from one of them and then if he
16 didn't know about it when he hired me, he
17 certainly didn't take long to figure it out.
18 Q And you were rehired in 2009
19 with full knowledge of your sexuality; is
20 that correct?
21 A Unless he forgot about it, then
22 I would say he would have know.
23 Q Is it possible that he may have
24 forgotten about it?
25 A It's possible.

1 D. Zarda 80
2 A It was.
3 Q Your work activities throughout
4 your employment at Skydive Long Island were
5 indistinguishable from any of your coworkers;
6 is that correct?
7 A I would say -- there's no way I
8 could say whether indistinguishable or not,
9 because I am the one that is performing the
10 work actions, and I would be viewed by a
11 third person, so it would be strictly up to
12 whoever was watching me and what they
13 thought, but I would say that I acted
14 normally just like everybody else. I didn't
15 do anything special that I can think of.
16 Q In your perception, you acted
17 just like everybody else?
18 A As far as I can tell.
19 Q In 2009, you testified that you
20 got along with everybody; is that correct?
21 A I believe, unless we were to
22 read back what I said, I think I said
23 something to that effect.
24 Q I think what you said is that
25 Ben Lowe and maybe Willie required a little

1 D. Zarda 81
2 bit of extra attention, but you won them over
3 by the end of the season; is that correct?
4 A I didn't say I won them over;
5 you just said that.
6 Q I did just say that. That was
7 my characterization.
8 A Well, I think the relationship
9 developed positively by the end of the
10 season. It required a little extra work, but
11 it got to a good place.
12 Q Would you say that in 2009, you
13 had positive working relationships with all
14 of your colleagues?
15 A I would say so, for the most
16 part.
17 Q What about 2010, did you have
18 positive working relationships with your
19 colleagues?
20 A There were some new characters
21 in 2010, so there's a high turnover rate for
22 seasonal employees at Skydive Long Island, so
23 there were some new people that were brought
24 into the mix, different attitudes and
25 different personalities, and most of the same

1 D. Zarda 83
2 was in the room, and Monkey kind of actually
3 got a little bit angry and sort of went off
4 on me a little bit, and some of the other
5 staff were in the room like Sean Tierney, I
6 think Marco was in there, and they dismissed
7 and resolved it and said, don't worry, Don,
8 just put your stuff over here, and I was
9 like, okay, no problem.
10 Q So your coworkers came to your
11 defense?
12 A They did, and, in fact, Monkey's
13 girlfriend, Carmen, also came to my defense
14 in the room by telling Monkey that he was
15 being, quote, a dick and to stop it.
16 The thing about that is that
17 it's not a good way for me to start a new
18 relationship with a coworker on the first
19 day, but I didn't have anything to do with
20 it, so I was just present, so that's why that
21 relationship probably needed a little extra
22 attention as opposed to the other people I
23 was working with.
24 Q Did you have any negative
25 interactions with any of your other coworkers

1 D. Zarda 82
2 people were there, but I would say that yes,
3 I did have a good experience. There were a
4 couple of personalities that needed a little
5 extra work.
6 Q In 2010, you had a good
7 experience, but some of the personalities
8 needed extra work; is that correct?
9 A I'd say so.
10 Q Who were those personalities?
11 A First, a guy named Monkey John.
12 Q Did his mom give him that name?
13 A I have no idea.
14 Q I'm making a joke.
15 A Oh, all right. He required a
16 little extra work.
17 Q What was Monkey John's problem?
18 A You know, it was kind of funny.
19 His problem was when I returned to my same
20 digs in the staff room, which is already
21 crowded, and I was going to take the same
22 spot that I had the previous year, he didn't
23 like it, so he made a little to-do about it,
24 and that was my first meeting with John, with
25 Monkey. His girlfriend Carmen, at the time,

1 D. Zarda 84
2 in 2010?
3 A No, not that I can recall.
4 Q Just Monkey Jim?
5 A Monkey John.
6 Q John, Monkey John.
7 A I think his real name is John.
8 I don't know his last name. He's the only
9 Monkey there.
10 Q From what you've told me, Monkey
11 John was acting like, and I quote, per
12 Carmen, a dick?
13 A Yes, that's what she said.
14 Q But then your coworkers and
15 Carmen came to your defense; is that correct?
16 A They did.
17 Q That must have been a good
18 feeling; right?
19 A None of it was a good feeling
20 because it was awkward for me because I was
21 coming to work, going back to the same spot
22 that I was in, and I've got somebody that I
23 don't know that's confronting me about that,
24 and so it's the first day, not something
25 anybody really wants to start out that way

1 D. Zarda 85
2 with a new relationship, so what -- you're
3 asking me if I felt good about it? I didn't
4 feel good about it.
5 Q Well, did you appreciate your
6 coworkers coming to your defense?
7 A I did appreciate that.
8 Q There was some discussion
9 yesterday about weight, how much people
10 weighed as it applied to jumping and certain
11 weight restrictions. Now, I can tell you as
12 I sit across this table from you, you appear
13 to be someone who is physically fit; are you?
14 A I am.
15 Q Have you always been?
16 A I have.
17 Q You started jumping for Skydive
18 Long Island in 2001; is that correct?
19 A I first worked there in 2001 for
20 Skydive Long Island.
21 Q Do you recall how much you
22 weighed then?
23 A I can't tell you, specifically,
24 but I've weighed pretty close to the same
25 weight for most of my adult life, so it was

1 D. Zarda 87
2 that range, I just told you, most of my adult
3 life. I've been right there. I lost a
4 little bit of weight over the broken ankle
5 because this (indicating) leg got smaller.
6 That was temporary.
7 Q You lost weight when you broke
8 your ankle?
9 A In this (indicating) leg.
10 Q You see, if someone like me was
11 to break my ankle, I'm sure I would gain
12 weight.
13 A I lost weight a little bit.
14 Probably about ten pounds, and it was
15 temporary.
16 Q Were you able to exercise when
17 you broke your ankle?
18 A I was. I was at the gym on
19 crutches.
20 Q You workout frequently?
21 A I do.
22 Q How often do you workout?
23 A Depending on whether I'm
24 traveling or what I'm doing. It could be
25 anywhere between three and five times a week.

1 D. Zarda 86
2 about what I weigh now. It would have been
3 between 170 and 180.
4 Q Does your weight normally
5 fluctuate between 170 and 180?
6 A It stays around 175 or 180.
7 Right now I think I'm actually 185 because I
8 did some mountain climbing this summer.
9 Q Mountain climbing increases your
10 weight?
11 A Well, it's just a form of
12 working out. I suppose I put on some extra
13 muscle.
14 Q And you view that as a good
15 thing?
16 A It is a good thing.
17 Q Has anything since 2001 to now,
18 affected your weight?
19 A Has anything?
20 Q Yes.
21 A No. I need you to be really
22 more specific about that.
23 Q Anything; holidays, workout
24 routines?
25 A Not much. I've really been in

1 D. Zarda 88
2 Q Was that consistent since 2001
3 to now?
4 A It's been over the last twenty
5 years. Ever since high school, so you can
6 include that timeframe.
7 Q Has anything during that
8 timeframe interfered with your consistent
9 working out of three to five times a week?
10 A Yes.
11 Q What was that?
12 A I had a back injury in 2002.
13 Q Could you explain that to me?
14 A It was an injury that I suffered
15 in the gym doing squats, and as a result of
16 that, I had to cut back my workout routine
17 for about six months or so.
18 Q When you cut it back, you cut it
19 back to how many times a week?
20 A Well, for a little bit there, I
21 don't remember exactly how long; it felt like
22 forever, but I couldn't do anything for, you
23 know, two or three weeks in a row, and I
24 wasn't supposed to be doing anything, but I
25 kind of was able to lightly do some very

1 D. Zarda 89
2 light weight throughout that four to six
3 months where I was really not supposed to be
4 doing anything.
5 Q So you still worked out; you
6 just used much lighter weights?
7 A I did some alternative
8 exercises, not weightlifting, you know, some
9 light weights, machines, stuff to keep me
10 moving and try to keep in shape. I'm not one
11 that does very good with just lying around,
12 so those kind of instructions don't work too
13 well for me.
14 Q That was the only thing
15 from 2001 to now, 2011, that interfered with
16 your working out; is that correct?
17 A That, and the broken ankle
18 interfered just for a little bit because,
19 obviously, I couldn't go to the gym right out
20 of surgery. I actually ran into the nurse,
21 one of the nurses that was in my surgery, at
22 the gym.
23 Q She yelled at you for being
24 there so soon?
25 A He.

1 D. Zarda 91
2 are, so with the Judge's instruction, I
3 kindly ask you to move on to another
4 subject.
5 MR. ZABELL: Are you directing
6 him not to answer the question?
7 MR. ANTOLLINO: Yes, yes.
8 MR. ZABELL: You need to just
9 make that clear.
10 MR. ANTOLLINO: All right. I'm
11 just trying to make it smooth also.
12 THE WITNESS: Good to go.
13 Q Do you smoke?
14 A No.
15 Q Have you ever smoked?
16 A I've smoked a clove on occasion,
17 but I've never smoked a regular nicotine
18 cigarette.
19 Q Within the last two years, have
20 you smoked clove cigarettes? Is it
21 cigarettes, or just cloves?
22 A It's called cloves. Yeah, I
23 have.
24 Q Why have you smoked cloves?
25 A Social setting. Something along

1 D. Zarda 90
2 Q "He"? He yelled at you for
3 being there so soon?
4 A He was surprised to see me in
5 there that quickly and just told me to take
6 it easy.
7 Q Did he scold you?
8 A He just said to be careful, take
9 it easy, don't get too carried away.
10 Q Did you listen to his advice?
11 A I did listen to it. I still
12 went, but I heeded -- you know when somebody
13 tells you something like that, and you've
14 never been through what I was going through,
15 I definitely didn't want to mess anything up,
16 but I didn't want to get out of shape because
17 I sitting around on the sofa.
18 Q Do you still suffer from the
19 effects of that back injury?
20 A I do.
21 MR. ANTOLLINO: Objection. I
22 think we're getting into the medical
23 privilege. Would you agree?
24 MR. ZABELL: No.
25 MR. ANTOLLINO: I think that we

1 D. Zarda 92
2 that line. Just smells good. Somebody had
3 one.
4 Q Have you smoked marijuana within
5 the last two years?
6 MR. ANTOLLINO: I don't know the
7 answer to that, but I'm going to direct
8 him not to answer that question on the
9 grounds that he has a right not to
10 incriminate himself.
11 MR. ZABELL: Well, his answer is
12 either no, I haven't, or --
13 MR. ANTOLLINO: If his answer
14 were yes, then --
15 MR. ZABELL: I tell you what.
16 We can designate it as confidential and
17 that will allay any of your concerns,
18 but I have an absolute right to ask him
19 that question.
20 MR. ANTOLLINO: Let me speak to
21 him outside. I think that his Fifth
22 Amendment Right is a basis for me to
23 direct him not to answer, and that's
24 going to be my objection at this point.
25 If you'd like, I can speak to

1 D. Zarda 93
2 him outside. I might reconsider it,
3 and I might not.
4 MR. ZABELL: I'll tell you what.
5 Why don't I leave you alone and this
6 way you don't have to leave.
7 MR. ANTOLLINO: All right.
8 Sounds good.
9 (Whereupon, a recess was taken
10 from 12:21 p.m. to 12:28 p.m.)
11 MR. ANTOLLINO: We're still
12 discussing this issue, you and I,
13 before you ask him any questions?
14 MR. ZABELL: I don't know if
15 we're discussing anything. Would you
16 like to discuss something?
17 MR. ANTOLLINO: Yes, I would
18 like to discuss something.
19 MR. ZABELL: What would you like
20 to discuss?
21 MR. ANTOLLINO: I would like to
22 direct the witness not to answer, and I
23 am going to ask the witness not to
24 answer on the grounds that an answer
25 could violate his right against

1 D. Zarda 95
2 the grounds that the answer may
3 incriminate him.
4 MR. ANTOLLINO: Let me speak to
5 my client outside, Saul.
6 MR. ZABELL: You may do so.
7 (Whereupon, a recess was taken
8 12:28 p.m. to 12:29 p.m.)
9 MR. ANTOLLINO: I'm asserting a
10 privilege on the grounds of his Fifth
11 Amendment Right against
12 self-incrimination. You can ask him,
13 and he's going to give you an answer.
14 I don't want to go around in circles
15 with this all day long. That's the
16 on-the-record reason for not answering
17 the question. Go ahead.
18 Q Mr. Zarda, are you refusing to
19 answer my question?
20 A I'm not going to answer any
21 questions that my attorney has advised me not
22 to answer.
23 Q Are you refusing to answer the
24 question on the grounds that your answer may
25 incriminate you criminally?

1 D. Zarda 94
2 self-incrimination.
3 MR. ZABELL: Well, you can
4 certainly advise him to say that I
5 refuse to answer that question on the
6 grounds that it may incriminate myself,
7 but he has to assert that. You can't
8 assert that for him.
9 MR. ANTOLLINO: I'm not so sure
10 about that. I'm going to direct him
11 not to answer.
12 MR. ZABELL: I understand what
13 you're saying, and we're going to get
14 to the same place, but he has to say, I
15 am refusing to answer that on the
16 grounds that I may incriminate myself.
17 MR. ANTOLLINO: It's a
18 deposition. It's different. It's
19 not --
20 MR. ZABELL: He still has to say
21 it because this is his sworn testimony,
22 and it gets cited to in the record, so
23 if that's what you're advising him,
24 that's fine. I'm going to ask him if
25 he's refusing to answer the question on

1 D. Zarda 96
2 A (No verbal response.)
3 Q Yes or no?
4 MR. ANTOLLINO: Objection. I've
5 instructed him not to answer the
6 question. I'm directing him not to
7 answer the question for the reason that
8 I have put on the record that he has
9 the right not to incriminate himself.
10 Let's not go around in circles on this.
11 Q Are you refusing to answer the
12 question on the grounds that you may
13 incriminate yourself?
14 A I can't answer the question,
15 because I'm not going to answer any questions
16 that my attorney has advised me not to
17 answer, and that is one of those questions.
18 Q Are you familiar with the term
19 "illegal drugs"?
20 A I've heard the term.
21 Q What is your understanding of
22 what the drugs are that are encompassed by
23 that term?
24 MR. ANTOLLINO: Objection. You
25 can answer.

1 D. Zarda 97
2 A There's a whole book full of
3 drugs that could be illegal. It can be drugs
4 that -- it can be prescription drugs that
5 don't have your name on it. That would be
6 illegal drugs. You could have too many
7 antiallergy pills in your backpack. That
8 would be illegal, so I mean, there's a whole
9 list of drugs that would be considered
10 illegal, I presume.
11 Q Can you identify some of the
12 those drugs?
13 A Well, I think the one you hear
14 about in the media the most would be like
15 marijuana, cocaine. Those would be a couple
16 of examples. Methamphetamine, I suppose.
17 Q Ecstasy, is that another one?
18 A I'm sure it would be considered
19 illegal.
20 Q Within the last two or three
21 years, have you taken methamphetamines?
22 MR. ANTOLLINO: I'm going to
23 direct the witness not to answer the
24 question for the reason stated before.
25 Q In the past three years, have

1 D. Zarda 99
2 Q About how long ago?
3 A I was done with that back in
4 around 2000.
5 Q You know, when you fill out
6 certain forms for insurance, they ask you how
7 often you drink. They'll ask you if it's one
8 drink a week or two drinks a week.
9 How many drinks a week would you
10 characterize your usage as?
11 A It just depends on where I'm at.
12 If I'm at a drop zone working and I'm hanging
13 out with a bunch of jumpers after work having
14 a couple of beers after work, or if I'm doing
15 school for a solid week and I'm doing
16 homework, I may not have any, so a per week
17 thing, I think maybe per night or something
18 might be a better way to answer the question.
19 Q Okay, please.
20 A I don't get drunk. I don't like
21 the feeling of being drunk, so I would stick
22 to the rule of no more than a drink an hour
23 or a beer an hour, not even that much. You
24 know, so a person might see me have a couple
25 of beers in a social setting, and that would

1 D. Zarda 98
2 you used cocaine?
3 MR. ANTOLLINO: I'm going to
4 direct the witness not to answer the
5 question for the reason stated before.
6 Q Have you used ecstasy in the
7 last three years?
8 MR. ANTOLLINO: I'm going to
9 direct the witness not to answer the
10 question for the reason I stated
11 before.
12 Q Have you used any item that has
13 altered your thought process within the last
14 three years that is not prescribed?
15 MR. ANTOLLINO: Wait. Hold on.
16 Okay, again, I'm going to direct the
17 witness not to answer the question for
18 the reason stated before.
19 Q Do you drink alcohol?
20 A I do on occasion.
21 Q Do you ever drink to excess?
22 A No, I do not.
23 Q Have you ever drank to excess?
24 A I have, but it was a long time
25 ago.

1 D. Zarda 100
2 be it.
3 Q Has that remained consistent
4 over the last three years?
5 A It has.
6 Q Has anything occurred within the
7 last couple of years to change that?
8 A No, I'm not a drinker.
9 Q At Skydive Long Island when you
10 worked there in 2009 and 2010, was there one
11 employee there that you knew you were
12 supposed to report complaints to?
13 A Say that one more time.
14 Q Was there one employee at
15 Skydive Long Island in 2009 and 2010, that
16 you knew you were supposed to bring your
17 complaints to?
18 A Are you asking if there was a
19 supervisor that if you have problems, you're
20 supposed to go to?
21 Q Yes.
22 A Not clearly, no. There was
23 not -- there were staff meetings in which Ray
24 held, so he would want people to bring
25 complaints to him, if you had them. There

1 D. Zarda 101
2 wasn't a specific chain of command that was
3 outlined to the staff or in any kind of staff
4 manual that dealt with that.
5 So Ray was the drop zone owner,
6 so if there was a problem with an employee or
7 anything, it went to Ray. Typically, if
8 there was a problem with gear, you went to
9 the rigger or Rich. If there was an issue
10 with procedures, something on a jump, like
11 that, a person would typically go to Rich and
12 talk to him about it, but it wasn't outlined,
13 specifically.
14 Q But you knew you could go to
15 Rich with your problems; correct?
16 A I felt like I could.
17 Q Did you go to Rich with any
18 problems?
19 A I did.
20 Q What problems did you go to Rich
21 about?
22 A I went to Rich about this
23 problem with Ray firing me.
24 Q Did you go to Rich with any
25 other problems?

1 D. Zarda 103
2 Rich; is that correct?
3 A Be more specific about "personal
4 issues," if you would.
5 Q There came a point in time where
6 you suffered a personal loss?
7 A Be more specific, please.
8 Q I believe a pet.
9 A Okay. Yes, there was a time
10 that that happened.
11 Q Do you recall when that
12 occurred?
13 A I do recall when that occurred.
14 That was June 22, 2009.
15 Q What occurred?
16 A My pet, my cat had a heart
17 attack in the middle of the night.
18 Q Was your cat with you on Long
19 Island at that time?
20 A She was.
21 Q How did that affect you?
22 A It was very upsetting. I think
23 anybody would be upset. It was unexpected,
24 out of the blue, in the middle of the night,
25 2 o'clock in the morning, so I was upset.

1 D. Zarda 102
2 A In 2009 and 2010, are you
3 asking?
4 Q Yes.
5 A Let me think about that for just
6 a moment, if there was anything else.
7 No, I can't think of anything
8 specifically that there was a problem that I
9 went to Rich for. The only thing we really
10 discussed work-wise, I don't know if they
11 were problems, was just me getting back on
12 board with the training program at Skydive
13 Long Island, getting me up to date because
14 some things changed over the years.
15 It wasn't a problem. It was
16 just a matter of since he was the chief
17 instructor, working me back into the system.
18 Q You felt comfortable with Rich;
19 correct?
20 A I did.
21 Q You felt you could bring any of
22 your problems to Rich's attention; correct?
23 A I did.
24 Q In fact, there were times when
25 you would confide about personal issues with

1 D. Zarda 104
2 Q Did you share that with Rich?
3 A I don't specifically remember
4 going to Rich or having a meeting or pulling
5 him aside and saying, hey, Rich, this
6 happened. I'm sure that I shared it with
7 people. I have no doubt that I shared it
8 with people.
9 Q And you shared it with people at
10 work; correct?
11 A I'm sure I did.
12 Q Did there come a time where
13 people at work told you that they felt that
14 you were unable to jump as a result of the
15 grief that you were experiencing?
16 A No.
17 Q Did you ever feel that the grief
18 that you were experiencing was preventing you
19 from effectively doing your job?
20 A No, it didn't. I did my job.
21 Continued on.
22 Q Did there come a time in 2009,
23 where you were crying at work?
24 A Where I was crying at work?
25 Q Yes.

1 D. Zarda 105
2 A I don't recall crying at work.
3 I certainly didn't -- let's see, 2009. No.
4 I didn't cry when I broke my ankle. That's
5 for sure. I don't recall. I don't recall
6 crying at work.
7 Q Did anybody at work make fun of
8 you when you lost your cat?
9 A Nobody made fun of me. Alex
10 Allen thought that he diminished it a little
11 bit. Maybe that's just his personality.
12 It's just a cat, and he didn't like cats, so
13 it's to be expected.
14 Q What was your cat's name?
15 A Little Cat.
16 Q Is that the full name?
17 A That was her full name,
18 Little Cat Moore Zarda.
19 Q Little Cat --
20 A Moore Zarda.
21 Q Moore?
22 A M-O-O-R-E, Zarda.
23 Q Is Moore a family name?
24 A It is.
25 Q As a side note, I did have a dog

1 D. Zarda 107
2 Q You believe you started to get
3 over it two days later; is that your
4 testimony?
5 A It began the healing process.
6 It helped having another cat, the same type
7 of cat. It helped out quite a bit, but yeah.
8 Q When you disclosed at Skydive
9 Long Island that you had lost your cat, were
10 your coworkers supportive?
11 A They were sympathetic and
12 empathetic. They know I'm a cat person, a
13 cat fan. They knew I had Little Cat for
14 seven years. Ray, at one time, was a cat
15 person. He even made liter boxes or cat
16 boxes. He did cat boxes at one time. He
17 knew my previous cat from 2001, and he
18 enjoyed that cat, so I think people were
19 supportive.
20 Q Was Ray supportive?
21 A I didn't directly tell Ray.
22 Lauren, I told Lauren, and Lauren said that
23 she told Ray just so Ray would know about it.
24 Q Did you require any time off
25 from work as a result of that?

1 D. Zarda 106
2 that my son named Little Bear.
3 A She was a little cat.
4 Q My son liked the TV show Little
5 Bear.
6 Did the loss of Little Cat
7 affect you emotionally?
8 A At the time, yes.
9 Q Does it still affect you
10 emotionally?
11 A I've since gotten over it. I
12 have another cat that we've added to the
13 family. I don't like the fact that she's
14 gone, but people die too. I'm used to that
15 all the time, so you get over that, and move
16 on.
17 Q When do you believe that you've
18 moved on for this?
19 A Well, I don't want to make
20 myself sound cold, but within two days, I had
21 gone to the cattery in New Jersey, and I
22 picked up and got a new cat, so I wouldn't
23 say I was over it the day we picked up the
24 new cat, but I felt it necessary to have
25 another cat with me.

1 D. Zarda 108
2 A I did not.
3 Q Did you take any time off from
4 work because of that?
5 A I did not.
6 Q You're sure of that?
7 A I am sure of that. There was a
8 possible two-day gap, but it was
9 weather-related, I believe. Little Cat died,
10 I believe, it was on a Tuesday. I'd have to
11 look at a calendar to verify that, and I
12 think we were back jumping again on the next
13 Thursday, so I think Wednesday was a weather
14 day because I'm pretty sure it rained all day
15 the next day, so I'd have to look back, but
16 I'm pretty sure of that. The next available
17 day to be at work jumping, I was there.
18 Q Are you in the habit of taping
19 conversations that you have with individuals?
20 A No, I'm not in the habit of
21 that; no.
22 Q Have you ever taped
23 conversations that you've had with
24 individuals?
25 A I have.

1 D. Zarda 109
2 Q Under what set of circumstances
3 have you taped conversations that you've had
4 with individuals?
5 A In my entire life, or --
6 Q Yes, in your entire life.
7 A You realize I'm forty-one years
8 old, so it would be difficult for me to
9 recount in this seating each and every
10 instance I've ever recorded a conversation.
11 Q As best you can.
12 A Well, the most recent would be,
13 you know, when Ray fired me, so that comes to
14 mind the most, because this is what I'm
15 focused on thinking about. I don't think
16 about some of the other things that I might
17 have recorded such as customer service calls
18 or calls to the bank or calls to Apple
19 computer regarding my computer, getting them
20 to fix it, or something like that, so I can't
21 recall every instance of recording a
22 conversation. It would be almost impossible.
23 It's pretty broad.
24 Q Why would you record a telephone
25 conversation?

1 D. Zarda 111
2 where she was. I believe she was in
3 New York.
4 Q Did you tell her that you were
5 taping your phone call with her?
6 A I did not.
7 Q So you taped it surreptitiously?
8 A Define "surreptitiously." I
9 know what the word means to me, but --
10 Q Well, why don't you tell me what
11 it means to you.
12 A Well, I think what it means to
13 me is, was I taping it covertly or to be able
14 to use it against her without her approval,
15 or something to that effect. I think that's
16 what you mean.
17 Q Well, I just mean covertly.
18 A What do you mean by "covertly,"
19 exactly?
20 Q What I mean exactly by that is
21 that the fact that it was being taped was not
22 disclosed to her.
23 A Okay, then yes. It was being
24 taped. I did not disclose it to her. It was
25 for my personal use to be able to reflect

1 D. Zarda 110
2 A Several reasons. There could be
3 legal reasons that come to mind. I did
4 record a phone call between me and Ray's
5 wife. I did record that, and again, there
6 could be legal reasons for recording a phone
7 call.
8 The best reason is just to
9 remember what was said during a phone call
10 because unless you type really fast or are a
11 court reporter or you take good notes, it's
12 just easier to record the call, and then if
13 you need to go back and listen to what was
14 said, it's right here. Sort of refresh
15 yourself, so, you know, that's the most
16 useful tool that I can think of for it.
17 Q Where were you when you tape
18 recorded your telephone conversation with
19 Ray's wife?
20 A Where in the world, or where in
21 the country?
22 Q Where, geographically?
23 A I was in the State of Missouri.
24 Q Do you know where she was?
25 A She was -- I don't know exactly

1 D. Zarda 112
2 back on to remember and to go over what did
3 she just tell me without me having to write
4 it all down as she's telling it to me because
5 I, obviously, could not keep up with that.
6 I'm not a court reporter. I don't type fast,
7 so to me for my own personal needs, it's no
8 different than if I was taking notes while
9 talking to her on the phone, and that was the
10 purpose.
11 Q Do you know if you violated any
12 laws --
13 A I checked.
14 Q -- by doing that?
15 A I don't believe I did. I did a
16 check with some of the statutes online to see
17 if that was legal for me to do from my state,
18 and from the research that I did online, it
19 was legal for one party to be recording the
20 conversation, so I do not believe I violated
21 any laws.
22 Q Now, there came a time where you
23 tapped a conversation that you had with Ray;
24 is that correct?
25 A That is also correct; yes.

1 D. Zarda 113
2 Q How many conversations with Ray
3 did you tape?
4 A That is the only conversation
5 that I can recall taping with Ray.
6 Q Why did you tape that
7 conversation?
8 A This was the termination. I
9 taped it because I knew that I had a week on
10 suspension. I knew that Ray had broke
11 several laws and made several rash decisions,
12 and I was speaking about the matter during
13 the week with some close friends and told
14 them what had happened to me. And they said
15 when you go back to work on Monday, you need
16 to document what is said when you go back to
17 work just in case something goes wrong, and
18 so I thought about that, and I heeded that
19 advice.
20 Q Who were friends that you spoke
21 to?
22 A I spoke to my partner,
23 William Moore. I spoke to another friend
24 that I've known in Massachusetts that's dealt
25 with situations complex -- complex

1 D. Zarda 115
2 Q Did you tell your partner,
3 William Moore, your friend Ira Helfand, your
4 mother, sisters, and Sal Falcone why you were
5 suspended from Skydive Long Island?
6 A I'm sure I told them what I knew
7 at the time.
8 Q What did you tell them?
9 MR. ANTOLLINO: Objection. Go
10 ahead.
11 A I can't remember. I can't
12 recall each conversation I had in detail with
13 each of those individuals during that time.
14 That would be overly broad and impossible for
15 me to tell you, but I can just say I was
16 suspended and that I had spoken to those
17 people, and I told them what had happened,
18 you know.
19 Whatever it was to whatever
20 level of detail and specificity that I would
21 have told each individual, I don't know.
22 There's no way. It was a tense moment, and
23 there's no way for me to remember that.
24 Q Did you tell them that you were
25 suspended because you were gay?

1 D. Zarda 114
2 situations.
3 Q Who was that person?
4 A His name is Ira Helfand,
5 H-E-L-F-A-N-D, and I spoke, obviously, with
6 my mom and sisters, of course. I'm sure I
7 spoke to -- well, I know I spoke to the owner
8 of the condo that I was leasing about it.
9 Told him -- I mean, he wanted to know why I
10 wasn't going to work, so we talked about it.
11 Q Who is that; what is his name?
12 A Sal, which is S-A-L. Falcone,
13 F-A-L-C-O-N-E. Sal Falcone, and they would
14 come out on, you know, periodically from
15 their condo from Westchester, so his
16 boyfriend, his name is Mike, but I can't
17 think of his last name, and they were
18 together, and Mike has his own business, and
19 I can't remember what it is, so just the fact
20 that he is a business owner in New York, we
21 talked about it some.
22 And I don't remember the details
23 of it, but they knew I was suspended, and I
24 was going back to work the following week for
25 Ray, and that I should be prepared.

1 D. Zarda 116
2 A I don't recall exactly the
3 reason that I told them. I would have told
4 them -- I most likely told them what I told
5 you about what Ray said, so you're asking me
6 to recall exactly what my conversation was
7 with five different individuals during a week
8 that I had, so I can't recall that.
9 Q Do you believe you were
10 suspended because you're gay?
11 A I believe that was the primary
12 reason.
13 Q Do you know what the secondary
14 reasons were?
15 A Well, I think there were some
16 gender issues in there, as well.
17 Q What gender issues were those?
18 A How I would conform to sex
19 stereotypes, how I act as a man. I think
20 that was a problem.
21 Q Did you act like a man?
22 A I think so.
23 Q Did you act like a woman?
24 A I don't think so, but other
25 people may think that. I don't know what

1 D. Zarda 117
2 people think.
3 Q Did you give anybody reason to
4 think that you acted like a woman?
5 A Who knows if they saw me throw a
6 softball? I don't know.
7 Q Did anybody comment on how you
8 threw a softball?
9 A I can't remember specifically
10 who and where, but people have seen me throw
11 a ball before during those times between
12 jumps when we're not jumping, we're on
13 weather hold, or whatever, and it was just
14 laughed about in the same realm as my gayness
15 being laughed about, and I just shrugged it
16 off because it does look a little funny.
17 Q So when you throw a softball,
18 you look a little funny?
19 A If I throw a softball, yes, it
20 looks a little funny.
21 Q Are you saying you throw a
22 softball like a spastic man or like a woman?
23 A I would say that if you saw me
24 throw a softball, somebody might think I was
25 gay.

1 D. Zarda 119
2 people; yeah, I think you can say that.
3 Q Do you know if there are any gay
4 professional baseball players?
5 A I don't follow professional
6 sports at all. Unfortunately, I cannot
7 answer that. I mean, I don't even know who
8 the major teams are. I get asked stuff like
9 that all the time, but I don't know.
10 Q Do you assume that there are?
11 MR. ANTOLLINO: Don't assume.
12 Objection.
13 Q You can assume if I asked you.
14 MR. ANTOLLINO: Objection.
15 Q You may disregard the objection.
16 A Statistically speaking, if
17 there's a group of ten people in a room, one
18 of us is gay, so I would have to say that
19 statistically speaking, probably so.
20 Q Other than maybe being teased
21 about how you threw a ball, can you think of
22 any other specifics?
23 A We're talking about specifics
24 of...
25 Q Of how you acted, I believe, in

1 D. Zarda 118
2 Q Why?
3 A Because of the way it looks.
4 Q Does it look like you're
5 spastic?
6 A No. It just looks, I mean, if
7 you've ever seen the stereotypical gay person
8 throw a ball, you know, the way it's thrown,
9 there's a certain look to it.
10 Q Could you explain to me that
11 look?
12 A I've never been asked to explain
13 the look. Maybe I should go out here and
14 throw the ball. It just kind of has a little
15 toss to it like I'm showing you right here
16 (indicating). It doesn't look like a
17 pitcher, a typical baseball pitcher or
18 softball pitchers, how you see straight guys
19 playing catch with the ball and the mitt. It
20 just looks different.
21 Q So straight guys have a
22 stereotype of how they play ball?
23 A I think you can tell the
24 difference when some gay people are throwing
25 a ball and playing ball versus some straight

1 D. Zarda 120
2 context of differently than other men at
3 work.
4 A Maybe some people enjoyed,
5 noted, commented on my pink hat, pink cap. I
6 had a pink ball cap. I don't know if it was
7 a ball cap or just a regular hat, but it was
8 pink, and it said rebel on it, and it was
9 bright pink, and I wore it. I wore it on
10 occasion at work. I have no hair. I would
11 wear it sometimes until about 1:00 or
12 2:00 p.m. when the sun would go behind the
13 building and I didn't need it anymore. It
14 was viewed as a feminine thing.
15 Q Your pink hat was viewed as a
16 feminine thing?
17 A It was.
18 Q Who commented on it?
19 A Everybody commented on it at
20 some point that they saw me wearing that hat.
21 Q I'd like for you to identify for
22 me the names of the people who commented on
23 it and what they specifically said, if you
24 remember.
25 A Rich put it best yesterday.

1 D. Zarda 121
2 It's so many jokes that it's almost
3 impossible to come up with one right now
4 because it was just a regular, routine thing.
5 A hat, a nice pink hat. There were various
6 comments on it. I mean, I look the way I do.
7 I don't look like a lot of gay people might
8 look. The condition that I'm in, I look more
9 athletic looking.
10 Q Are you saying that all gay men
11 don't look athletic?
12 A Not all gay men do, so I get
13 mistaken for being straight sometimes, and
14 here I was in a pink hat, so it kind of
15 didn't make sense to some people, or they
16 didn't know what to do with it.
17 Q Are you saying that outwardly,
18 you believe your appearance leads people to
19 believe that you're straight?
20 A It does oftentimes, as long as I
21 don't have any accessories on that might lead
22 people to think otherwise. People do.
23 Sometimes even when I'm out at a gay club,
24 people come up to me to ask me if I'm gay.
25 Yeah, sometimes I get mistaken for being

1 D. Zarda 123
2 finished answering the question.
3 A Let me finish answering.
4 Q Did Rich Winstock say to you,
5 nice pink hat?
6 A Again, I can't specifically
7 recall specific times and moments when the
8 pink hat was discussed. It was discussed or
9 mentioned or commented on regularly. I wore
10 it regularly in the mornings, as I said, to
11 protect my head. It drew attention. People
12 saw it. People commented on it.
13 MR. ANTOLLINO: All right. Can
14 I just say something on the record?
15 MR. ZABELL: No.
16 MR. ANTOLLINO: Not the last
17 question, but the one before that, I'm
18 going to move to strike, because
19 Mr. Zabell interrupted the witness as
20 he was finishing the question. And I
21 even tried to get Mr. Zabell to allow
22 the witness to finish answering the
23 question, but he continued to ask the
24 next question which my client fully
25 answered, and I had no objection.

1 D. Zarda 122
2 straight just on my appearance.
3 Q Are you saying that you are of
4 the belief that your outward appearance
5 indicates to people that you are straight?
6 A I get told that a lot.
7 Q Is that offensive?
8 A I don't say that it's offensive,
9 because I can't hold somebody accountable
10 just because I might look a certain way and
11 they are mistaken about it. It surprises me
12 sometimes, and it doesn't offend me. I
13 wouldn't be offended for looking straight.
14 It's just kind of funny sometimes.
15 Q When people at work, who you
16 can't really identify by name, would say,
17 hey, nice pink hat, were you offended by
18 that?
19 A No, I wasn't offended.
20 Q Did Rich --
21 MR. ANTOLLINO: Wait, wait. He
22 hadn't finished answering yet.
23 Q -- Winstock say to you, nice
24 pink hat?
25 MR. ANTOLLINO: He had not yet

1 D. Zarda 124
2 MR. ZABELL: Counselor, pursuant
3 to the Federal Rules of Civil
4 Procedure, what you have just done is
5 called a speaking objection. You are
6 not entitled to make a speaking
7 objection. If you'd like, I will give
8 you an opportunity to review the
9 Federal Rules of Civil Procedure so you
10 may confirm the representations I have
11 made are completely accurate, and that
12 you will learn to remain silent
13 throughout the rest of deposition and
14 only object in a manner which is
15 appropriate pursuant to the Federal
16 Rules of Civil Procedure.
17 To the extent that I am
18 empowered to, I deny your request to
19 strike the question and the answer and
20 ask that you remain silent throughout
21 the rest of this deposition.
22 MR. ANTOLLINO: I will make
23 objections that are appropriate.
24 MR. ZABELL: Thank you. You
25 have been doing so.

1 D. Zarda 125
2 MR. ANTOLLINO: I have.
3 MR. ZABELL: That's why I'm
4 going to request that you take me up on
5 my offer to review the Federal Rules of
6 Civil Procedure.
7 MR. ANTOLLINO: You've, once
8 again, made a derisive comment,
9 Mr. Zabell. I have made an appropriate
10 objection. I have made very few
11 objections in this deposition, and I
12 will make what I feel are appropriate
13 objections.
14 Q When in 2010, did you wear your
15 pink hat?
16 A Be more specific, if you would,
17 please. When as in, what; days of the week,
18 time of the day?
19 Q What days in 2010, while you
20 worked at Skydive Long Island, did you wear
21 your pink hat?
22 A Can't remember every specific
23 time that I took a pink cap out of my bag or
24 out of my cubbyhole in the video room and put
25 it on my head, but in general, I would wear

1 D. Zarda 127
2 pink hat at some point in my life. When,
3 during this forty-one-year-old process, I
4 can't say right now at this seating.
5 Q When people would say to you the
6 one comment you were able to relay to me,
7 hey, nice pink hat, do you recall who those
8 people were that said that to you?
9 A It's a close-quarters
10 environment. The key players that I worked
11 with, the full-timers, have all said
12 something. Probably most at the beginning of
13 the season when they seen the hat and they
14 seen me we wearing it.
15 I mean, either a sleeveless
16 shirt on because it's hot, or whatever, or
17 there was this guy wearing a pink hat, you
18 know. I can't remember exactly who said
19 what/when about the pink hat.
20 Q Would Rich say anything to you?
21 A It would be in that same
22 category of questioning of me not being able
23 to say specifically if Rich said something,
24 what he said, and when. I just know that it
25 was talked about a lot.

1 D. Zarda 126
2 my pink hat when the sun was shining.
3 Particularly, in the morning hours from when
4 we began work until about 1:00 or 2:00 p.m.
5 when the sun would go behind the building
6 where the gear area is and I no longer needed
7 protection from the sun.
8 I would wear it while I was
9 gearing up passengers on the ground. Any
10 time I was running around on the ground and
11 the sun was shining, I would wear the hat to
12 protect my head.
13 Q Have you ever seen a straight
14 man wear a pink hat?
15 A I can't say that I recall a
16 specific time I've seen a straight man wear a
17 pink cap, but I don't see it often.
18 Q But you have seen it; is that
19 what you're saying?
20 A I can't recall. I mean, you're
21 asking me to think back over the course of --
22 I'm forty-one years old -- to the time that I
23 could remember if I've ever seen a straight
24 man wear a pink hat. I will tell you that I
25 probably have seen a straight person wear a

1 D. Zarda 128
2 Q As you're sitting here today,
3 you can't identify who specifically said
4 anything about your hat?
5 A Not at this seating. To ask me
6 to think about the number of comments that
7 were made and who made them and exactly what
8 they said, that would be pretty broad.
9 Q Did you maintain a diary during
10 your employment at Skydive Long Island?
11 A No, I'm not graced with the time
12 to keep up with diaries.
13 Q Did you ever take written notes
14 of the occurrence of your days while you were
15 employed at Skydive Long Island?
16 A No. The only kind of
17 documentation that we have are jump logs.
18 Q Did you make any notations in
19 your personal jump logs?
20 A About pink hats, or just period?
21 Q About anything.
22 A My jump logs are really not
23 caught up, and there are printouts in Ray's
24 computer about how many jumps I did on a
25 given day, and that's my jump log right now,

1 D. Zarda 129
2 so there are no addendums or notes written
3 onto those. I just trust that that's the
4 number of jumps I made, and they're in a file
5 somewhere.
6 Q You made contemporaneous notes
7 of your jump logs, of your days while
8 employed at Skydive Long Island?
9 A Not that I can recall right now.
10 Q Where do you currently reside?
11 A My home of record is in
12 Missouri; Richmond, Missouri.
13 Q Can I have your actual address?
14 A Well, the actual address I
15 receive correspondence and everything at is
16 the Post Office Box that's I've had for about
17 seventeen years. That's my actual address.
18 Q Do you have an actual home where
19 you sleep when you are in Missouri?
20 A I do.
21 Q Where is that?
22 A That is located on a skydiving
23 center which is private airport called
24 Lexington Memorial Airport, and that is in
25 Henrietta, Missouri, which is just down the

1 D. Zarda 131
2 Q Where in Coram, New York did you
3 live?
4 A I was leasing a condo from the
5 aforementioned Sal Falcone that we talked
6 about, and that was -- I can remember the
7 address but not the zip code. Three
8 Appomattox, A-P-P-O-M-A-T-T-O-X, Court,
9 Coram, New York, and I believe the zip code
10 might have been 11727, but you'll have to
11 look that up yourself.
12 Q You resided there until when?
13 A In 2010?
14 Q Correct.
15 A I stayed there until, I believe,
16 September 17, and if it wasn't exactly
17 September 17, it was real close to that, real
18 close. Probably within a day, which I don't
19 remember which day exactly, but it was just
20 after the time period that I was supposed to
21 leave anyway.
22 Q Where did you go after that?
23 A I have to think about it for a
24 second.
25 I believe I proceeded back

1 D. Zarda 130
2 road from Richmond.
3 Q You actually sleep there?
4 A When I'm there, I do.
5 Q How often are you there?
6 A I haven't been home in awhile.
7 Over the course of seventeen years that that
8 place has been there, I estimate I've
9 probably been there twenty to thirty percent
10 of that entire time. It varies. It depends
11 on where I'm going to be, what I'm doing, if
12 I'm traveling, working, if I'm in Dallas for
13 an extended stay. It really varies. I have
14 no set schedule for when I'm going to be
15 there.
16 Q Beginning in July of 2010, where
17 did you reside?
18 A Beginning in July of 2010.
19 That's -- oh, beginning in July of 2010. My
20 home of record remains in Richmond, Missouri
21 at that airport.
22 Q Where were you physically
23 residing?
24 A Where I was physically in July
25 of 2010 was, I guess, in Coram, New York.

1 D. Zarda 132
2 towards Missouri. Yes, I did. I was in my
3 truck, and then I went back home to Missouri,
4 but along the way, I stopped at some other
5 drop zones.
6 Q Where did you stop?
7 A What drop zone I stopped at was
8 a drop zone that I sought employment at after
9 Ray fired me in July, and that was
10 Chicagoland Skydiving Center. At the time,
11 Chicagoland, they just moved this past
12 season, and you may have to look that up. I
13 can't remember exactly which city. I think
14 it was Hinckley, Illinois at the time.
15 They've moved.
16 Q When did you stop by
17 Chicagoland?
18 A It would have been in the third
19 week or so of September.
20 Q And you asked them for
21 employment; is that correct?
22 A At one time, I did; yes.
23 Q That September, did you ask them
24 for employment?
25 A I did not ask for employment in

1 D. Zarda 133
2 September, but rather I discussed the matter
3 of him not offering me employment in July in
4 response to Mr. Maynard terminating me in
5 June.
6 Q Why did you drive there in
7 September then?
8 A Because it is on the way home,
9 directly on the way home, and because I
10 wanted to have a face-to-face conversation
11 with the owner of the drop zone.
12 Q Did you?
13 A I did. I felt we were both
14 entitled to have a conversation about the
15 matter face-to-face.
16 Q What did your conversation with
17 him consist of?
18 A Mostly it was about the e-mail
19 exchange that we had regarding me responding
20 to his ad for help and his denying me
21 employment and the action that had taken
22 place at Skydive Long Island with Ray. We
23 discussed that and what I was going to do
24 about it, primarily.
25 Q What was discussed about what

1 D. Zarda 135
2 Q In her deposition, she testified
3 that she did complain about you; did she not?
4 MR. ANTOLLINO: Objection.
5 Q You may answer.
6 MR. ANTOLLINO: You can answer.
7 A Umm --
8 Q Yes or no?
9 A It's not a yes or no.
10 MR. ANTOLLINO: If this is going
11 to be a yes or no --
12 MR. ZABELL: It is a yes or no.
13 A I'd have to look back on the
14 record, but I think her boyfriend complained.
15 Q You don't remember any testimony
16 about her complaining?
17 A I do remember testimony about
18 her complaining.
19 Q Do you doubt that a complaint
20 was made to Ray Maynard about you?
21 A I doubt that the complaint came
22 from Ms. Orelana, and she was the passenger
23 that I took on the tandem. I doubt that.
24 Q Well, who do you think the
25 complaint came from?

1 D. Zarda 134
2 happened with you at Skydive Long Island?
3 A Well, we have the e-mails
4 between Mr. Doug Smith, he's the drop zone
5 owner, and I just told him my side of the
6 story.
7 Q What was your side of the story?
8 A I mean, what we already talked
9 about when you asked me about what Ray said
10 when he suspended me that day. I told them
11 all of that.
12 Q Did you tell Doug Smith that you
13 felt you were terminated from Skydive Long
14 Island because you were gay?
15 A I did, and I also supplemented
16 that with the ridiculous accusation that was
17 made that I inappropriately touched a female
18 passenger which he had, I think, enjoyed and
19 could appreciate my frustration with that
20 situation, based on the interaction that we
21 were having while we were having this
22 man-to-man talk.
23 Q Well, you were at the deposition
24 of Rosanna Orelana; were you not?
25 A I was.

1 D. Zarda 136
2 A I think it was clear that day
3 that the complaint came from Mr. Kengle,
4 which was Ms. Orelana's boyfriend.
5 Q Why do you think Mr. Kengle
6 complained about you?
7 A Well, he said during his
8 deposition what his reasons were.
9 Q What do you believe those
10 reasons to have been?
11 A Well, he said that I was getting
12 familiar with his girlfriend.
13 Q Do you think that that's what he
14 complained to Ray?
15 A Well, he said that that was one
16 of the reasons that he felt -- I'd have to
17 look back and see exactly what he said, but
18 that was one of the reasons. I mean, that's
19 what he said. He felt I was getting familiar
20 with his girlfriend.
21 Q Do you believe that he actually
22 conveyed that to Ray Maynard?
23 A Be a little bit more specific,
24 if you would, on what you're asking me to
25 answer there, if I -- how I believe he --

1 D. Zarda 137
2 Q Do you believe that Mr. Kengle
3 actually called up Ray Maynard and
4 complained?
5 A Oh, yes, I believe he called.
6 Q Do you believe that he
7 complained that you were getting familiar
8 with his girlfriend on the jump?
9 MR. ANTOLLINO: Objection.
10 Asked and answered.
11 A Yes, I believe he made a
12 complaint. I believe that he was testifying
13 under oath the day he said that. I wasn't
14 privy to the conversation that he had with
15 Ray, so I have to take him at his word under
16 oath that that is what he said when he called
17 Ray. To that extent, yes.
18 Q Do you believe it was that
19 complaint that Mr. Maynard was acting on when
20 he suspended you?
21 A Not entirely.
22 Q Is the complaint that Mr. Kengle
23 made about you consistent with your sexual
24 orientation?
25 MR. ANTOLLINO: Objection.

1 D. Zarda 139
2 consistent.
3 Q It doesn't sound like Mr. Kengle
4 complained about you being gay; correct?
5 MR. ANTOLLINO: Objection.
6 A In that one complaint, no, no,
7 not in that part.
8 Q You, in fact, testified that
9 Mr. Kengle complained that you were getting
10 familiar with his girlfriend; correct?
11 A That's what he said.
12 Q If he, in fact, complained, as
13 he testified he complained, then he didn't
14 complain about you being gay; correct?
15 MR. ANTOLLINO: Objection.
16 A He said that. Ray did not say
17 that. Ray said something different when Ray
18 suspended me. Ray said that they complained
19 about my sexuality coming up and that they
20 were offended by it, and that was
21 inappropriate. He said that.
22 Q Did you disclose to Rosanna Orelana
23 your sexuality?
24 A I believe I did.
25 Q Did you disclose your sexuality

1 D. Zarda 138
2 A Okay, I think I understand the
3 question somewhat. Could you maybe be a
4 little more specific?
5 Q I'd like you to try and answer
6 the question, if you can.
7 A You're asking me if the
8 complaint -- let me just reword your
9 question.
10 Q Well, I'd like you to just
11 answer my question, if you can, and if we
12 need to clarify thereafter, we will.
13 MR. ANTOLLINO: I'm going to
14 object.
15 MR. ZABELL: And you may object.
16 Q You're free to disregard the
17 objection.
18 A I want to make sure that I
19 understand the question clearly so that I can
20 give you an accurate answer. I think what
21 you're asking me is if Mr. Kengle's complaint
22 was about me getting familiar with his
23 girlfriend is consistent with me being gay?
24 Q Yes.
25 A No, I don't think that it is

1 D. Zarda 140
2 to Ms. Orelana because you sensed that she
3 was uncomfortable?
4 A I believe so.
5 Q Did you disclose your sexuality
6 in an effort to allay her discomfort?
7 A I believe so, yes, and to make
8 me more comfortable, as well.
9 Q Who was the customer on that
10 jump?
11 A Who was the customer?
12 Q Yes.
13 A My particular customer on that
14 particular lift, on that load, was Ms. Orelana.
15 Q Did you agree with Mr. Winstock
16 yesterday when he said your primary role is
17 to go from the airplane to the ground safely?
18 A That is correct. That is our
19 number one priority, to bring the customers
20 back safely --
21 Q Did you --
22 A -- above all else.
23 MR. ANTOLLINO: Let him finish.
24 Q Did you agree with him that your
25 secondary role is to make the jump experience

1 D. Zarda 141
2 enjoyable for the customer?
3 A I agree that that is another
4 goal. Whether or not it's two or three, I'd
5 have to think about a little bit, but it is
6 one of our primary goals. Our other primary
7 goal is to make sure the customer is having a
8 good time, to the best of our ability, and to
9 the extent that we can do so without breaking
10 any rules or regulations of the FAA, the
11 United States Parachute Association, our
12 licensing manufacturers that give us our
13 licenses.
14 All of those things that we have
15 to take into account when we're trying to
16 give our customers that good experience. We
17 have to think about every single one of those
18 things on every single jump, so that is a
19 goal. We want to have a good time, and
20 whatever we can do to do that, but sometimes
21 it's not necessarily the second priority. It
22 might be three or four. There could be other
23 things going on that you have to worry about
24 that's number two.
25 Q You chose to disclose your

1 D. Zarda 143
2 hour, so I was at the drop zone probably
3 about two hours. Mr. Smith was flying the
4 aircraft. I had to wait for him to land the
5 aircraft for me to have an opportunity to be
6 able to talk to him.
7 Then sunset came, and I
8 discussed staying the next day and making
9 another jump or making a fun jump because I
10 didn't make another jump. I said, you know,
11 I'm within eight hours of home, maybe I
12 should just go for it, and he said, you
13 probably ought to try to just get home,
14 sounds like a long trip, so I decided to
15 leave and go home.
16 Q Then you went home to Missouri?
17 A I did. I made it that far.
18 Q Is it safe to say that in the
19 third week of September, you made it back to
20 Missouri?
21 A I would say closer to the fourth
22 week, the end of the September. Looking
23 back, it was in the late 20s of the calendar.
24 Q How long did you stay in
25 Missouri for at that time?

1 D. Zarda 142
2 sexuality to Ms. Orelana because you sensed
3 that she was uncomfortable; is that correct?
4 A I believe so, yes.
5 Q It came back to you that it did
6 not allay her discomfort; correct?
7 A Apparently not, if they called
8 and complained about it. She -- they must
9 not have -- and when I said "they," I mean
10 Mr. Kengle called and complained, but they
11 were together in it. I think Mr. Kengle was
12 mentioned as the brains of the operation, or
13 something to that.
14 MR. ANTOLLINO: Adding insult to
15 Ms. Orelana.
16 MR. ZABELL: Counselor, remain
17 silent, please.
18 Q I believe you testified that in
19 the third week of September of 2010, you
20 stopped by the Chicagoland Skydive Center; is
21 that correct?
22 A Chicagoland Skydiving, yes.
23 Q How long did you stay at
24 Chicagoland Skydive Center?
25 A Our conversation was about one

1 D. Zarda 144
2 A Before I went somewhere else,
3 you mean?
4 Q Yes.
5 A Approximately -- I'm pretty
6 busy. I do a lot of traveling, so I don't
7 have my travel itinerary exactly in front of
8 me, so I can't tell you for sure if I went
9 somewhere else between the next trip, but the
10 next trip that I can remember that I went on
11 was a cruise.
12 Q A cruise?
13 A Yes.
14 Q From when to when did you go on
15 a cruise?
16 A That year -- it shifts every
17 year by a week, so the dates, I don't -- it's
18 typically the third week in October, so I
19 believe that I would have left somewhere
20 around the middle of October because I
21 usually go a little early. It's a yearly
22 event, and I come back a little after the
23 event, so I usually go out there before I go
24 on the cruise ship and make some fun jumps,
25 and then go on the cruise.

1 D. Zarda 145
2 Q Where do you cruise from?
3 A It's typically from L.A. to
4 Mexico and then pack to L.A. Although,
5 sometimes it's from San Diego, but most of
6 the time, it's from L.A.
7 Q What kind of a cruise is this?
8 A It's a seven-day Mexican Riviera
9 cruise.
10 Q Who do you go on this cruise
11 with?
12 A Fellow passengers on the cruise.
13 Depending on the cruise ship and the size of
14 the ship, which varies from year to year, it
15 could be anywhere between 2,000 and 3,400
16 other passengers.
17 Q Do you go with a group?
18 A I do not go with a group. I go
19 by myself, but there are people that I know
20 on the cruise ship.
21 Q How do you know these people?
22 A From previous cruises and from
23 introductions from their friends to other
24 friends. It's over the years. I've gotten
25 to know a lot of people.

1 D. Zarda 147
2 A No, I did not.
3 Q Did you attempt to work while
4 you were out there?
5 A No.
6 Q You stayed there for how many
7 weeks before your cruise?
8 A It's not weeks. I would have to
9 go back and look at the itinerary
10 specifically, but typically, I'll go out
11 there a few days, so that can be four or five
12 days, so I can jump, and I like to leave
13 myself some leeway in case we have crappy
14 weather. I don't want to show up a day
15 before the cruise or two, and not get to
16 jump. Typically, it's four to five days, and
17 then we go on the cruise.
18 Q The way you talk about jumping,
19 it almost seems like you need to get your
20 jumps in in order to keep your head on
21 straight, in order to maintain your mental
22 health; is that accurate?
23 A No, I won't say that at all. I
24 won't say that that's accurate. I would say
25 that I've been jumping for almost twenty

1 D. Zarda 146
2 Q How did you get from Missouri to
3 L.A. in October of 2010?
4 A I'm sure I flew. I normally
5 fly. The only time I drove was in 2009.
6 Q Where did you stay in California
7 in October of 2010?
8 A Before or after the cruise?
9 Q Before the cruise.
10 A Typically, I would stay at the
11 drop zone in Paris, California; Paris Valley
12 Skydiving Center. It's a very large
13 commercial facility, and they have bilitines
14 for visiting skydivers.
15 Q They have what?
16 A Bilitines. Bilitine is housing
17 or places to sleep. Bilitine, buildings,
18 bunkhouses, accommodations, work
19 accommodations. They have accommodations for
20 visiting jumpers.
21 Q Do you pay?
22 A You do pay a small fee. It's
23 minimal.
24 Q Did you work while you were out
25 there?

1 D. Zarda 148
2 years, just like Rich Winstock yesterday.
3 We're almost the same age. We started in the
4 same year. We are dedicated to it. We are
5 passionate about it. We're professionals,
6 and we both share the same feeling in it, and
7 it's typically a comradery of a relatively
8 small group of society, the population, that
9 we all enjoy. I won't say that I need it. I
10 enjoy it.
11 Q Do you get depressed if you
12 don't get to jump for a period of time?
13 A Be more specific about do I get
14 depressed; about what?
15 Q About jumping.
16 A Do I get depressed about
17 jumping? Well, if I haven't jumped for a
18 period of time, then I seek and want to jump
19 soon.
20 Q What period of time is that?
21 A It varies. It depends on, you
22 know, if I'm really busy with school or if
23 I've had a hectic couple of weeks, or you
24 know, some people, you know, fun jumpers have
25 a hard time getting through the work week

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1 D. Zarda

2 without thinking about jumping. They come

3 out during the week, in fact, after work and

4 make a jump to calm themselves down. It just

5 varies. It depends. I know I can feel when

6 I need to go make a jump.

7 Q Have you ever made a jump just

8 to calm yourself down?

9 A What do you mean by calm myself

10 down?

11 Q Exactly how you just used the

12 term.

13 A I plan on making a jump tomorrow

14 or Sunday or several jumps, so it's been a

15 little while already. I've got a lot of

16 things going on, and it's a nice, relaxing

17 thing. I think we're going to have great

18 weather, and I'm going to be with some

19 friends, and I'm going to have a good time.

20 Q Where are you jumping tomorrow?

21 A Likely, if the weather does hold

22 out, I will go to The Ranch which is in

23 Gardiner, New York. It's a large commercial

24 drop zone.

25 Q You went out to California in

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1 D. Zarda

2 for another couple more fun jumps; is that

3 correct?

4 A That's correct. Some people

5 jump after the cruise, as well, about the

6 same period of time.

7 Q Where did you go after those fun

8 jumps at the conclusion of your cruise?

9 A 2010; right?

10 Q Correct.

11 A I just went through this

12 routine, so I have to think about it for a

13 second. Okay. All right. Yeah, it's coming

14 back to me here. I went back to Missouri.

15 Q What did you do in Missouri?

16 A I was taking care of things I

17 needed to do around the house before it got

18 too cold to do; maintenance outside because

19 November, and, you know, cut the grass last

20 time, do maintenance, painting, whatever, you

21 know, anything that needed to be done outside

22 before it got too cold. I was doing that and

23 getting prepared for school.

24 Q You went back to Missouri in the

25 end of October, early November to do some

150

1 D. Zarda

2 the third week of October for some fun dives;

3 is that what you call them; fun jumps?

4 A Just to clarify for the record.

5 Typically, jumpers that work in the industry

6 will call work jumps, work jumps, and jumps

7 when we're not working, where we are actually

8 customers of the drop zone and we're actually

9 paying for a spot on the airplane and we're

10 just jumping for fun, we call those fun

11 jumps.

12 All jumps are fun, but there's a

13 distinguishing -- we distinguish between work

14 jumps when we're actually working and getting

15 paid and jumps where we're actually just

16 playing, and those are fun jumps. Just to

17 make it easier for us to have this dialogue.

18 Q So you went to California in the

19 third week of October for some fun jumps

20 before your cruise; is that correct?

21 A Yes, that's correct.

22 Q Then you went on the cruise for

23 seven days; is that correct?

24 A That is also correct.

25 Q Then you stayed in California

152

1 D. Zarda

2 maintenance; is that correct?

3 A Yes, and prepare for school.

4 Q What school did you go to?

5 A I did go to, and I am currently

6 going to Embry-Riddle Aeronautical University.

7 Q Where is Embry-Riddle

8 Aeronautical University?

9 A Well, it's a worldwide school.

10 It's the largest aeronautical university, so

11 they have locations, you know, primary

12 campuses; Daytona Beach, Florida and

13 Prescott, Arizona. However, I'm a worldwide,

14 online student.

15 Q You were preparing to attend

16 Embry-Riddle via computer?

17 A That's right. These are

18 compressed terms that move very quickly, so

19 once they get started, you really do need to

20 prepare before classes start so you can be

21 seamlessly able to go through it.

22 Q When did you start going to

23 Embry-Riddle, initially?

24 A The very first class I think I

25 ever took with them was back in 2006 or 2007.

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1 D. Zarda

2 Q What is the course of study that

3 you're pursuing?

4 A It's a Bachelor's of Science in

5 aviation management, logistics technical

6 specialty, and I'm also seeking a minor with

7 that in international relations.

8 Q The classes that you started

9 taking in 2010 or in and around November of

10 2010, when you did sign up for those classes?

11 A Enrollment is between the 1st of

12 November and when classes start, which is

13 always on the 15th of the month, so I would

14 have enrolled in that window, or I would have

15 e-mailed my advisor a few days prior or so.

16 I would have to look back and see, but it's

17 in that window.

18 Q And you had intended to take

19 those classes; correct?

20 A Yes, I did.

21 Q For how long did you intend to

22 take those classes?

23 A How long did I plan on going to

24 school for that term, do you mean?

25 Q Yes, in November of 2010.

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1 D. Zarda

2 A I know that -- yeah, I know that

3 it's -- I'm going to be going to school and

4 that the likelihood of being able to do much

5 of anything else was pretty slim.

6 Q Did anything in November of 2010

7 affect your ability to concentrate on your

8 classes?

9 A Yes.

10 Q What was that?

11 A This situation that I'm involved

12 in with Ray.

13 Q You mean the situation where you

14 were terminated?

15 A The whole thing; the

16 termination, the suspension, the false

17 accusations, this case, all of it.

18 Q Did Ray falsely accuse you of

19 something?

20 A Yes, he did.

21 Q What did he falsely accuse you

22 of doing?

23 A He falsely accused me of

24 inappropriately touching a tandem passenger

25 at the hip, and he knows better that that

154

1 D. Zarda

2 A Until this is done. Until my

3 degree is done. I go to school every

4 November, so it's just planned.

5 Q So since 2006, every November,

6 you're going to be attending school online?

7 A I hadn't made that commitment to

8 that level back in '06 or '07, but certainly,

9 in the last, I think, four Novembers, I've

10 been at that, yeah.

11 Q So from November of 2008 --

12 A I believe so, and I'd have to

13 look and see about that, but I think that's

14 right. Eight, nine, ten, eleven; yes.

15 Q So from November 2008, you

16 committed yourself to begin going to school

17 every November; is that correct?

18 A Definitely for that term, yes.

19 Q How long does a November term

20 last for?

21 A It's eleven weeks.

22 Q You know for that eleven-week

23 period since 2008, you're going to be going

24 to school, and you're not going to be doing

25 anything else; is that correct?

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1 D. Zarda

2 didn't happen.

3 Q Didn't Mr. Kengle accuse you of

4 that?

5 A Well, we just learned that four

6 weeks ago, so that's the first time that I've

7 heard anybody else, other than Mr. Kengle say

8 that, so up until that point, that verbatim

9 came from Ray Maynard, and so Ray accused me

10 of it, and what's even worse is that Ray is

11 also an instructor. He's been jumping around

12 forty years, tandem instructor and an owner

13 of a drop zone, and he knows better. He

14 knows better. He knows better that that

15 didn't take place.

16 Q But you know that Mr. Kengle

17 complained about it taking place; correct?

18 A I know now that Mr. Kengle

19 complained about it, but before Mr. Kengle

20 testified, the only thing I knew was what Ray

21 said, so that's all I have to go on, so Ray,

22 in effect, is the person that accused me of

23 it.

24 Q But Ray said to you that he

25 received a complaint, and he told you what

1 D. Zarda 157
2 the complaint was; correct?
3 A Through that line of questioning
4 that we talked about earlier where I was
5 asking if there was anything else, and Ray
6 said, yeah, and he mentioned -- if we have to
7 look back to see exactly what I said -- where
8 he mentioned the inappropriate touching,
9 well, Ray said that.
10 Q Ray said that the customer
11 complained about it; correct?
12 A He said the customer complained
13 about it, yes. I would still --
14 Q In November --
15 MR. ANTOLLINO: I'm sorry. The
16 witness hasn't finished answering the
17 question --
18 MR. ZABELL: Excuse me. You
19 have a right to object. Other than
20 that, your role is to remain silent.
21 MR. ANTOLLINO: My role is to
22 allow the record to be clear to let the
23 witness answer the question. Just like
24 you don't want him to interrupt you,
25 you need to let him finish answering

1 D. Zarda 159
2 Q -- answering that.
3 A All right. Repeat that
4 question, please.
5 Q In November of 2010 when you
6 started taking classes, do you know what
7 classes you took?
8 A Yes.
9 Q What classes did you take?
10 A From memory, I'll have to think
11 about this a little bit. Business
12 information systems, business law -- give me
13 just a minute -- and some other management
14 class. I can't...
15 Q One other management class?
16 A Yeah. It was management
17 production operations, or something to that
18 effect. It was a management-driven aviation
19 class. The specific title of that class, I
20 can't remember, but the other two, because
21 they were hard, I remember. Business law and
22 business information systems.
23 Q Do you know what your grade was
24 in the business information systems class?
25 A Yes. I got an A in all three

1 D. Zarda 158
2 the question.
3 MR. ZABELL: You, sir, are
4 interrupting the record, and you were
5 doing nothing to keep the record clear
6 and straight.
7 Again, you may object to the
8 form of a question. Beyond that, your
9 role is to remain silent --
10 MR. ANTOLLINO: No, that's not --
11 MR. ZABELL: -- please do so.
12 MR. ANTOLLINO: I'm allowed to
13 insist that you allow the witness to
14 answer the question, and I will
15 continue to do so if you continue to
16 interrupt the witness.
17 Q In November of 2010 when you
18 started taking your classes, do you know what
19 classes you took?
20 A If I could, I would like to
21 finish answering the question.
22 Q I just asked you a question, so
23 you can start by --
24 MR. ANTOLLINO: Just answer his
25 question.

1 D. Zarda 160
2 classes.
3 Q That's pretty good; right?
4 A I guess. I suppose it is.
5 Q Were you happy with your grades
6 in all three classes?
7 A I was happy and surprised.
8 Q You were surprised that you did
9 so well?
10 A I was surprised I made it, yes.
11 Q But you did?
12 A I did.
13 Q Do you take classes other than
14 in November of each year?
15 A Yes.
16 Q When is the next period of time
17 that you take classes?
18 A Following the eleven-week term
19 that begins on November 15, I take classes in
20 the next term.
21 Q When does the next term run
22 from?
23 A It runs from February 15 until
24 the first week of May. Terms start on the
25 15th of every month all year long, but if

1 D. Zarda 161
2 you're already in a term, obviously, you're
3 going to finish that term, and then start
4 another one, so that's how I do it.
5 Q If you started a class
6 November 15, you would have gone to school
7 from November through December through
8 January; correct?
9 A That's right.
10 Q Did you do anything between the
11 end of the November term and the beginning of
12 the February term?
13 A So what you're asking me is in
14 the little break there?
15 Q Yes. What did you do?
16 A I went on a cruise.
17 Q Where did you cruise to?
18 A That was a Caribbean cruise; one
19 that I had booked a year in advance.
20 Q Did you have fun on the cruise?
21 A It was very refreshing after
22 what I'd just been through, so yes, I had a
23 good time.
24 Q You know, I didn't even ask
25 before, and it was rude of me. Did you have

1 D. Zarda 163
2 exactly what account I paid the money from,
3 but I typically buy those cruises a year in
4 advance, so if it was 2010, I probably paid
5 for it somewhere in late 2010 or early 2011
6 on a credit card because you have to put a
7 deposit down.
8 I think for the 2010 one, I went
9 ahead and signed up on the ship before
10 getting off actually for that particular
11 year. Sometimes I do that. Sometimes I
12 don't. Sometimes they make you a deal if you
13 sign up on the ship before you disembark, so
14 it just depends on what the deal is. If it's
15 good, then I'll sign up.
16 Q Is it safe to say that one of
17 your hobbies is going on cruises?
18 A No, it isn't, because I wouldn't
19 define that as a hobby.
20 Q What would you define it as?
21 A Going on a cruise?
22 Q Yes.
23 A Social experience. Maybe a
24 short vacation. I wouldn't call it a hobby.
25 Q Is it your preferred social

1 D. Zarda 162
2 a good time when you cruised from L.A. to
3 Mexico?
4 A It's a fun cruise, yes. I go on
5 it every year, you know, if it wasn't fun, I
6 wouldn't go on it.
7 Q You had fun when you cruised
8 from L.A. to Mexico; is that correct?
9 A I had fun on the cruise, yes.
10 Q You enjoyed the cruise?
11 A I did.
12 Q Was it refreshing, as well?
13 A It is. It takes me away from
14 these worldly problems and gives kind of a
15 moment where I can be with some good friends
16 and good people and do some jumps and get
17 away from it.
18 Q How did you pay for the cruise
19 from L.A. to Mexico?
20 A Specifically, what payment
21 method or --
22 Q Where did you get the money to
23 pay for it?
24 A That would be an accounting
25 thing that I wouldn't be able to tell you

1 D. Zarda 164
2 experience or a preferred social experience
3 for you?
4 A It's not my preferred, but it is
5 a social experience that I enjoy. I mean, I
6 have lots of social experiences I enjoy.
7 Jumping is certainly one of them, so it's one
8 of them. I enjoy it.
9 Q This cruise to the Caribbean in
10 that break between January and February,
11 where did that leave from?
12 A Fort Lauderdale, Florida.
13 Q Did you arrive early and stay
14 late again so you could jump?
15 A I didn't get that luxury on that
16 one. The terms, again, are compressed.
17 They're very difficult. They're eleven
18 weeks. I had three finals to take and a term
19 paper to write and prepare for this case, the
20 interrogatories and admissions that you
21 requested, all in that time frame, so there
22 was some -- I had a number of things going
23 on, so I wasn't able to book any previous
24 time for anything other than making it to the
25 cruise ship terminal one day in advance to

1 D. Zarda 165
2 get on the ship.
3 Q That February to May courses
4 that you took, how many courses did you take?
5 A I took a full-time course load
6 of two courses and two courses is full-time
7 because of the compressed nature of the
8 classes.
9 MR. ANTOLLINO: Can we take a
10 bathroom break?
11 MR. ZABELL: Once I'm finished
12 with this line of questioning.
13 MR. ANTOLLINO: Okay.
14 Q So the previous semester you
15 took three classes. This semester you took
16 two classes; correct?
17 A I took three, and that was
18 overkill, and I'd never done that before, so
19 two classes is full-time, and I'm sticking
20 with the two classes.
21 Q What two classes did you take?
22 A In the February one?
23 Q Yes.
24 A There were more aviation
25 management, 400-level courses, and again,

1 D. Zarda 167
2 have thirty days to return it to you
3 sworn and signed by the three.
4 MR. ZABELL: We'll make it
5 available for him to review.
6 Are we exchanging deposition
7 transcripts?
8 MR. ANTOLLINO: Let's talk about
9 it later. I tend not to proceed too
10 unreasonably, but I'd like to talk
11 about that later.
12 MR. ZABELL: Wait. You tend to
13 not to proceed unreasonably?
14 MR. ANTOLLINO: I tend not to
15 proceed unreasonably with most of my
16 adversaries, but I want to make a deal
17 with you, if you're asking me for
18 something.
19 This is wasting our time here
20 today, so let's finish with the
21 questions, and let's talk nicely after
22 the deposition about it; okay?
23 MR. ZABELL: I will endeavor to
24 talk nicely after the deposition with
25 you.

1 D. Zarda 166
2 without having it in front of me, one of them
3 was operations. They were so similar in the
4 title that particular term that I kept
5 getting them almost mixed up, but Management 420
6 and Management 424, I can tell you, if you
7 want to look up the course syllabus.
8 Q What kind of grades did you get
9 in those classes?
10 A I received an A.
11 Q In both of them?
12 A Yes.
13 MR. ZABELL: I think your
14 attorney wants to take a bathroom
15 break.
16 THE WITNESS: Sounds like a good
17 idea.
18 (Whereupon, a recess was taken
19 from 1:44 p.m. to 1:54 p.m.)
20 MR. ANTOLLINO: All right,
21 Mr. Zabell, since you've mentioned it
22 in the previous three depositions, I
23 just want to make sure that I put on
24 the record that my client would like to
25 review a copy of the transcript and

1 D. Zarda 168
2 Does that work for you, Mr. Zarda?
3 THE WITNESS: Yup, I'm good.
4 Q Before the break, we were
5 talking a little bit about why you were upset
6 with Mr. Maynard in that until you heard
7 Mr. Kengle's deposition testimony, you blamed
8 the complaint on Mr. Maynard; is that
9 correct?
10 MR. ANTOLLINO: Objection,
11 characterizes.
12 Q You many answer.
13 A I don't want to have you put
14 words in my mouth. Did I blame -- the only
15 information -- the only person I could hold
16 accountable for the accusation that was being
17 made to me at that time was Mr. Maynard,
18 because I didn't hear the customers complain
19 to me or my supervisor.
20 It wasn't written up on a piece
21 of paper for me to sign in the form of a
22 reprimand by Ray. There wasn't a statement,
23 letter, an e-mail, or anything generated by
24 the client for me to see that's tangible or a
25 recording or anything. This was just words

1 D. Zarda 169
2 from Ray's mouth that the customer said.
3 That's it.
4 Q Did you not believe Ray when he
5 relayed this information to you?
6 A It was hard to believe that
7 somebody could have said something like that,
8 so that led me to quite a few things. I was
9 angry myself because I thought it was so
10 ridiculous. I didn't understand it
11 completely, and so I didn't know what to make
12 of it. It was an unbelievable thing to hear,
13 so whether it was truth or not, to hear that,
14 it was an unbelievable thing to hear.
15 Whether that means Ray Maynard
16 was lying or not, that was a big question
17 mark that's been hanging over the whole
18 thing. What did the customer say; what did
19 they not say? Well, I think we found a
20 little bit of it out of what they said in
21 that deposition, so we know a little bit more
22 now about what was said, but for a long time,
23 I really wasn't sure whether Ray was flat-out
24 lying or exaggerated it or what.
25 Q Now that you heard Ms. Orelana

1 D. Zarda 171
2 Q Please.
3 A It could be just that Mr. Kengle
4 is insecure and maybe his insecurity led him
5 to say things and behave and act in a manner
6 that an otherwise normal person would not in
7 that situation. That's one reason. Another
8 reason could be, and I brought this up in the
9 termination to Mr. Maynard, maybe they were
10 just looking for a free jump, and they ended
11 up getting one, so that was stricken down
12 quite abruptly by Mr. Maynard as even a
13 possibility, so that could have been a
14 motivation. I don't know, beyond those two
15 things, what the motivations might have been.
16 Q Do you know what Mr. Maynard's
17 motivation may have been for terminating you?
18 A What his motivation may have
19 been? Be a little more specific on
20 terminating me in relation to me touching the
21 girl inappropriately, please.
22 Q Do you know what Mr. Maynard's
23 motivation was for terminating you in or
24 about July of 2010?
25 A All I know is what he said, so I

1 D. Zarda 170
2 and Mr. Kengle testify, do you think that Ray
3 made up what he relayed to you in that
4 meeting?
5 A I'm still not sure how I feel
6 about the truth of the testimony that was
7 given because so much time has passed.
8 There's been opportunities for the customer
9 and Ray to speak. There has been
10 opportunities for them to have their stories
11 corroborate, so I'm not sure that I'm
12 convinced as to the truthfulness of that
13 testimony that was given.
14 Q So now you doubt the
15 truthfulness of Ms. Orelana and Mr. Kengle?
16 A I doubt the truthfulness of the
17 whole thing. I know they made a complaint.
18 Whether it was genuine or not is probably
19 what's most in doubt.
20 Q Do you know why they would
21 fabricate a complaint against you?
22 A It could be for a number of
23 reasons. It could be -- do you want me to go
24 through some of the reasons that I think it
25 might be?

1 D. Zarda 172
2 can only attest to his motivations being
3 associated with what he said, so I can't
4 superimpose anything on Mr. Maynard's thought
5 processes, because they're rather abstract at
6 times, and they don't always make sense.
7 Q So you think he terminated you
8 for the reasons he told you he terminated
9 you; is that correct?
10 A Sounds like that's what I'm
11 saying.
12 Q What were those reasons again?
13 A Well, because I'm gay and that I
14 brought that up, or it was mentioned before
15 the customers and they were offended by it,
16 and that that was inappropriate and for
17 touching my female passenger in a way that
18 made her feel uncomfortable at the hips.
19 Q Both of those things actually
20 occurred on the jump; is that correct?
21 MR. ANTOLLINO: Objection.
22 A No. Let's be more specific when
23 you say this occurred.
24 Q As part of the jump, you had to
25 touch the customer in the hip area; is that

1 D. Zarda 173
2 correct?
3 A As part of the jump, yes, you do
4 have to touch the customer in the area of the
5 hips, but you don't have to touch them
6 inappropriately.
7 Q And you sensed that the client,
8 Ms. Orelana, was uncomfortable when you were
9 touching her in the hips; is that correct?
10 A No, that's not correct. I did
11 not sense that she was uncomfortable when she
12 was being touched around the hips. I just
13 sensed at some point, that she was
14 uncomfortable.
15 Q In an effort to allay her
16 discomfort, you revealed your sexual
17 orientation; is that correct?
18 A I believe that to be correct;
19 yes.
20 Q So those things happened during
21 the jump that you had to touch her hips, that
22 she felt discomfort, and that you revealed to
23 her your sexual orientation. Those three
24 things happened, and they may have happened
25 abstractly, but they happened over the course

1 D. Zarda 175
2 to each other in that question, and I'm
3 making sure that those thoughts are separate
4 so that they don't get inflated. I did not
5 sense that she was uncomfortable, because I
6 was putting my hands close to her hips.
7 Q But you don't recall when you
8 sensed that she was uncomfortable; correct?
9 A That's not correct either. We
10 haven't gotten to discuss much about what
11 happened in the airplane, so we haven't
12 talked about that. I believe that she became
13 uncomfortable around the time when I
14 mentioned something about my sexuality, and
15 so how close that was to the point when I
16 have to touch around her hips, I don't know,
17 because touching around the hips can take
18 place from the time that we sit down on the
19 benches from when we get in the airplane,
20 through the airplane ride, up to altitude,
21 through the hookup process, through sliding
22 down the benches to the door and out the
23 door, so that encompasses a time period of
24 fifteen to twenty minutes.
25 Q You know you testified before

1 D. Zarda 174
2 of her jump experience; is that correct?
3 MR. ANTOLLINO: Objection to
4 form.
5 A The way the question -- I think
6 it was a multiple question. The way it was
7 asked to me had different parts, so I broke
8 it down to make sure that they don't get
9 confused or inflated.
10 Q Let me break it down again.
11 A Okay, break it back down.
12 Q During the jump with Ms. Orelana,
13 at some point, you put your hands on her
14 hips; is that correct?
15 A I would put my hands in the
16 location around the hips that's necessary to
17 be able to perform the functions that I am
18 required to do as a tandem instructor.
19 Q And at some point, you sensed
20 that Ms. Orelana was uncomfortable; is that
21 correct?
22 A At some point, I sensed that she
23 was uncomfortable, but I can't say it was
24 because I was putting my hands anywhere near
25 her hips, so those two things are too close

1 D. Zarda 176
2 that you only disclosed your sexuality in an
3 effort to allay her discomfort; right?
4 A I think that's what I said
5 earlier.
6 Q So the discomfort came first,
7 and then the discussion about your sexuality
8 came second; correct?
9 A Sounds that way, yes.
10 Q Not the other way around?
11 A The other way around would have
12 been -- tell me what the other way around
13 would have been.
14 Q The other way around would have
15 been what you just testified; that first you
16 discussed your sexuality, and then she became
17 uncomfortable.
18 A Then she became uncomfortable.
19 That would be --
20 Q It didn't happen that way;
21 right?
22 A No, I don't think so. I'm not
23 real sure what the order of her discomfort
24 was. What I'm saying is this -- let me make
25 this clear. I don't think that her

1 D. Zarda 177
2 discomfort came from me touching her around
3 the hips.
4 Q Even though that's what she
5 testified to; correct?
6 A I don't think that's exactly
7 what she was saying that day in her
8 testimony. I think her boyfriend was the one
9 that was really saying that.
10 Q But the one thing that you are
11 sure about is that, first, the discomfort
12 came, and then came the conversation about
13 your sexual orientation; correct?
14 A First the discomfort came, and
15 then I brought that up to allay her
16 discomfort. Sounds like it.
17 Q That February to May group of
18 classes, aviation management and one of the
19 operations classes, you got As in those, as
20 well; correct?
21 A I did.
22 Q What was the next set of classes
23 you took?
24 A Well, that brings us to this
25 term, I believe.

1 D. Zarda 179
2 MR. ANTOLLINO: He warms up to
3 everyone, actually.
4 MR. ZABELL: I'm not really a
5 bad guy. Just Mr. Antollino doesn't
6 care for me all that much.
7 THE WITNESS: I don't think
8 anybody said you're a bad guy.
9 MR. ZABELL: I would hazard to
10 guess that Mr. Antollino, if he hasn't
11 said it, he certainly thought it.
12 THE WITNESS: Maybe.
13 A So when classes ended in May of
14 this year, I had plans made to go on a trip
15 overseas.
16 Q You had plans?
17 A I had made plans, and then I
18 executed those plans.
19 Q With precision?
20 A I wouldn't say it was with
21 precision, but I would say it was kind of a
22 sloppy buildup to it, but we had some
23 roadblocks along the way.
24 Q Where did you go?
25 A I went to Norway.

1 D. Zarda 178
2 Q So from May --
3 A No, wait a minute. Let's see.
4 We're talking -- yeah, this term because it's
5 2011, so yeah, that brings us to this term.
6 Q What did you do from May of 2011
7 to this current term, the November 15, 2011,
8 term; what did you do?
9 A I did a lot of the things.
10 Q A couple of cruises?
11 A No, no cruises. Well, I just
12 went on a cruise, so...
13 Q Stop lying to me, sir.
14 A No, I cannot lie.
15 Q Now, you know that I said that
16 as a joke.
17 A Oh great. I'll take it as a
18 joke.
19 Q Okay. I see you're starting to
20 warm up to me. It's okay.
21 A No, I'm just --
22 MR. ANTOLLINO: I told him not
23 to, but go ahead.
24 MR. ZABELL: He clearly has. I
25 would imagine that that's the case.

1 D. Zarda 180
2 Q Did you have fun?
3 A I had fun, yes.
4 Q Any chance you met your attorney
5 overseas?
6 A No, I did not.
7 MR. ANTOLLINO: I would have
8 liked it to have, but it didn't work
9 out that way.
10 MR. ZABELL: Well, I know you
11 had told me on several occasions that
12 you were out of the country.
13 MR. ANTOLLINO: Yes, we were in
14 different parts of Europe.
15 Q How long were you in Norway for?
16 A It ended up turning into two
17 months.
18 Q Two months. Now, I have to say
19 that the way you're saying that it turned out
20 to be a little over two months, you had a
21 very guilty look on your face, so that's
22 causing me to ask --
23 A Guilt is a relative term.
24 Q -- what's that?
25 A It's a relative term.

1 D. Zarda 181
2 Q Guilt is?
3 A That's a relative, relative
4 term.
5 Q Tell me what you did for the two
6 months, and why you're smiling when you're
7 talking about it.
8 A The reason I'm smiling when I
9 talk about it is because it was a very good
10 trip. I had a great time that allowed me to
11 get away from the horrible winter that I had
12 which was dealing with this case and the
13 classes and other things that were going on
14 that were difficult, and it was an
15 unbelievable breath of fresh air, a nice
16 place.
17 Q I've got to stop you. You said
18 some other things that were going on this
19 winter?
20 A Just minor stuff.
21 Q I'm going to need to know what
22 they are; you know that, right?
23 A Okay, go ahead. Ask me.
24 Q What were those some other
25 things that you just referenced?

1 D. Zarda 183
2 hours is considered full-time, twelve hours
3 is maximum. They don't even let you take
4 more than twelve, so that just gives you an
5 idea of what kind of class load it is with
6 this university, and it's a leading
7 university, and they don't mess around.
8 Q How did you do on your classes,
9 by the way?
10 A I did good. I struggled. It
11 was very hard. It took a lot out of me, but
12 I did okay.
13 Q You got As on them; right?
14 A I did.
15 Q Prior to 2009, how were your
16 grades?
17 A They were the same.
18 Q All As?
19 A I've been getting good grades.
20 I wouldn't say all As. I think I got a
21 couple of Bs in there somewhere, but mostly
22 As.
23 Q Is it safe to say that after
24 July of 2010, you've only gotten As in your
25 coursework?

1 D. Zarda 182
2 A My partner, his father died over
3 the holidays, so that was tough. That just
4 added on to all this other stuff. I was out
5 there living on an airport, going to classes,
6 and we had an unusual run of bad weather and
7 a lot of the snow, and it's very rural. I
8 literally got in a situation where I was
9 snowed in to my house, and I couldn't even go
10 get food several times, and I didn't have
11 some water for part of time because
12 everything froze up.
13 Just when you add all that
14 together with classes, trying to deal with
15 this situation --
16 Q "This situation" being the
17 lawsuit?
18 A -- the lawsuit, getting these
19 interrogatories and these demands met that
20 were needed for this, my partner needing, you
21 know, strength from me for his loss. It was
22 a lot in a short amount of time.
23 The class load alone. I took
24 nine hours. That's a very heavy load for an
25 eleven-week term. They're compressed. Six

1 D. Zarda 184
2 A I think so.
3 Q You finished that February to
4 May class, May, your classes end; you have a
5 scheduled trip to Norway?
6 A Yes.
7 Q Two fabulous months of Norway?
8 A They were good moments.
9 Q Any bad moments?
10 A During that time?
11 Q Yes.
12 A Couple fatalities. Some people
13 injured. I mean, you got to take the good
14 with the bad. You know, it's not good when
15 you meet people on a trip where you're having
16 a good time and they end up dead. That's
17 not, you know, a great thing.
18 Q Some of the people that you went
19 on the trip with ended up dead?
20 A People that I met.
21 Q How did they die?
22 A Within the activities I was
23 participating in.
24 Q May I inquire?
25 A Yes, BASE jumping.

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1 D. Zarda

2 Q You were actually BASE jumping,
3 and on a BASE jump, somebody died?

4 A Yes.

5 Q And you were there?

6 A I was in the area.

7 Q That must have been devastating.

8 A Yeah, that sucks when that
9 happens; without a doubt. We don't like that
10 to happen, but it does happen. I've been
11 jumping for almost twenty years, so you kind
12 of get a little used to some of that stuff
13 happening, but it's never pleasant when that
14 happens.

15 Q How many fatalities were there?

16 A During my trip, there were two
17 that I knew. As far as total, I don't know.
18 For the summer, I don't know.

19 Q That must have weighed heavily
20 on you?

21 A We don't like it, but it's part
22 of the nature of the activity that people
23 accept, like it or not, and it's something
24 that happens. It's just part of the reality
25 of it, and you deal with it, and you go on.

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1 D. Zarda

2 present when both of the fatalities occurred?

3 A When the first one occurred,
4 that person had gone down to another place to
5 jump and had his fatality there, and the
6 second one occurred just around the corner at
7 another exit point from the exit point that I
8 was jumping from.

9 Q And there were other injuries
10 besides the fatalities?

11 A There were.

12 Q How many other injuries?

13 A You know, I don't have a
14 specific number. Injuries, they come and go.
15 I mean, they range from minor to major, and
16 anything in between. There were some
17 injuries. Some people got hurt and had their
18 trips shortened or delayed or had to take a
19 break or had to cut short.

20 Q Over this two-month period, did
21 you see a grief counselor?

22 A No.

23 Q You came back from overseas in
24 June or July of this year?

25 A No, I did not. I came back

186

1 D. Zarda

2 It's kind of like dealing with losing a pet.

3 Q Kind of like Disney's Circle of
4 Life?

5 A I'm not familiar with that.

6 Q No?

7 A I'm not a big Disney follower.

8 Q Any reason why?

9 A As far as mainstream sports,
10 things like that, along with ball games, I'm
11 not into that, TV programs, and the main
12 reason is that I don't have time in my life
13 for much else. Cannot connect with much
14 mainstream things. It's a time thing.

15 Q The two fatalities, were they
16 people you actually knew?

17 A They were.

18 Q People you had conversations
19 with?

20 A Yes.

21 Q People you shared a meal with?

22 A Yes.

23 Q People you shook hands with?

24 A Yes.

25 Q You were actually physically

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1 D. Zarda

2 around the end of August.

3 Q August. So you went from --
4 June to August.

5 Q Okay. Where did you return to
6 in August?

7 A Let me think. Oh, that's easy.
8 Dallas.

9 Q How is Dallas?

10 A Then, it was freaking hot.

11 Q How were the stars at night?

12 A Well, it's pretty polluted down
13 there and lit.

14 Q Not big and bright?

15 A No, not there.

16 Q What did you do in Dallas in
17 August of 2011?

18 A Well, for one, I was very hot
19 because it was 110 degrees, and I was not
20 adjusted or accustomed to that type of
21 weather change, so it took me just a little
22 bit -- you know, a week to get myself
23 acclimated because it was really hot. It was
24 one of the hottest summers on record with
25 more than ninety days of over 100-degree days

1 D. Zarda 189
2 in a row.
3 Fortunately, I was overseas
4 during much of that, but having returned from
5 being in Norway where it's just the polar
6 opposite of that, it was hot, so I went back
7 to Dallas in August to be with my partner, my
8 ex-husband for a moment.
9 Q What is your ex-husband's name?
10 A William Moore, M-O-O-R-E.
11 Q Therein, is the family name
12 for --
13 A Little Cat.
14 Q -- Little Cat Moore?
15 A Right.
16 Q You said ex-husband?
17 A Yes.
18 Q When were you married to
19 William Moore?
20 A As you may be familiar, gay
21 marriage is not legally recognized in most
22 parts of the country, so the term "married"
23 and use of the word "husband" and so forth
24 are, in the gay community, sort of used
25 interchangeably, even though they don't carry

1 D. Zarda 191
2 neighborhood of 2002, 2003. I think that
3 would probably be about the right time.
4 Q Did you live together during
5 that period of time?
6 A Yes, we did.
7 Q From when to when?
8 A I've always maintained my home
9 of record at the location I mentioned
10 earlier, and I still have, but we lived off
11 and on together from shortly after we met in
12 late 2000, off and on through 2003, and
13 then -- there's been an awful lot -- and then
14 from 2005 to 2007, and then we've been mostly
15 separated most of the time from late 2007
16 through now.
17 Q You referred to him as your
18 ex-husband.
19 At what point did you consider
20 him to be your ex-husband?
21 A I think we both technically
22 would say as of late 2007.
23 Q How is your relationship with
24 him now?
25 A Complicated.

1 D. Zarda 190
2 the legal status.
3 Q When did you begin the period of
4 your relationship with William Moore wherein
5 you referred to each other as husbands?
6 A Well, we met in September of
7 2000, September 8, 2000, in Dallas, Texas,
8 and so we were together for quite a few
9 years, and we started a business together and
10 so forth.
11 Q Right. But my questions is --
12 A When did we consider ourselves
13 married?
14 Q Yes.
15 A I'd almost have to ask Bill.
16 Q Why; did you not consider
17 yourself married during a period of time
18 where he did?
19 A Probably within two or three
20 years of our relationship because we acquired
21 things together and had significant trips and
22 things like that together.
23 Q When was that; what year was
24 that?
25 A I'm going to say in the

1 D. Zarda 192
2 Q Is that a fancy way of saying
3 sometimes good; sometimes bad?
4 A I think the word "complicated"
5 is the best choice for describing it.
6 Q At times, does he cause you
7 aggravation?
8 A Yes.
9 Q And at times, do you cause him
10 aggravation?
11 A Yes.
12 Q But it's always his fault;
13 right?
14 A Well --
15 Q I said that as a joke. You
16 don't have to answer that.
17 A I don't want to get myself in
18 any more trouble.
19 Q You know that I'm going to show
20 him this transcript immediately, so...
21 I'm not. I'm kidding you.
22 A I hope so. It is what it is.
23 Q Not unlike how Ray Maynard's
24 relationship was with his ex-wife; correct?
25 A I've only heard hearsay and

1 D. Zarda 193
2 rumors about it, but it sounded pretty
3 treacherous by some of the things I heard
4 floating around.
5 Q Well, you actually had an
6 opportunity to speak to Ray about it; didn't
7 you?
8 A Well, Ray actually had an
9 opportunity to speak with me about it, or at
10 least speak about it in my presence.
11 Q And you had the chance to speak
12 to Ray Maynard's ex-wife, as well; correct?
13 A I did, yeah.
14 Q Would you characterize their
15 relationship anything other than complicated,
16 as well?
17 A I have no way to be able to
18 answer that because I don't know the nature
19 of their relationship beyond that. They had
20 been together a number of years and that they
21 were getting a divorce and that Ray had left
22 her shortly before he terminated me.
23 Q I'm sure that you'll agree that
24 when relationships are breaking up, people
25 are never at their best.

1 D. Zarda 195
2 Q Did you work?
3 A I did some work for the company
4 that we are involved in together that needed
5 to be done with the computers and with our IT
6 infrastructure that we have in place, and so
7 I worked on some of that and began to prepare
8 for getting ready to enroll in some of these
9 classes that I'm in now.
10 Q Did you look for any work, other
11 than working for that company, during that
12 four or five weeks?
13 A No, I didn't look for any, so I
14 did some tandems, you know, a couple of
15 weekends at a drop center in Texas, which is
16 another drop zone that I worked at part-time.
17 I did do some of those.
18 Q From October to November 15, you
19 just cut the lawn and got yourself ready to
20 go to classes; is that correct?
21 A No, that's not correct this
22 year. That was the routine the previous two
23 years. This year, I've yet to make it back
24 to Missouri, so the grass is about two feet
25 high, and if you'd like to come out it, fly

1 D. Zarda 194
2 A Probably is true. That's
3 probably true.
4 Q When you came back in August of
5 2011, you went and spent some time with your
6 ex-husband; correct?
7 A That's right.
8 Q How much time did you spend with
9 your ex-husband?
10 A I'm going to say -- let me just
11 think because I've been pretty busy. What
12 did I do? The next few weeks.
13 Q From August 2011 to September of
14 2011?
15 A Until towards the end of
16 September, yeah. We're looking at four to
17 five weeks.
18 Q How was his air conditioning?
19 A Good.
20 Q Helpful?
21 A Needed.
22 Q What did you do for that four or
23 five weeks?
24 A Reflected on a great trip, for
25 one.

1 D. Zarda 196
2 out there, and cut it for me. I'd appreciate
3 it because I haven't been able to get anybody
4 to do that yet.
5 Q I think it's down, but okay.
6 A It's laid over, but it's pretty
7 tall.
8 Q I wouldn't be flying up to
9 Missouri; I'd be flying down, but we'll let
10 that go.
11 A Yeah, I guess you're right.
12 It's actually across, but we'll let that go.
13 So no, I haven't been back to
14 the airport yet since I left in June and here
15 we are, it's December.
16 Q How are you taking your classes?
17 A Online.
18 Q Where are you residing now?
19 A I am in Dallas.
20 Q Why did you not go from Dallas
21 to Missouri?
22 A Literally because I just could
23 not work it in timewise between doing what I
24 was doing there, getting caught up from the
25 summer, coming up here for the depositions

1 D. Zarda 197
2 that we had in November, which was right
3 before school just started, and all those
4 things. I mean, just simply didn't have time
5 to make it happen.
6 Q Where are you living in Texas
7 now?
8 A I'm staying at the office.
9 Q The office where you run your
10 business?
11 A There is an apartment attached
12 to it, and I'm sleeping upstairs currently.
13 Q You keep referencing how this
14 case is causing you stress.
15 A Sure.
16 Q Is that correct?
17 A Yes.
18 Q That's the stress of responding
19 to interrogatories and document demands and
20 admissions?
21 A Well, last winter when that was
22 going on, it was just a lot of administrative
23 stuff. Obviously, you requested a lot of
24 things to try to come up with in a short
25 amount of time, and simultaneously taking an

1 D. Zarda 199
2 now?
3 A Better, better.
4 Q The fact that now you know that
5 someone actually complained to Ray about your
6 conduct, did that add more stress or detract
7 from the stress?
8 A I think that now that I'm being
9 able to learn some of the things and get some
10 information. I think some of the truth is
11 starting to come out more and more, so it's
12 making me feel a little better about what
13 happened. For me, from my perspective,
14 there's not as much of a big question mark as
15 to who said what, when, and who's going to
16 say what, when, so I think that now that
17 things are getting documented, testimony is
18 being given, and we're finding things out,
19 I'm starting to feel a little better about
20 it.
21 Q What things did you find out
22 that you're feeling better about?
23 A Specifically about the testimony
24 or -- why don't you break that down a little
25 bit?

1 D. Zarda 198
2 extra heavy load of classes, so yeah, that
3 created quite a bit of stress, just to get
4 all that together. That was quite a bit of
5 information, a lot of things to think about.
6 At the same time, I was trying
7 to do these classes, and you can really only
8 focus on one or the other. You can't be
9 doing homework at the same time as you're
10 doing that, so that created a lot of stress.
11 Q You're doing all right with it
12 now?
13 A With the case, or with the
14 stress?
15 Q The stress.
16 A This case and this situation and
17 what happened has -- no, I'm not doing okay
18 with it.
19 Q Let's take this in a couple of
20 different directions.
21 A Okay.
22 Q Let's talk about the stress
23 involved in preparing for this case.
24 A Okay.
25 Q Are you doing okay with that

1 D. Zarda 200
2 Q You said that now that things
3 are coming out, I'm starting to feel a little
4 better about it.
5 A Right.
6 Q So what things are coming out
7 that you're now feeling better about?
8 A As I said, when Ray suspended me
9 and when he fired me, there was no
10 documentation. There were no letters of
11 reprimand that I signed or offered or any of
12 that kind of thing, so that everything that I
13 was told about the incident came from Ray, so
14 we established that.
15 So he was the only source, and
16 his motives, to me, were not pure and unclear
17 and uncertain, so I had nothing else to go
18 on, other than what Ray said and what was Ray
19 thinking, and, you know, did he lie, did he
20 exaggerate, you know, all these things.
21 So now that Ms. Orelana and
22 Mr. Kengle have testified, it's helped to
23 refresh me about the jump. I've been
24 actually able to see the videos for the first
25 time that I asked to see when Ray suspended

201

1 D. Zarda

2 me, and he denied me access, and he had the

3 ability to let me see those videos right then

4 and there when he suspended me. We could

5 have done it. It could have happened and he

6 refused. He said it was irrelevant, and I

7 could have looked at it right then, so I

8 finally got to see that and see that the jump

9 was routine, the customers were happy, it

10 looks in the video, and there wasn't any

11 crazy thing hanging out there that I didn't

12 know about to be hidden from me, so stuff

13 like that makes me feel a little better.

14 And then also finding out from

15 both the customers' testimony, and they're in

16 complete agreement, that somebody else in the

17 airplane cracked a joke that could be deemed

18 inappropriate, and it wasn't me, causing me

19 to react the way I reacted with what I said.

20 So I feel vindicated some. It's actually a

21 little bit of a relief.

22 Q What is it that was said that

23 caused you to say something?

24 A Well, what they said was -- if

25 you recall, the boyfriend, Mr. Kengle, was

203

1 D. Zarda

2 I think, if I recall in their

3 testimony, they were saying, well, we're

4 young, we can take a joke, and they were okay

5 with that joke, but me saying something like,

6 don't worry, I'm gay, they were okay with

7 that, and I think they said that. That has

8 to make me kind of scratch my head a little

9 bit, so I'm being put in this situation where

10 I have sort of in my possession, because I'm

11 taking this girl on a tandem jump, and I'm

12 strapping her body to my body in an intimate

13 situation.

14 I have her and I have her

15 boyfriend sitting right over here

16 (indicating) with somebody else cracking a

17 joke about me strapping his girlfriend to my

18 body, and so I was not comfortable with that.

19 Q Couldn't you have just said,

20 don't worry, they're being silly?

21 MR. ANTOLLINO: Objection. You

22 can answer.

23 A You can speculate all the

24 different things that a person could say, but

25 I could have said nothing, or I could have

202

1 D. Zarda

2 bringing Ms. Orelana out to Skydive Long

3 Island to make a tandem jump for her

4 birthday. I think we agree on that. I think

5 even Ray agrees with that. That was the

6 circumstance, and I was taking Ms. Orelana on

7 her tandem and that the joke was to the

8 boyfriend that somebody else made, which was

9 Mr. Kengle, he's the boyfriend, how do you

10 feel about your girlfriend being strapped to

11 another man or another guy? It was either

12 man or guy, same thing.

13 So that was the joke that was

14 made, and they're a young couple, so that's

15 the not first time that joke has been used.

16 It's a golden oldie. It's been used several

17 times before, you know, at many drop zones.

18 It's a pretty routine, boring joke for us.

19 Q Is that a gay joke?

20 A That, itself, is not a gay joke,

21 but if everybody is okay with it, then it's

22 not even inappropriate, but apparently in

23 this case, Mr. Kengle is not okay with it or

24 maybe Ms. Orelana, or maybe neither one of

25 them were okay with it.

204

1 D. Zarda

2 said anything, so I said what I felt was the

3 best thing to say, at the time, for me and

4 for her and for him.

5 Q And in hindsight, was that the

6 best thing to say?

7 MR. ANTOLLINO: Objection. Go

8 ahead.

9 A In hindsight, if it were a

10 perfect world, then I suppose nobody could

11 make any jokes about anything because

12 somebody might get offended or be upset by

13 it.

14 So your questions was, in

15 hindsight, would I say it again; is that what

16 you're asking me?

17 Q Sure. Knowing what you know

18 now.

19 A About their complaint?

20 Q Yes.

21 A If I knew -- I don't think there

22 would be any way to know that the boyfriend

23 would get upset by that or that they would be

24 anti-gay or offended by gay remarks, you

25 know. There would be no way to know that, so

205

1 D. Zarda

2 I can't say. I can say this about it: I've

3 used that comment before in situations just

4 like that over the years to sort of resolve

5 or calm a situation, and it's worked for me,

6 and it's taken me out of the hot seat. It's

7 made me feel more comfortable to be able to

8 say, in that situation where I got somebody

9 else's girlfriend, I'm strapping them to my

10 body and somebody says something like that,

11 don't worry about me, I'm gay, I have an

12 ex-husband for proof, don't worry, to disarm

13 the situation, so if he hears me say that, he

14 can know, okay, he's not going to hit on my

15 girlfriend. He's gay anyway. So I don't

16 think I would change it.

17 Q So, wait a minute. Are you

18 saying that Mr. Kengle didn't know you were

19 gay before that joke was made?

20 MR. ANTOLLINO: Objection.

21 A Just re-ask that. Rephrase that

22 a little bit.

23 Q Did you know if Mr. Kengle knew

24 you were gay before you told his girlfriend

25 you were gay?

207

1 D. Zarda

2 Q Now, did you --

3 A That's the normal response.

4 People don't normally get upset.

5 Q In July of 2010, did you ask

6 Rich to intercede on your behalf and try and

7 convince Ray not to terminate you?

8 MR. ANTOLLINO: I believe it was

9 June.

10 A It was the end of June of 2010,

11 yes.

12 Q And why?

13 A Why did I ask Rich,

14 specifically?

15 Q Yes.

16 A Well, Rich is the person that

17 just a few minutes after Ray suspended me

18 that I went to with, as I've said earlier,

19 with the problem.

20 Q Were you asking him that because

21 you enjoyed working at Skydive Long Island?

22 A No, not specifically, no. I

23 wasn't asking him for that reason. I sought

24 his counsel immediately because I was upset.

25 That's the first thing when it happened, and

206

1 D. Zarda

2 MR. ANTOLLINO: Objection.

3 A Definitely, I have no way to

4 know if he knew. He didn't tell me he knew,

5 so he's sitting over here (indicating). We

6 all met in an instant, in a flash. It's just

7 like normal kind of like a conveyer belt. I

8 don't know.

9 Q It seems to me like maybe you

10 were being accused of being straight as

11 opposed to being gay.

12 A Nobody accused me when that joke

13 was made. Maybe people had assumptions. The

14 staff certainly knows I'm gay, so I don't

15 know if it has anything to do with who

16 cracked that joke, you know, cracking the

17 joke and trying to get a response for fun out

18 of all of us, because, generally, when that

19 joke is made, it is to get a response from

20 the customers in a fun way and not to make

21 anybody upset, and generally, people laugh

22 that off, oh, yeah, ha, ha, ha. Don't worry,

23 she comes home to me, you know. A lot of

24 times you'll hear the customer say that. I'm

25 her only man, or just stuff like that.

208

1 D. Zarda

2 I thought him knowing Ray for so long, him

3 being the chief instructor there and so

4 forth, his position there, he should know

5 about it, and so I went to make him aware of

6 what just happened, and he offered to, in

7 that conversation, to advocate on my behalf,

8 to talk to Ray and reason with Ray and calm

9 Ray down, and he told me Ray was on a

10 tangent, just let him calm down.

11 This is what Rich said he didn't

12 remember yesterday. Rich didn't remember

13 that conversation very well. I remember it

14 better than he does. Rich probably hasn't

15 thought about it that much anymore. I

16 obviously have, but Rich told me to go on

17 home, let me talk to Ray, and I'll get back

18 with you.

19 Q But in 2010, you wanted to

20 continue to work at Skydive Long Island;

21 correct?

22 A After the suspension, is that

23 what you're asking?

24 Q Yes.

25 A Yes, yes. I didn't want to lose

1 D. Zarda 209
2 any job. I didn't even want to lose that
3 week. I didn't want to lose a day.
4 Q In 2010, did you enjoy working
5 at Skydive Long Island?
6 A Up until that point.
7 Q What was it about that job that
8 you liked working, that you liked; what was
9 about it?
10 A There was a lot of things I
11 liked about it.
12 Q Did you like the people you
13 worked with?
14 A I liked the people I worked
15 with.
16 Q Did you like the work
17 environment?
18 A The work environment could be
19 better, but it could be worse. Work
20 environments at skydiving centers vary
21 widely, so none of them are perfect, but the
22 work environment, they all have areas where
23 they are dysfunctional. The work environment
24 was okay. I liked being able to make good
25 money.

1 D. Zarda 211
2 the job there?
3 A Yes.
4 Q Why didn't you get the job
5 there?
6 A I didn't get the job there,
7 because the owner found out or was told by
8 somebody that I was suing Skydive Long
9 Island, and he felt I would be too much of a
10 liability for him to take on because of that.
11 And those are not exact quotations, but
12 that's what he said in an e-mail that he sent
13 to me which, I believe, has been forwarded on
14 to you and Ray.
15 Q Do you know if he found out
16 about it because your lawyer had press
17 releases made of the lawsuit?
18 A I know --
19 MR. ANTOLLINO: Objection.
20 Q You may answer.
21 MR. ANTOLLINO: Objection to the
22 characterization.
23 A I can say that that was
24 impossible because when he denied me that
25 employment, that was like two months before

1 D. Zarda 210
2 As you probably can see, the
3 instructors make pretty good money in that
4 short amount of time to work there, so that's
5 a good thing. I like the fringe benefits of
6 having being able to come to New York for a
7 season and be with friends that I have up
8 here and be able to go do things with friends
9 I have in New York, friends that I've met on
10 some of these trips. That, itself, was a
11 little bit of a driver to making me want to
12 come up here, and I made some relationships
13 with some friends, so it's like, hey, I think
14 I'll be working in Long Island next year, you
15 know, great. We're going to have a great
16 time, and so, yeah.
17 Q Could you tell me where you've
18 applied for skydiving work since being
19 terminated in June of 2010?
20 A Well, the first place I applied
21 was directly or pretty soon after Ray
22 terminated me was the one we mentioned
23 earlier, Chicagoland Skydiving in Hinckley,
24 Illinois.
25 Q Do you know why you didn't get

1 D. Zarda 212
2 any legal action was taken.
3 Q Are you sure of that?
4 A I'm sure of that, because I
5 answered an ad for work at his drop zone in
6 July of 2010, and he denied me employment
7 right then, and no legal action had been
8 taken against Skydive Long Island or Ray at
9 that point.
10 When I finally got to talk to
11 Mr. Smith face-to-face, like I think I
12 mentioned I was going to do to him on the
13 phone at some point, he corroborated part of
14 that.
15 Q Did you ask him how he found out
16 about the lawsuit?
17 A I did ask him how -- or no, he
18 didn't tell me how he found out about the
19 lawsuit. I asked him when we were talking
20 face-to-face, I said, who told you that I had
21 filed a lawsuit against Skydive Long Island?
22 And he said that he had sources that he
23 wasn't willing to reveal, and I said that the
24 reason I'm asking you is because at that time
25 that you sent me that e-mail, I hadn't taken

213

1 D. Zarda

2 any legal action whatsoever, so basically,

3 what I was telling him is that somebody is

4 talking shit on me, and I'm pissed off.

5 Q Did you ever find out who was

6 talking that shit on you?

7 A I did not find out. I pressed

8 Mr. Smith, as far as I felt was gentlemanly,

9 and he wasn't willing to offer the source.

10 He just said he had sources, and apparently,

11 his sources were incorrect. For one, because

12 of the timing, and I don't know, you know,

13 how they're related to Ray or Ray's drop zone

14 or anybody that knows anything about what

15 happened.

16 All I can say is that I applied

17 because of what happened at Skydive Long

18 Island. I didn't get the job, and it was a

19 major drop zone, a major skydiving center,

20 and that upset me very much.

21 Q Where else did you apply for

22 work?

23 A I didn't directly apply, but I

24 went and had a meeting with the owner of Long

25 Island Skydiving Center, which is Ray's

215

1 D. Zarda

2 me being complained about. I told him about

3 the accusations. I told him about the gay --

4 what Ray did to me. I told him about the

5 Chicagoland thing. I mean, I just told him

6 the whole thing.

7 Q What did Ray do to you?

8 A Ray fired me for being gay. He

9 accused me of something I didn't do. He

10 stole money from me and then gave it back.

11 He humiliated me in the skydiving community.

12 I'm trying to -- maybe the list of what Ray

13 didn't do to me might actually be shorter. I

14 have to think about it. He did a lot of

15 things.

16 Q You were fired not for being

17 gay; you were fired because there were

18 customer complaints about you; correct?

19 MR. ANTOLLINO: Objection.

20 A I disagree. I said that I think

21 it's a -- it's not -- you know, people don't

22 always get fired for just one thing. It

23 could be a culmination of things. I think

24 this was a culmination of all these things

25 we've discussed.

214

1 D. Zarda

2 competitor on Long Island, and that guy's

3 name was Brian Erler. Don't quote me on it.

4 He's the only owner. I can't remember the

5 guy's name. I just can't remember.

6 Q When did you speak to him?

7 A I spoke to him probably around

8 that same time.

9 Q Around July of 2010?

10 A Around the end of July.

11 Q The end of July?

12 A Yeah. Because it was around the

13 third week of July, I think, if we look in

14 the e-mail from Doug Smith where we were

15 going back and forth talking about me working

16 for him. I think it was around maybe the

17 third week of July when he said no. It was

18 after that I think I talked to Long Island

19 Skydiving Center, and I drove out there in my

20 truck and sat down and discussed the matter

21 in detail with the owner of Long Island

22 Skydiving Center.

23 Q What matter did you discuss?

24 A I told him everything that we've

25 discussed right here today. I told him about

216

1 D. Zarda

2 Q This wasn't the first time you

3 were fired by Ray; was it?

4 A It wasn't.

5 Q And you were fired the first

6 time because of an apparently inappropriate

7 interaction between yourself and a customer;

8 correct?

9 MR. ANTOLLINO: Objection.

10 A I won't say that was

11 inappropriate interaction. I'd say that it

12 sounds like to me that the customer wasn't

13 satisfied, for whatever reason, in that

14 incident that was ten years ago, but I'm not

15 going to say it was inappropriate. I don't

16 agree that it was inappropriate.

17 Q You had a customer that wasn't

18 satisfied then, and you had a customer that

19 wasn't satisfied now; correct?

20 A The customer then, I believe,

21 wasn't satisfied with something about the

22 jump, and then in this case, the customer,

23 she didn't say that she wasn't satisfied with

24 the jump. She looked satisfied to me,

25 sounded like she said she was satisfied. She

1 D. Zarda 217
2 had a good time. She smiled in the video.
3 She got a picture with me. I think she was
4 satisfied with the jump. I think she just
5 had a complaint about something that happened
6 on the jump.
7 Q Well, if you have a complaint
8 about something that happened on the jump, it
9 means you were dissatisfied with it; right?
10 MR. ANTOLLINO: Objection.
11 A I disagree.
12 Q So you think she was satisfied
13 but just had a complaint?
14 A Yes.
15 Q Okay. You say Ray stole money
16 from you?
17 A He did.
18 Q How did he steal money from you?
19 A He docked my paycheck for the
20 full price of two tandem jumps and two
21 videos, and it really sucks because that's
22 just sort of like throwing gas on the fire
23 and really just sticking it to you.
24 You know, on top of all this
25 other stuff, whether it's just a bunch of BS,

1 D. Zarda 219
2 Q You think there's something
3 wrong with speaking to his attorney before
4 terminating you?
5 A No. I think he has a right as a
6 business owner to make business decisions,
7 and if that involves seeking Counsel and
8 getting advice from an attorney, that's his
9 right to do so. I think if it's for the
10 purpose of trying to backtrack or maybe cover
11 his tracks for mistakes he might have made,
12 it's probably still legal to speak to your
13 attorney in that matter, but I think that's
14 what he was doing.
15 Q What mistakes do you think he
16 made?
17 A Well, he stole money from my
18 paycheck. He didn't pay me for the jump that
19 I did with Ms. Orelana, and then he actually
20 took money from me for the other jump with
21 Mr. Kengle and the two video people out of my
22 paycheck. We have it documented. We have a
23 record that he actually did that, and then,
24 of course, we have it where he gave the money
25 back after he either spoke to his attorney

1 D. Zarda 218
2 now he's going to take money out of my
3 paycheck for a tandem that I didn't even do,
4 and that was Mr. Kengle's tandem. I wasn't
5 his instructor, and for work performed by two
6 other of his employees, which were the video
7 guys, that I had nothing to do with. It
8 didn't make any sense to me that he was doing
9 that.
10 Q And he immediately refunded you
11 that money; did he not?
12 MR. ANTOLLINO: Objection.
13 A Not immediately.
14 Q Did he refund that money before
15 the lawsuit was filed?
16 A He did before the lawsuit was
17 filed.
18 Q When did he refund that money to
19 you?
20 A One week later when he
21 terminated me after he spoke to his lawyer,
22 which I think is kind of the key thing about
23 that, after he spoke to his attorney, which
24 he admitted when he terminated me, that he
25 did.

1 D. Zarda 220
2 and learned that what he did was either wrong
3 or, perhaps, it might even have been illegal
4 and it was, you know, unethical, as well.
5 Q What other mistakes did he make?
6 A What other mistakes did he make
7 in relation to --
8 Q You said he made mistakes, so
9 I'm asking you what mistakes were made.
10 A Oh, okay. I see where you're
11 going. I'm sorry. It just took me a moment
12 to focus. My opinion what the mistakes were?
13 Q I'm asking you what mistakes he
14 made because you said he made mistakes.
15 A He didn't, to my knowledge,
16 investigate these complaints made by the
17 customers. What he did was he just took
18 action against me, his employee, without
19 investigating and asking anybody else in the
20 airplane, any of the other instructors, the
21 cameraman, without reviewing the video, any
22 of those things to perform an investigation.
23 He just took adverse action in
24 an angry manner against me as soon as he
25 learned of the complaints. I think that was

1 D. Zarda

2 a mistake. And he wouldn't even let me, when

3 he was questioning me about whatever it was

4 the incident was, he wouldn't even let me

5 reflect upon the videos that were readily

6 available. He wouldn't let me see them. He

7 was asking me questions, he was angry, he

8 wasn't calm, about a jump that took place,

9 who knows, twenty to thirty jumps ago and

10 three days ago.

11 He's asking me details about

12 this, and yet, he wouldn't stop long enough

13 to let me look at the videos and say, hey,

14 okay; oh, yeah, I think I remember those

15 people. Okay, all right. You know, that's a

16 mistake.

17 If you're going to take action

18 against an employee, you should at least give

19 them the common courtesy of being able to

20 look at their records and give them an

21 opportunity to respond. He didn't give me

22 that. He just brought me in that room that

23 day to tell me what he was going to do to me,

24 and then he did it.

25 Q Any other mistakes he made?

1 D. Zarda

2 personal about myself, personal information,

3 like he said in the termination, and then him

4 talking about his personal life in earshot of

5 customers, so it seems like that's a mistake.

6 If you're going to fire somebody

7 and use that as part of the reason and then

8 you do it yourself, it seems a little

9 hypocritical.

10 Q Did you tell him that?

11 A No, I didn't have an opportunity

12 to tell him that.

13 Q What other mistakes?

14 A Well, okay. I'm thinking about

15 some more things because Ray has made a lot

16 of mistakes, in my opinion, so to come up

17 with all of them in one seating... I need to

18 take a moment.

19 I think that Ray had some

20 concerns about the issue of my ankle, and so

21 the way that he handled that he could have

22 been handled better. He had questions for me

23 about the Workers' Comp that I received, and

24 all of that. And his mistake was, instead of

25 asking me questions and calling me on the

1 D. Zarda

2 A Any other mistake he made, let

3 me think. Is this a general,

4 all-encompassing question?

5 Q Yes.

6 A Mistake about how he runs his

7 business, or just anything?

8 Q We're talking about mistakes

9 having to do with your employment.

10 A Just having to do with my

11 employment, okay.

12 I think a mistake that he made

13 was to mention at any time, either in the

14 suspension or the termination, this issue

15 about personal information in front of

16 customers. Seems to be something he's

17 concerned about. Seems to be something he's

18 passionate about, not having happened yet.

19 He has the -- what's the word

20 I'm looking for -- I'm getting tired. He had

21 the leeway to discuss his marriage in front

22 of staff, when he was leaving his wife, when

23 there was other customers standing around.

24 I'm trying to understand what this whole

25 business is about me saying something

1 D. Zarda

2 phone or sending me e-mails or when he had a

3 question, having a dialogue with me about it,

4 he saved up all this stuff until a week

5 before I came to work for him in 2010 -- he

6 calls me about six days -- I have my vehicle

7 packed, I have everything ready to go so I

8 can report to work on time on May 15, 2010,

9 and I get this blistering phone call, and

10 it's Ray Maynard, in my ear, shouting at me

11 about this Workers' Comp stuff that was over,

12 as far as I'm concerned, four months prior,

13 and so I think that was a mistake.

14 If you can imagine my surprise,

15 I'm getting this phone call from the guy I'm

16 going to work for another season, and he's

17 yelling at me, in my ear, just before going

18 up there. I conferred with my drop zone

19 owner at the airport I live about it and got

20 his opinion, and he said he thought that was

21 odd. I said, what do you think I should do,

22 and he said, well, he didn't tell you not to

23 come up to go to work, so go up there and do

24 your job and come home, so I said, okay,

25 because I don't really have a choice at this

1 D. Zarda 225
2 matter.
3 But what was a mistake was, he
4 just went off on a tangent, like he has a
5 history of doing, without getting the facts
6 and without asking the questions that needed
7 to be asked so he can get the facts to find
8 out what really happened. Just like in this
9 case, where he suspended and fired me. It
10 was just a prelude to that with the Workers'
11 Comp thing.
12 He didn't know what he was
13 talking about when he called and yelled at
14 me. He didn't have the information in front
15 of him. He was just reacting to either --
16 whatever it was that he was reacting to.
17 I'm not able to talk to Ray when
18 he's being irrational like that and yelling.
19 You can't talk to Ray. Both when Ray
20 suspended me, he stomped out of the room, and
21 when he fired me, he stomped out of the room.
22 I mean, it gets to a point where you can't
23 deal with him. You can't talk to him. What
24 are you supposed to do? I think that's a
25 mistake.

1 D. Zarda 227
2 Q Do you think you were terminated
3 because his Workers' Comp premiums went up?
4 A No. He terminated me for the
5 reasons that we discussed.
6 Q Which you were accused of
7 inappropriately touching a woman and then
8 sharing the fact that you don't like women
9 with her?
10 MR. ANTOLLINO: Objection.
11 A I didn't say I didn't like
12 women. You said it.
13 Q Sharing with her your sexual
14 orientation --
15 A Yes.
16 Q -- which indicated that you
17 didn't like women in that respect.
18 A I don't like that wording being
19 on the record because I didn't say that. I
20 never said I didn't like women. Women in
21 that manner, I need you to break that down.
22 What do you mean by that manner?
23 Q You were accused by Ms. Orelana
24 of touching her inappropriately --
25 A Right.

1 D. Zarda 226
2 If you're going to be a CEO, if
3 you're going to run a company, you're going
4 to have to be able to make rational
5 decisions. You're going to have to listen to
6 what your employees say. If you've got a
7 problem with an employee or something comes
8 up, you need to investigate it from all
9 angles. You need to get the information, and
10 once you get the information, then you're at
11 a position where you can discuss the
12 information with the person and then make
13 decisions. Ray didn't do that. That's a
14 mistake.
15 Q Anything else?
16 A Unfortunately, yes.
17 I believe after kind of talking
18 to some people, that Ray -- Lauren Callanan,
19 she is the manifest person and the office
20 person at Skydive Long Island, that Ray may
21 have been upset that his Workers' Comp
22 insurance went up drastically as a result of
23 the claim for my injury, and so I think Ray
24 was taking that out on me, and I don't think
25 it was fair.

1 D. Zarda 228
2 Q -- and then disclosing to her
3 your sexual orientation, which indicated that
4 you are not sexually attracted to women?
5 A I would say that that would
6 indicate that. By me saying, don't worry I'm
7 gay, would convey that idea.
8 Q It's somehow saying, don't
9 worry, if I'm touching you in a manner that
10 makes you feel uncomfortable, I'm not acting
11 on it; correct?
12 A No, not correct.
13 Q Can a gay man ever touch a woman
14 inappropriately?
15 A They can. They could. So no,
16 it's not to convey that idea. It's to
17 resolve the situation about the joke that was
18 made in front of the boyfriend about the
19 girlfriend being strapped to another man,
20 which was me, and to quell that situation and
21 to calm that situation down.
22 Q And you felt that that needed to
23 be calmed down?
24 A Say that once more, please.
25 Q You felt that that situation

1 D. Zarda 229
2 needed to be calmed down; correct?
3 A Yes.
4 Q Because at some point, you
5 sensed Ms. Orelana was uncomfortable;
6 correct?
7 A Yes.
8 Q You just don't know when --
9 A I don't.
10 Q -- you just don't know when it
11 was in relation to the joke being made?
12 A No. I mean, there's a lot of
13 things going on in the airplane. It's a
14 fifteen- to twenty-minute ride up, depending
15 on the load. It's a pretty routine process.
16 Q During that process, did you
17 ever rest your head on Ms. Orelana's shoulder
18 or neck?
19 A No. And I know what she said
20 about that. We can discuss this for a
21 second, but before we do, do you want me to
22 finish talking about Ray's mistakes?
23 Q We'll get to that.
24 MR. ANTOLLINO: Just answer the
25 question.

1 D. Zarda 231
2 them without having to shout at them or
3 without having to be yelling at them, at the
4 customer, because the airplane is noisy, and
5 all the other instructors are talking and
6 they're doing the same things, so everybody
7 is talking in the plane.
8 It gets to be really noisy in
9 there, plus the noise of the aircraft, and
10 then the door is coming open, so there is
11 even more noise. When you have a customer,
12 and you've seen the video, strapped to you
13 shoulder to shoulder, hip to hip, their head
14 is right here (indicating) in my face.
15 If you're going to talk to
16 somebody with their head right here
17 (indicating) in your face, you're talking to
18 the back of their hair or the back of their
19 neck, so if you want to talk to them where
20 they can hear you, then you're going to lean
21 over and talk to them in their ear, and it's
22 right here (indicating). So her ear, or a
23 customer's ear -- you try the harness on
24 yourself and you'll see, when you're sitting
25 on the bench -- it's right here (indicating),

1 D. Zarda 230
2 THE WITNESS: All right. I just
3 didn't want to get --
4 MR. ANTOLLINO: Answer the
5 question.
6 THE WITNESS: -- to where I was
7 forgetting where I was going thinking
8 about all Ray's mistakes --
9 MR. ANTOLLINO: Okay, answer the
10 question.
11 THE WITNESS: -- because it
12 takes awhile.
13 A The question was about me
14 resting my head on her shoulder?
15 Q Correct.
16 A No, I didn't rest my head on her
17 shoulder, and after hearing her testimony,
18 after seeing the video, it's very easy for me
19 to see what that's about.
20 Q What's that about?
21 A Well, what that is about is me
22 leaning forward to give her instructions
23 prior to leaving the aircraft, like I've done
24 thousands and thousands of times before, in
25 her ear so that she could understand and hear

1 D. Zarda 232
2 so this, what did he say,
3 whispering-in-your-ear thing that Mr. Kengle
4 was upset about, there was no whispering in
5 her ear. There was only me giving her
6 instructions that she needed to have to make
7 the jump, in her ear.
8 Q She might have been completely
9 wrong --
10 A She --
11 Q -- wait. You have got to let me
12 finish.
13 A Okay.
14 Q She might have been completely
15 wrong and misread all of the things that she
16 complained about; is that correct?
17 A That's very possible.
18 Q In fact, is it more than
19 possible; is it probable?
20 A It's probable. It's probable.
21 Q Everything she complained about
22 is probably wrong?
23 A Yes, it's probably wrong.
24 Q But she complained about it
25 anyway?

1 D. Zarda 233
2 A She did, and customers complain
3 about all kinds of things. They complain
4 about stuff that you can do nothing about
5 involved in this thing called tandem jumping.
6 It's hot in the airplane. It's too loud.
7 It's too cold. The harness is too tight.
8 The harness is too loose. It can go on and
9 on and on, and they can be wrong about it.
10 The harness can be just the way it's supposed
11 to be, or they could just not like it.
12 Q Do you think that Ray Maynard
13 took the opportunity to take Ms. Orelana and
14 Mr. Kengle's mistaken complaints about you
15 and coupled that with his being upset about
16 his Workers' Compensation premiums going up
17 and taking that opportunity to fire you?
18 MR. ANTOLLINO: Objection to
19 form.
20 Q Is it possible?
21 A I think it's possible.
22 Q Do you think it's probable?
23 A I think it's just possible. I
24 think it's possible that it's a package deal.
25 Q Okay.

1 D. Zarda 235
2 MR. ZABELL: Let's get this man
3 a drink.
4 (Whereupon, a recess was taken
5 from 3:35 p.m. to 3:59 p.m.)
6 Q Before the break, I was asking
7 you questions about the possible likelihood
8 that you were terminated because Ray Maynard
9 was upset that his Workers' Comp policy went
10 up because you had filed a claim; do you
11 recall that?
12 A I recall that.
13 Q Do you recall testifying that it
14 was, in fact, possible that that was one of
15 his motives?
16 A I said that it was possible.
17 Q And another one of his motives
18 could have been that Mr. Kengle and
19 Ms. Orelana complained about their jump; is
20 that correct?
21 A Sounds like it, yeah. I mean,
22 that's what he told me.
23 Q During the break there was, what
24 I would characterize as, innocent banter
25 between your attorney and myself, and I think

1 D. Zarda 234
2 A If he did that, that's awful.
3 It's just as bad as if he didn't do it, and I
4 think it's even illegal, so I hope he didn't
5 do that.
6 Q But you don't know if that was
7 his motivation; do you?
8 MR. ANTOLLINO: Objection.
9 A There's no way for me to know
10 that. Beyond that, he called me on the phone
11 a week before I came up there yelling at me
12 and angry and shouting about the Workers'
13 Comp thing, and it didn't make me feel very
14 good about the situation, and so I can tell
15 you a little bit about what I remember about
16 the conversation.
17 Q I have no interest.
18 A Okay.
19 MR. ANTOLLINO: Counsel, do you
20 have some of that iced tea you
21 promised? I need a little lift.
22 MR. ZABELL: You can ask me a
23 little nicer, and yes, I will get you
24 an iced tea.
25 MR. ANTOLLINO: Thank you.

1 D. Zarda 236
2 you were involved, as well; is that correct?
3 A Yes.
4 MR. ANTOLLINO: It was off the
5 record.
6 MR. ZABELL: Yes, absolutely.
7 Q One of the topics that were
8 discussed were gay jokes, jokes regarding
9 people who are gay, and I don't think anybody
10 was offended by them. I don't think I made
11 any of them, but do you engage in jokes about
12 being gay?
13 A Depends on the situation and
14 where and when, like -- could you be more
15 specific?
16 Q Sure. Could there be an
17 occasion where making a joke that has to do
18 with someone's sexuality would be
19 appropriate?
20 A Is this in a social setting, at
21 work, at home, family, or where?
22 Q In the setting that we were just
23 in during a break at a deposition --
24 A Yeah.
25 Q Were we not making a joke?

1 D. Zarda 237
2 A We were.
3 Q Was it appropriate?
4 A I thought it was okay.
5 Q Who made the joke?
6 A Greg made a joke, and I
7 corroborated the joke.
8 Q And I laughed at the joke;
9 correct?
10 A Yeah.
11 Q And I laughed completely
12 appropriately?
13 A I wasn't offended by it.
14 Q What kind of setting would you
15 call that?
16 A I'd call it casual. I mean,
17 we're in an official setting, but I would say
18 that that was casual.
19 Q Are you more comfortable with
20 gay jokes being made around me because I'm a
21 Civil Rights attorney?
22 MR. ANTOLLINO: Objection.
23 A No. I didn't even know you were
24 Civil Rights attorney, to be honest, so I
25 didn't know you were a Civil Rights attorney.

1 D. Zarda 239
2 homosexual.
3 Q But if I had never met you
4 before and I called you a homo, even though
5 it may be correct, it wouldn't be considered
6 appropriate; would it?
7 A That's probably on the boundary.
8 It would probably just depend on the
9 by-language, the interaction that we were
10 having, the rapport that we were having.
11 If you were walking down the
12 street and you said, hey, homo, and you
13 yelled at me and were a stranger, that would
14 probably sound derogatory. If we were just
15 hanging out with some friends, it would be
16 all right.
17 Q You're comfortable enough in
18 your sexuality that if somebody was going to
19 make jokes with you about it, it was clear
20 that their intention was just to invoke a
21 smile or some laughter, that it would be
22 fine; correct?
23 A Correct.
24 Q Did anybody at Skydive Long
25 Island bring up your sexuality in an attempt

1 D. Zarda 238
2 Q Okay.
3 A Are you a Civil Rights attorney?
4 Q That's what we're here
5 litigating about today; correct?
6 A Oh, I know that. I didn't know
7 that was your area of specialty.
8 Q Yes, it's all I do, Civil Rights
9 and labor and employment.
10 A Oh, okay.
11 Q Have you ever had e-mail
12 correspondence with your friends where jokes
13 were made about your sexuality?
14 A I'm sure there has. I'm sure
15 there has been some. FaceBook, possibly.
16 Q Have any of your friends
17 referred to you as a homo?
18 A They have.
19 Q Have you ever referred to any of
20 them as a homo?
21 A Possibly.
22 Q Do you believe that they have
23 referred to you as a homo inappropriately?
24 A Well, technically, if they've
25 called me a homo, they're correct. I'm a

1 D. Zarda 240
2 to hurt your feelings?
3 A In an attempt to hurt my
4 feelings, I can't remember specifics. I
5 don't think so. Like we just talked about,
6 some borderline stuff. I think that an
7 attempt to hurt my feelings would imply
8 malice and so that the person was wanting to
9 be malicious, and so I don't think anybody
10 there was wanting to be malicious to me, so
11 they might have done it in error or
12 ignorance, possibly, not knowing what to say
13 or how to say something; yeah, in that regard
14 possibly, but not -- I don't think anybody
15 was being malicious about it.
16 Q And if somebody had brought
17 something up to you in error, did you feel
18 comfortable addressing it with them?
19 A Again, specifics over this whole
20 time period is difficult for me to come to.
21 I'm just thinking back. There were some
22 social cues, you know, moments where somebody
23 like Willie, possibly, or Ben might have said
24 something that was a little off just because
25 they didn't know any better. I didn't feel a

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1 D. Zarda

2 need to try and correct it beyond maybe --

3 no.

4 I mean, if there was an

5 opportunity to be able to correct it or

6 address it without causing a stink and making

7 an issue out of it because I don't want to

8 make an issue out of anything, then I

9 probably would say something, but it

10 certainly wouldn't be something I would go

11 tell Rich about or make a big deal about.

12 Q Did you find any of your

13 coworkers at Skydive Long Island to be

14 homophobic?

15 A Yes, I did.

16 Q Who was homophobic?

17 A Ray.

18 Q Ray was?

19 A Yes.

20 Q Ray, the man who hired you on --

21 A Yes.

22 Q -- three different occasions?

23 A Yup.

24 Q Do you think that your sexual

25 orientation affected whether or not you were

243

1 D. Zarda

2 spoke negatively about me often during their

3 marriage, so I thought that was intriguing.

4 Not completely surprised to hear that. Don't

5 know what Ray was thinking.

6 Q So Ray's issue with you is just

7 because you're gay; is that what you're

8 saying?

9 A Which time; when he fired me?

10 Q When he fired you in 2010.

11 A Well, when he fired me in 2010,

12 he said it was because the issue of my

13 sexuality came up in front of the customers.

14 He was firing me for that. It was

15 inappropriate, and the issue about touching

16 this girl inappropriately came up, and that's

17 what he said.

18 Q But you think it also may be

19 because you caused his Workers' Compensation

20 premiums to go up, as well; correct?

21 MR. ANTOLLINO: Objection.

22 A No. I'm not going to go down

23 that road. I didn't cause anything. I'm not

24 the Workers' Comp Board. I'm not the New

25 York State Insurance Fund. I didn't cause

242

1 D. Zarda

2 hired by Ray Maynard?

3 A Which time?

4 Q All three times.

5 A I think that Ray tolerated it up

6 until a point where he could no longer deal

7 with it himself, so that would be the best

8 answer I could give for that.

9 Q Are you saying he tolerated it

10 up until a point where he received a

11 complaint about you?

12 A Up until a point where he,

13 himself, for whatever reason, couldn't deal

14 with having me be gay and be there working

15 for him. For whatever reason, whether it's

16 him being a homophobic person, or he has

17 issues with homophobia or gay people.

18 Whatever the reason is, and I don't know what

19 all the reasons are. I got a little

20 information from his wife about some possible

21 reasons.

22 Q What were those possible

23 reasons?

24 A That Ray hated my sexuality, I

25 believe, is what she said in an e-mail and

244

1 D. Zarda

2 anything that happened. Whether Ray took

3 action on that or not, that's in his head.

4 It's a possibility. That's all I can say

5 about it.

6 Q But it's something that you

7 believe is a possibility?

8 A It is a possibility. That's it.

9 Nothing beyond.

10 Q And Ray knew you were gay each

11 of the three times he hired you; correct?

12 A I think we covered that.

13 Again, back in 2001, I don't

14 specifically recall this seating if we talked

15 about it, but it was pretty clear in 2009

16 and 2010.

17 Q Talk to me about this business

18 you share with your ex-husband in Texas.

19 A Could you be a little more

20 specific; what would you like to know?

21 Q What's the name of the business?

22 A It's Advanced Skin Fitness.

23 Q What is Advanced Skin Fitness?

24 A It's a medical spa.

25 Q What happens at the medical spa?

1 D. Zarda 245
2 A We do a variety of anti-aging
3 procedures. We do laser hair removal, which
4 is the primary thing, we do facials, we do
5 laser skin resurfacing, and we do cellulite
6 reduction. We do hormone therapy. We do a
7 lot of things. I don't have the whole list
8 of all we do.
9 Q Is it run by a doctor?
10 A We have medical directors that
11 oversee the legal part of that part of the
12 operation.
13 Q Is your ex-husband a medical
14 doctor?
15 A He is not a medical doctor.
16 Q Is he a doctor?
17 A He is not a doctor. He has a
18 Master of Science in Exercise Physiology and
19 Kinesiology.
20 Q Are you a doctor?
21 A I am not.
22 Q But you have doctors on your
23 board --
24 A We do.
25 Q -- to make everything kosher,

1 D. Zarda 247
2 A It's personal, primarily, and
3 partly strategic. In the event that while we
4 were together and we had started this and we
5 didn't make it, for whatever reason, we could
6 always start up under my name.
7 Q What's the personal reason?
8 A What is the personal reason?
9 Q Yes.
10 A Those are reasons related to our
11 relationship.
12 Q I need to know for purposes of
13 this deposition. I'm not prying, but I do
14 need to know.
15 A I don't have -- I can't recall
16 every personal thing that we've discussed
17 over this many years that we've had this
18 business, and we've been together in and out
19 of the personal relationship that we've been
20 in.
21 It's just the way we started it.
22 We started the business. I wrote the first
23 check. It was in an office about this
24 (indicating) size, and then we grew and just
25 moved forward, and some of it had to do with

1 D. Zarda 246
2 for lack of a better term?
3 A To make everything legal.
4 Q Are you familiar with that term,
5 "kosher"?
6 A I am.
7 Q What's the name of this
8 business?
9 A Well, it's Advanced Skin Fitness.
10 The incorporated name is Lush, L-U-S-H,
11 Investments Incorporated.
12 Q Are you a partner in that
13 company?
14 A Silent partner.
15 Q What percentage of the business
16 do you own?
17 A We don't have that broken down
18 like that. My ex and I started that
19 together, so for various reasons and legal
20 reasons, I don't have a legal holding.
21 Q You don't have any legal
22 holding?
23 A I don't have a legal holding.
24 Q What is the reason for you not
25 having a legal holding?

1 D. Zarda 248
2 my willingness to relocate to Dallas from
3 Kansas City, and whether we were going to be
4 together that way or not. That was a little
5 bit of it.
6 I maintained a place up in
7 Kansas City, and obviously, to be more
8 involved in that would require me to fully
9 move to Dallas and be in Dallas. That's an
10 example of one of the personal things that I
11 meant.
12 Q So you're a partner in this
13 business, you do work for this business, but
14 nowhere in the business's records are you
15 indicated to be a partner?
16 A That's right.
17 Q What percentage of the profits
18 of the business do you share in?
19 A It works like this: If there is
20 any profit left over, then we may get paid.
21 That's pretty much the long and short of it.
22 Q Is it a profitable business?
23 A It has been. It has been
24 profitable. I mean, it depends on which
25 month you want to look at. It's up and down,

1 D. Zarda

2 especially during these turbulent times.

3 People aren't as focussed on spending money

4 on how they look and getting expensive

5 treatments done, so it's up and down. It's

6 difficult.

7 Q In 2010, did the company make

8 any money?

9 A I don't have the records in

10 front of me. I don't have the books in front

11 of me. I'd have to look to see what our

12 actual profit and loss -- to what our balance

13 sheet actually reflects, but I think we did

14 make some money. I think we were somewhere

15 in the black. We certainly weren't living

16 large or anything like that, but I think that

17 we were somewhere in the black.

18 I'd have to look back at the

19 records and see what capital purchases were

20 made to be able to tell. And 2010 -- you

21 said 2010, right?

22 Q I did.

23 A I'd have to look.

24 Q Did you make any money from the

25 business in 2010?

1 D. Zarda

2 A It did.

3 Q Did you file an income tax

4 return for 2010?

5 A 2010, yes.

6 Q Did you file an income tax

7 return for 2009?

8 A It has not been filed yet.

9 Q Why is that?

10 A That was the year that I broke

11 my ankle, and I got behind, in part, because

12 of that. It was just a matter of logistics.

13 I had traveled, and I had a difficult time

14 with the whole situation; with my ankle being

15 broke and getting around, getting my records

16 together and school, and I just simply got

17 behind and didn't get to it.

18 Q But were able to get your 2010

19 filed --

20 A Yes.

21 Q -- just not your 2009?

22 A Right.

23 Q Did you make more in 2010 than

24 you made in 2009?

25 A I don't know, because I haven't

1 D. Zarda

2 A Did I make any money? No, I

3 didn't make any money from the business. I

4 received some, I guess, reimbursements from

5 the business.

6 Q Did you get paid for the work

7 you performed for the business in 2010?

8 A No, not yet. Maybe some day.

9 We both have -- I mean, the business owes us

10 a lot of money on the books, so maybe some

11 day, if we can keep going and get through

12 everything, get to a better place, maybe then

13 it will pay us back. I hope for all of our

14 hard work and the employees and the people

15 that work for us to get their paychecks.

16 Sometimes we don't get our paychecks.

17 Q Did the business file an income

18 tax return in 2010?

19 A Yes, it did.

20 Q Did it file an income tax return

21 in 2009?

22 A It did.

23 Q And for all previous years that

24 it was in existence, did it file a tax

25 return?

1 D. Zarda

2 done 2009 yet, so I'll find out. It's just a

3 matter of getting caught up on that.

4 Q Now we're at the end of the year

5 in 2011; are we not?

6 A We are.

7 Q How did you do financially in 2011?

8 A Not very good.

9 Q Is that because you spent a fair

10 amount of time out of the country and on

11 vacation?

12 A No, it's because I didn't take a

13 full-time job skydiving.

14 Q And why didn't you take a

15 full-time job skydiving?

16 A Because of this.

17 Q Because of this lawsuit?

18 A In part, because of this

19 lawsuit. Mostly because of the damages that

20 have been done to me because of what Ray did

21 when he fired me and accused me of something

22 I didn't do and how it's hurt me in the

23 industry.

24 Q Isn't it the accusations of

25 Ms. Orelana and Mr. Kengle?

253

1 D. Zarda

2 A We've been through this I think

3 about two or three times now, so...

4 Q Well, Ray didn't accuse you of

5 doing anything. Ray just relayed to you the

6 accusations made by the customers; correct?

7 A Ray accused me when he suspended

8 me and when he fired me.

9 Q Well, specifically, what did he

10 accuse you of?

11 A Well, we went over that. He

12 accused me of touching Ms. Orelana in a way

13 that made her feel uncomfortable at the hips.

14 Q Did he say you touched Ms. Orelana

15 in a way that made her uncomfortable at the

16 hips, or did he say, I received a complaint

17 from a customer that said you touched her in

18 a way that made her uncomfortable at the

19 hips?

20 A He said that I touched her --

21 well, let me think about that for a minute.

22 There has been more than one time that this

23 has been discussed, so I can't recall how he

24 said it right now.

25 Q Because earlier today you said,

255

1 D. Zarda

2 that for the first time in November a month

3 ago, Ray knowing better, knowing that I

4 didn't do this, corroborated it and agreed

5 with it and took action against me, based

6 upon it, so that, to me, is the same thing as

7 him accusing me. It is the same thing.

8 Q How does Ray know better that

9 you didn't make this woman feel

10 uncomfortable?

11 A It's simple. Because Ray's been

12 doing tandems for three decades, jumping for

13 forty years. Ray knows me. He knows my

14 reputation. He knows my record. He knows

15 the situation that's involved in strapping

16 another passenger to you to take them on a

17 tandem. He knows what's involved with

18 strapping at the hips. He knows all of that.

19 He knows every part of that like the back of

20 his hand. He would be an expert in that, and

21 he knows that I did not do anything wrong.

22 Period.

23 Q I don't know how he would know

24 if he wasn't there --

25 MR. ANTOLLINO: That's --

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1 D. Zarda

2 (reading), he relayed to me that a customer

3 made a complaint that I made her feel

4 uncomfortable because I had touched her in

5 the hip area, and I disclosed my sexual

6 orientation to her.

7 A Okay.

8 Q That's what you said. That's

9 different than Ray accusing you of doing it.

10 That's Ray relaying to you that somebody else

11 was accusing you of doing it; correct?

12 A I --

13 Q I need you to answer that

14 question with a yes or a no.

15 A No.

16 Q No, that's not correct?

17 A No.

18 Q Okay, go ahead. What is it you

19 wanted to say?

20 A The reason it's not correct is

21 because what I said earlier. Ray knows

22 better, so even if Ray is relaying that

23 information, and that information is

24 relatively new to this case and to us, as far

25 as I'm concerned, because I just got to hear

256

1 D. Zarda

2 Q I do know that he received a

3 complaint --

4 MR. ANTOLLINO: We're not

5 arguing --

6 Q -- and you're aware of that; is

7 that correct?

8 A I'll agree with you that he

9 received a complaint.

10 Q Talk to me about Marco Marcovitch

11 (phonetic). Do you know him?

12 A I know Marco.

13 Q Friend of yours?

14 A I'm going to say he's a friend.

15 I'm not sure what our status of friendship is

16 right this second, though. He has been a

17 friend.

18 Q Have you referred to yourself as

19 a fag?

20 A I probably have.

21 Q What kind of situations would

22 you have referred to yourself as a fag?

23 A Probably would have been some

24 casual, loose situation.

25 Q Did Ray Maynard ever refer to

1 D. Zarda 257
2 you as a fag?
3 A You're asking me if he ever used
4 that word?
5 Q Yes.
6 A Not that I can recall at this
7 time in earshot of me.
8 Q Did Marco Marcovitch ever refer
9 to you as a fag?
10 A I think he has used the word in
11 a joking way somewhere along the line.
12 Q Did you ever discuss with Marco
13 Marcovitch what you would do to him if he
14 were a homosexual?
15 A What I would do to him?
16 Q Yes.
17 A Not that I can recall. No.
18 Could you break that question -- what do you
19 mean by what I would do to him?
20 Q Sexually.
21 A No, I don't recall ever
22 discussing it. Marco and I have never
23 discussed sexual relationships with each
24 other, so if you say something to the
25 contrary, I'd be interested to know what it

1 D. Zarda 259
2 FaceBook page without you approving it;
3 correct?
4 MR. ANTOLLINO: Objection.
5 A Incorrect.
6 Q What's posted on your FaceBook
7 page without your approval?
8 A FaceBook has the ability to be
9 able to allow people to post things on your
10 wall or in your forum or tag photos of you
11 without you having control over that, and
12 they still have that in place, even though
13 they've made improvements to their privacy
14 controls.
15 Sometimes those privacy controls
16 aren't pushed out to the community to make
17 you aware of them, and I'm still not even
18 aware of them today, of all of them, but you
19 are not always in control over what somebody
20 puts on your FaceBook page.
21 Q If somebody put something on
22 your FaceBook page that you're unhappy with,
23 you can take it down; correct?
24 A You could if you know about it
25 and if you saw it, if you got a notification.

1 D. Zarda 258
2 is.
3 Q Do you have comments posted on
4 your FaceBook site by Marco Marcovitch?
5 A I did at one time. We have had
6 comments back and forth. They typically
7 involved joking and banter between each
8 other.
9 Q Did that joking and banter ever
10 include sexual orientation?
11 A I'm sure it did.
12 Q Were you bothered by it?
13 A Well, there was a lot of it, so
14 as a blanket statement, I can't answer to
15 that because I'd have to see the specific
16 comment as an example, but in general, no,
17 because I know Marco wouldn't have been
18 saying anything to me maliciously.
19 Q You control what you post on
20 your FaceBook page; right?
21 A You're asking me do I control
22 what I post?
23 Q Yes.
24 A Yes, I control what I post.
25 Q Nothing is posted on your

1 D. Zarda 260
2 It's a living, breathing, electronic entity
3 and things come and go, and if you don't log
4 on to your FaceBook for a week, there could
5 be a week's worth of stuff that passed
6 through there that you don't even see.
7 Q Tell me about the incident that
8 occurred at Fire Island where you picked up
9 some Brazilian boys.
10 A Sounds like I had a good time,
11 but I don't recall it.
12 Q You don't recall speaking to
13 some of your coworkers about picking up
14 Brazilian boys at Fire Island?
15 A Brazilian boys at Fire Island.
16 No, I don't. I don't recall it.
17 Q Is that something you would have
18 discussed at work had it happened?
19 A It depends on whether somebody
20 would have asked me what I did this weekend
21 or not, or one of the times or the many times
22 Brian Petretti -- I don't why he kept
23 bringing it up -- hey, Don, did you go the
24 Grove this weekend? If he would ask me that,
25 maybe I would have responded with, no, I went

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1 D. Zarda

2 to the Pines. That would be the context.

3 That would be the only context that I could

4 think of.

5 Q Did you ever discuss taking

6 Viagra with your coworkers at Skydive Long

7 Island?

8 A Did I ever discuss it?

9 Q Yes.

10 MR. ANTOLLINO: I'll object to

11 the form.

12 A I can't recall.

13 Q You can't recall?

14 A I can't recall having a

15 discussion about Viagra.

16 Q Did you have discussion about

17 Viagra and Fire Island and a sex marathon?

18 A No.

19 Q You never had the discussion

20 with Curt Kellinger?

21 A A sex marathon, no. Now that

22 you're bringing it up, it seems like that

23 Curt might have put something or made a

24 comment on a FaceBook post at some point, or

25 he might have said something like that, but

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1 D. Zarda

2 somebody sent me a picture or over lunch or

3 something on FaceBook or something came up on

4 my cellphone, that it's possible that

5 somebody saw it.

6 Q Did John Campbell tell you to

7 stop looking at naked pictures on your

8 cellphone?

9 A You know, I think he might have

10 made a joke at one point about something like

11 that, and that's Monkey, John Campbell. I

12 think he made a joke one time or something

13 like that, and I don't even know if I was

14 looking at naked pictures on my cellphone. I

15 think he might have been assuming that.

16 Q Do you remember a time when a

17 coworker brought their child to work at

18 Skydive Long Island?

19 A There's been several people that

20 have brought children to work.

21 Q Do you remember complaining

22 about it?

23 A I don't.

24 Q Did you ever discuss at work at

25 Long Island Skydive oral sex?

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1 D. Zarda

2 not me.

3 Q You never had a discussion with

4 Curt Kellinger about Viagra at Fire Island?

5 A Not that I can recall. I mean,

6 he might have made a joke about something at

7 some point.

8 Q Talk to me about pornography on

9 your cellphone.

10 A Talk to you about pornography on

11 my cellphone?

12 Q Yes.

13 A What about it?

14 Q Do you ever look at pornography

15 on your cellphone?

16 A Define "pornography." What is

17 pornography to you?

18 Q Do you ever look at pictures of

19 naked people on your cellphone?

20 A I've had pictures of naked

21 people on my cellphone; yes.

22 Q Did you ever look at pictures of

23 naked people on your cellphone while at

24 Skydive Long Island?

25 A I suppose it's possible that if

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1 D. Zarda

2 A Did I ever discuss it?

3 Q Yes.

4 A No, I didn't discuss it.

5 People -- other employees they discussed

6 sexual things quite a bit, so I steered away

7 from making too many comments like that, so

8 when the conversation would turn in that

9 direction among my peers, I steered away from

10 it.

11 Those kind of things came up a

12 lot, and a lot of times, it could have been

13 straight related, or it could have been gay

14 related. Those things came up just among

15 peers, among staff in the video room.

16 I mean, if there was a girl with

17 big boobs on a jump that were bulging out of

18 her halter top, there'd be a rush, an influx

19 into the video room to hurry up and see the

20 video so they could look at the girl's boobs

21 spread apart in free fall. Ray participated

22 in that. In that setting, there would be

23 people that would make comments and jokes.

24 Who knows what was said?

25 Q Did Marco Marcovitch ever lie to

1 D. Zarda 265
2 you?
3 A Did Marco ever lie to me
4 about...
5 Q Anything.
6 A Well -- I can't think of
7 anything he lied to me about directly.
8 Q Do you have any reason to
9 believe that Marco Marcovitch is not a
10 truthful person?
11 MR. ANTOLLINO: Objection.
12 Answer.
13 A No, I don't think that I have
14 any reason to believe that he's a liar.
15 Q Do you have any reason to --
16 A I think that he's vulnerable.
17 Q Do you have any reason to doubt
18 his propensity for truthfulness?
19 A Yes.
20 Q What is your reason for doubting
21 his propensity for truthfulness?
22 A I just think that he's
23 vulnerable, because he's a young kid and he's
24 not experienced in a lot of areas with life,
25 and he's working in a very unique adult

1 D. Zarda 267
2 Do you believe that he testified
3 about anything untruthfully yesterday?
4 MR. ANTOLLINO: Objection.
5 A Let me just think and recall for
6 a moment.
7 Q Please.
8 A I think that he may have been
9 factually incorrect on some of the things
10 that he said.
11 Q And those things were?
12 A Which would be different than
13 testifying --
14 MR. ANTOLLINO: Objection.
15 A -- and that would be different
16 than testifying untruthfully.
17 Q What were the things that you
18 thought he was factually incorrect about?
19 A Just some --
20 MR. ANTOLLINO: Objection.
21 Asked and answered.
22 A -- of the questions.
23 Q I'm going to ask you to be as
24 specific as you can.
25 A This was just yesterday, so it's

1 D. Zarda 266
2 environment like it is at Skydive Long
3 Island. The kind of job that we're doing
4 there, the kind of responsibilities that we
5 have, and all those things that are going on
6 there. I just think he's vulnerable.
7 Q Do you have any reason to doubt
8 Mr. Winstock's propensity for truthfulness?
9 A I was concerned about it.
10 Q What is your reason for doubting it?
11 A Well, I was concerned about the
12 conflict of interest with his position at
13 Skydive Long Island and his position, which
14 is newly acquired with United States
15 Parachute Association, and his relationship
16 with Ray. I was concerned.
17 Q Well, you heard him testify
18 yesterday. Do you think he testified
19 untruthful about anything?
20 MR. ANTOLLINO: Objection.
21 A I feel better after hearing him
22 testify yesterday.
23 Q That's a wonderful answer. It's
24 just not the answer to the question I asked
25 you.

1 D. Zarda 268
2 a lot of information that was covered
3 yesterday.
4 Q But you were taking notes, so
5 I'm sure you recall --
6 MR. ANTOLLINO: Objection.
7 Asked and answered.
8 A What I was taking notes about
9 were questions to ask --
10 MR. ANTOLLINO: Don't discuss
11 what you were going to discuss with me.
12 A That's what I was taking notes
13 about.
14 Q Tell me what you think he was
15 factually inaccurate about.
16 MR. ANTOLLINO: Objection.
17 Calls for a narrative. Asked and
18 answered.
19 Q You may disregard the comments
20 from your attorney.
21 MR. ANTOLLINO: Like all other
22 objections, unless I tell you not to
23 answer, go ahead.
24 Q Feel free to disregard and
25 continue.

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1 D. Zarda

2 A Okay. Just some things that he
3 may not have remembered because through the
4 passage of time, such as, gay jokes, you
5 know, me being called Gay Don, things about
6 safety, the handle touches. Just some of
7 those kinds of things.

8 I don't think that he
9 maliciously said anything that was untrue or
10 that he lied. I just think that he may have
11 not remembered some of the facts at all or
12 maybe not remembered some of them 100 percent
13 clearly.

14 Q How about Duncan Shaw; have you
15 ever had a reason to doubt Duncan Shaw's
16 propensity for truthfulness?

17 A I have.

18 Q What was that?

19 A Same thing. Similar problem,
20 conflict of interest. And Duncan Shaw's
21 position is different than Rich's. He's not
22 a chief instructor, but he is a longtime
23 employee of Ray's. He's worked there for
24 awhile. He's had run-ins with Ray. In and
25 out. He's been in and out of employment with

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1 D. Zarda

2 said it all the time. I mean, it's pretty
3 clear. You start there with that and that
4 just leads into other things.

5 Q What other things?

6 A Well, even Rich couldn't
7 remember all the jokes. It's just so much.

8 Q I know. I'm not asking Rich.
9 I'm asking you. What were the jokes?

10 A I can't remember all the jokes
11 at this seating.

12 Q Can you remember some of them?

13 A Well, let me just sit here and
14 think about it for a moment.

15 Without remembering specifically
16 who said things like this, there were times
17 when there might be guys that were muscular
18 or attractive or gay looking that were
19 customers that were around, and some of the
20 other employees would say, how about him,
21 Don? He looks like your type. What do you
22 think about him? Stuff like that.

23 Q Do you recall who said that to
24 you?

25 A It happened frequently. I do

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1 D. Zarda

2 Ray, and like many of the people that work
3 there, they're under Ray's thumb, so they all
4 work for him, and so I feel that -- and
5 they're all participants, they all
6 participated in this joking, this gay banter,
7 this gay fun. They all participated, so
8 they're all culpable to some extent in this,
9 and yet we're in a situation where they all
10 still work for Ray and they're under Ray's
11 thumb, and Ray can hang their jobs over them.

12 Q Right. But I asked you to
13 identify this gay banter, and you were unable
14 to identify it.

15 A When was I unable -- I don't
16 remember being unable --

17 Q I asked you to tell me about any
18 of the gay banter that was made, and you were
19 unable to state what was said and when it was
20 said. If you've thought of something, please
21 enlighten me now.

22 What was this gay banter?

23 A Well, I think Rich just nailed
24 it right on the head; easy with Gay Don. I
25 mean, that's my name, Gay Don. Everybody

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1 D. Zarda

2 recall, and I won't be able to tell you the
3 dates and times because that would just be
4 impossible for me to recall, but one of the
5 persons that did that all the time was
6 Brian Petretti.

7 Q Do you remember the year in
8 which it occurred?

9 A That occurred in 2001, '09, and '10.

10 Q When in 2010 did it occur?

11 A During the time I was working
12 there, so before I was fired.

13 Q Do you remember the day?

14 A No.

15 Q Do you remember the month?

16 A It would have been in June or
17 July; possibly May. I guess it would have
18 been June and May in 2010, because those are
19 the only two months I worked there.

20 Q That happened in 2010 --

21 A Yes.

22 Q -- with Brian Petretti?

23 A Yes.

24 Q Did he say it maliciously?

25 A Brian --

1 D. Zarda 273
2 Q Yes or no?
3 MR. ANTOLLINO: Let him answer
4 the question.
5 Q Yes or no, Don?
6 A No, I don't think it was
7 malicious.
8 Q Do you have any reason to doubt
9 Curt Kellinger's propensity for truthfulness?
10 A Curt is a straight-shooter. I
11 think of everybody, I would feel most
12 comfortable with him.
13 Q What about Michael Goki (phonetic)?
14 A I don't really know him that
15 well.
16 Q Did Michael Goki ever lie to you
17 while you were employed at Skydive Long
18 Island?
19 A I can't recall Mike lying to me
20 about anything. I don't even really know him
21 that well. He was the rigger, and he was
22 there part-time. Technically, a full-timer
23 there, but he wasn't out there full-time.
24 Q Did Curt Kellinger ever lie to
25 you while you were employed at Skydive Long

1 D. Zarda 275
2 Q Is that the only thing he lied
3 about?
4 A He lied about there being video
5 of the jump. There was video of the jump.
6 Q Did he ever tell you there was
7 no video of the jump?
8 A At one point -- at one point, he
9 cast doubt on whether there was video.
10 Q So he never told you there was
11 no video of the jump; is that correct?
12 A I can't remember him directly
13 saying there was no video. I'm trying to
14 remember around the time, a week later when
15 he terminated me, or not if it came up after
16 the termination, because I still wanted to
17 see those videos, so that's why I'm trying to
18 remember if it came up then or not, again,
19 because I asked about the videos after the
20 termination.
21 Q In fact, he never accused you of
22 touching this woman inappropriately. He
23 relayed to you her complaint or her
24 boyfriend's complaint that you touched her
25 inappropriately; correct?

1 D. Zarda 274
2 Island?
3 A Not that I recall.
4 Q Did John Campbell ever lie to
5 you while you were employed at Skydive Long
6 Island?
7 A Not that I can recall at this
8 moment.
9 Q Did Duncan Shaw ever lie to you
10 while you were working at Skydive Long
11 Island?
12 A Not that I can recall at this
13 time.
14 Q Did Rich Winstock ever lie to
15 you while you were working at Skydive Long
16 Island?
17 A Not that I can recall at this
18 time. I don't have any evidence or proof.
19 Q Did Ray Maynard ever lie to you
20 while you were working at Skydive Long
21 Island?
22 A Yes.
23 Q What did he lie to you about?
24 A He lied about me touching this
25 passenger inappropriately at the hips.

1 D. Zarda 276
2 A We've been through this --
3 Q Right.
4 A -- so I'm going to state it
5 again.
6 Q Please do.
7 A Okay, so I think we'll have this
8 on the record four or five times now.
9 MR. ANTOLLINO: Yes. Objection
10 to the fact that it's been asked many
11 times.
12 Q Thank you for reminding him.
13 A Good, so --
14 Q I know it probably bothers him
15 more than --
16 MR. ANTOLLINO: Actually, we
17 were doing fine, but if you want to use
18 your seven hours asking things again,
19 you can do that.
20 MR. ZABELL: I'm aware of what I
21 can and can't do, Counselor. Thank
22 you, though.
23 A Since I've answered this so many
24 times, I'm going to try to make it even a
25 little bit more condensed, in that Ray's

1 D. Zarda 277
2 corroboration of that ridiculous complaint is
3 accusing me of it because he knows better.
4 Simple as that. It's just that simple.
5 Q How did Ray corroborate that
6 event?
7 A The accusation?
8 Q Yes.
9 A Because he went along with it.
10 He didn't investigate it. He didn't let me
11 see the video. He didn't ask anybody else in
12 the plane. He didn't check this out. He
13 just acted on the customer's complaint
14 immediately, didn't check anything out, so he
15 just owned it.
16 Q And that's how he lied to you?
17 A It's a lie because he knows that
18 Don Zarda did not touch the customer in a way
19 that was inappropriate whatsoever. He knows
20 that.
21 Q How does he know that?
22 A Because he has the experience in
23 the industry, in the sport, as an instructor,
24 and he knows me for ten years now. He knows
25 my record, he knows my reputation, and he

1 D. Zarda 279
2 issue.
3 Q As you sit here today, you
4 believe you were terminated 100 percent
5 because you are gay?
6 A I didn't say 100 percent. You
7 said 100 percent.
8 Q What percentage would you say --
9 MR. ANTOLLINO: Objection.
10 Q -- the likelihood is that you
11 were terminated because you're gay?
12 MR. ANTOLLINO: Objection.
13 A Statistically speaking, I
14 suppose if you were to crunch the numbers, if
15 there's a possibility of another reason, then
16 this reason over here can't be 100 percent,
17 so where in there is it; one percent, two
18 percent, three percent? I don't know. I'm
19 not in Ray's head, so I can't answer that.
20 The question was: Is it
21 possible that Ray could have fired me, in
22 part, for the Workers' Comp situation? Yes,
23 it's possible. How much of that weighed on
24 him when he made the decision to fire me for
25 being gay, I don't know. I wasn't in Ray's

1 D. Zarda 278
2 knows better. Simple.
3 Q And you think he just fired you
4 because you were gay and because you drove
5 his Workers' Comp premiums up?
6 MR. ANTOLLINO: Objection.
7 A No, no. I said earlier when you
8 asked me that if that was a possibility that the
9 Workers' Comp. was an issue, and I said that
10 it's a possibility.
11 Q Is it also a possibility that it
12 was because you were gay?
13 A Yes, absolutely.
14 Q Which do you think is more
15 probable?
16 A That I'm gay.
17 Q You think so?
18 A I think that's bigger.
19 Q Do you have an opinion one way
20 or the other as to the reason why you were
21 terminated; is it because you were gay, or is
22 it because of the Workers' Comp premium --
23 MR. ANTOLLINO: Objection.
24 Q -- in your mind?
25 A It's clearly going to be the gay

1 D. Zarda 280
2 head, so I can't answer that.
3 Q Do you believe that it could
4 have only been one of those two reasons?
5 MR. ANTOLLINO: Objection.
6 Q You may answer.
7 A Do I believe -- can you repeat
8 that?
9 Q Do you believe, as you sit here
10 today, that your termination was either the
11 result of you being gay or the result of you
12 driving up his Workers' Comp policy?
13 MR. ANTOLLINO: Objection.
14 A I'm going to say this once more.
15 I didn't do anything to drive up his Workers'
16 Comp policy.
17 Q Well, his belief that you drove
18 up his Workers' Comp policy.
19 A I still don't think that I can
20 say that is even his belief because that's
21 something that is not in my control, nor his
22 control, so I can't state to what his belief
23 is about me driving up his Workers' Comp
24 that as being a factor in whether or not he
25 wanted to let me go or not, could have been a

1 D. Zarda 281
2 little part of it, but I think the bigger
3 piece, the much bigger piece, the
4 dramatically larger piece of it had to do
5 with me being gay.
6 MR. ANTOLLINO: Off the record
7 for one moment, if you don't mind.
8 MR. ZABELL: Are we talking
9 about scheduling?
10 MR. ANTOLLINO: Yes.
11 MR. ZABELL: Sure.
12 (Whereupon, a discussion was
13 held off the record.)
14 Q The dramatically large piece of
15 your termination had to do with your being
16 gay.
17 What, if any, do you believe
18 could have been the other factors?
19 MR. ANTOLLINO: Objection.
20 Asked and answered.
21 A Well, we've been down this path,
22 but to go briefly again, the accusation of
23 the inappropriate touching was in the mix and
24 the issue of me being gay.
25 Q And?

1 D. Zarda 283
2 A Let me think about that for a
3 minute.
4 Q You do that.
5 A I can't think of a specific time
6 where she would have just flat out said an
7 untruth to me directly. Given that she was
8 participating, however, in my termination, to
9 me, might make her culpable in that, in the
10 act of possibly committing an untruth in that
11 situation.
12 Q But as you sit here right now,
13 do you have any reason to believe that she
14 lied?
15 A I do have reason to believe -- I
16 do have a little bit of reason to believe. I
17 just can't prove that.
18 Q We all need a reason to believe.
19 A Yeah, well.
20 Q What is your reason to believe
21 that she lied?
22 A My reason would be because she
23 was sitting there with Ray and me when I was
24 terminated, for whatever reason, whether it
25 was for Ray to have a witness or whatnot, and

1 D. Zarda 282
2 A The slight possibility that it
3 had to do with the Workers' Comp situation,
4 for which neither Ray nor me has any control
5 over because Ray doesn't work for the New
6 York State Insurance Fund or the Workers'
7 Comp Board and neither do I.
8 Q Are you finished with your
9 answer?
10 A I am.
11 Q Anything else you want to add?
12 MR. ANTOLLINO: Objection.
13 A To that question?
14 Q Yes.
15 A No, I think I answered it a lot.
16 Q Okay. Talk to me about
17 Lauren Callanan; what do you know about her?
18 A She is the manifestor, the
19 primary manifestor for the office, and I
20 don't know if she has an official title as an
21 office manager, but she certainly takes on
22 that role.
23 Q Nice person?
24 A She appears to be.
25 Q She ever lie to you?

1 D. Zarda 284
2 for her to be there, I can't imagine her
3 believing this to be true, the reason I was
4 being fired, so that would make me feel like
5 that she could be culpable of lying by
6 corroborating with Ray, the reason Ray was
7 firing me for.
8 I guess it would be like this:
9 Lauren, do you really believe that this
10 happened? That would be my question if I had
11 to ask her, and she would have to say yes or
12 no, and depending on that would, I guess,
13 determine whether or not she was lying. I
14 can't imagine --
15 MR. ANTOLLINO: All right.
16 That's the answer.
17 MR. ZABELL: Counselor, if your
18 client is speaking and he's halfway
19 through his answer, you do not get to
20 say, all right, that's enough.
21 MR. ANTOLLINO: Yes, I
22 apologize.
23 Q You said "I can't imagine."
24 Please tell me what you can't
25 imagine with regard to that question, and

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1 D. Zarda

2 disregard your attorney telling you, okay,

3 that's enough.

4 A I can't imagine her believing

5 that.

6 Q Can't believe that a customer

7 complained about you or believing that the

8 actual complaint was accurate?

9 A Believing that I did anything

10 wrong like that.

11 Q What months in the year 2001 did

12 you work for Skydive Long Island?

13 A I'll just have to give you an

14 approximate on that. It could have been the

15 months in June, July, August, and very early

16 September.

17 Q Would that have been the same

18 for 2009?

19 A No. 2009 would have been the

20 months of May, June, and the first part of

21 July.

22 Q What about 2010?

23 A Those would have been the months

24 of May and June.

25 Q And typically, if you were given

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1 D. Zarda

2 A It can be a seasonal business.

3 Technically speaking, skydiving can take

4 place 365 days a year, seven days a week, if

5 you have the weather. If the planets

6 rearrange themselves and it got to be nice

7 weather in December, they -- I wouldn't be

8 surprised if in the coming weekends, even

9 this month, if they aren't doing tandems at

10 Skydive Long Island on the weekend.

11 Q Would you work on rainy days?

12 A Would I work on a -- you're

13 asking me --

14 Q On a rainy day, yes.

15 A If I would or did?

16 Q If you would.

17 A If I would work on a rainy day?

18 Q Yes.

19 A Could you be more specific; in

20 what way would I work?

21 Q Would you actually jump out of

22 planes in the rain?

23 A We're not allowed to do that.

24 Q So on rainy days, you can't jump

25 from planes?

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1 D. Zarda

2 the opportunity, would you have worked for

3 Mr. Maynard year round?

4 A It was a seasonal arrangement.

5 It was a seasonal engagement to come to work

6 there.

7 Q What makes it seasonal?

8 A In part, the weather and the

9 nature of the activity, and the location of

10 Mr. Maynard's drop zone is in that place

11 mentioned. I think Rich told you, the season

12 was from March to November, and that's for

13 the locals. So what I mean by that is, Rich

14 lives in this area and so do some of the

15 other employees, so they stay all year, and

16 they're able to work a little bit longer

17 outside in the busy season where instructors

18 like me come from other parts -- they're able

19 to work a little bit longer on either end of

20 the season because they live here versus

21 instructors get hired in from other parts of

22 the country. We come for the busy part.

23 Q And you understand that

24 skydiving on Long Island is a seasonal

25 business; correct?

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1 D. Zarda

2 A You can't jump from planes while

3 it's raining, during the part of the day that

4 it's raining.

5 Q What other restrictions are

6 there on when you can jump from a plane?

7 A Legally, as far as conditions?

8 Q Yes.

9 A Legally, the sky must be clear,

10 you must have visibility of three statute

11 miles, you must be 500 feet below clouds,

12 there must be 1,000 feet above the clouds,

13 and 2,000 feet separation from the clouds to

14 be able to jump. If you don't have that kind

15 of visibility -- that's off the top of my

16 head. The FARs, but it's relatively close.

17 Q And that was enforced at Skydive

18 Long Island; correct?

19 A Not all the time.

20 Q No; there were times where you

21 would break the law and dive?

22 A Yes.

23 Q Why would you do that?

24 A Because the pilot was willing to

25 fly the aircraft, and Ray was willing to have

1 D. Zarda 289
2 us do jumps in those conditions.
3 Q And you were willing to jump in
4 those conditions?
5 A Willing or -- I was willing to
6 jump. Pressured to jump, I think, would
7 probably be a better way to put it.
8 Q You had the right to refuse a
9 jump; did you not?
10 A You could. If you did and you
11 were the only one, then that would possibly
12 raise concern or draw attention to why you
13 would not be jumping when these other people
14 who have a vested interest in making as much
15 money as they possibly can are jumping, so
16 there's that paradox.
17 Q What's the paradox?
18 A Everybody else must think it's
19 okay to jump, so therefore, I should jump
20 too, even if it's illegal. That's the
21 paradox.
22 Q Did you ever complain about
23 being forced to jump illegally?
24 A In this industry, if you
25 complain about things too much, illegal or

1 D. Zarda 291
2 times it was Rich. Sometimes it would be the
3 pilot. Everybody has a different role in
4 this.
5 The pilot could refuse not to
6 fly if the conditions aren't good enough, so
7 then if the pilot doesn't fly, then,
8 obviously, the jumpers can't make the
9 decision not to jump.
10 Q Did you maintain a schedule of
11 your hours worked in 2009?
12 A A written schedule, no.
13 Q Did you maintain a schedule of
14 your hours worked in 2010?
15 A No. We were expected to show up
16 at work at a specific time, and that time was
17 given to us either the prior day, we'd look
18 at the schedule, see what tandems were coming
19 in, and we were expected to stay until the
20 work was complete, no matter how long that
21 was or until we were dismissed, if we were
22 ever dismissed.
23 Q Sometimes you would never be
24 dismissed; right?
25 A Sometimes you wouldn't.

1 D. Zarda 290
2 not, then you may lose your job.
3 Q That's a wonderful answer. It's
4 just not the answer to the question I asked
5 you.
6 A Okay.
7 Q Did you complain about being
8 forced to jump illegally?
9 A No.
10 Q If you wanted to complain, who
11 would you complain to?
12 A The only person I would have
13 felt comfortable with making a complaint
14 about conditions and not jumping would have
15 been Rich, himself, and if Rich wasn't there,
16 I would probably conferred next with Duncan,
17 Duncan Shaw.
18 Generally, either one of those
19 two people would be there. Collectively how
20 it would work is, if it's really crappy
21 conditions and we're talking borderline
22 dangerous, it would get to a point where the
23 herd of staff would collectively stand down.
24 Sometimes that call had to be made by
25 somebody. Oftentimes, it was not Ray. Many

1 D. Zarda 292
2 Q And you would sleep there when
3 you weren't dismissed; correct?
4 A You're just waiting. You could
5 be using the computer or you could do
6 nothing, or if there was something -- there
7 was various things you could do. If you
8 needed to pack your parachute or something, I
9 suppose you could do that.
10 Q You could also drive off site
11 and just when they call you back, return;
12 correct?
13 A Sometimes they would let you do
14 that, but not all the time.
15 Q You had a cellphone when you
16 worked in 2009 and 2010; correct?
17 A Yes.
18 Q What was your cellphone number?
19 A Same as it is now.
20 Q Which is?
21 A (901)569-5860.
22 Q And that was known to Skydive
23 Long Island; correct?
24 A Yes, of course.
25 Q And they could always call you

1 D. Zarda 293
2 on your cellphone; correct?
3 A Yes, they could.
4 Q And, you know, there were times
5 during bad weather where you'd leave and go
6 run some errands and maybe stop back, but if
7 the skies opened up and it got more rainy,
8 you would just go home; correct?
9 A No. Typically, for me, once I
10 made the trip out there, I would stay from
11 where I had come from, so I can't think of
12 specifics, but there were not very many times
13 that I would go run errands, because there's
14 not too many things that you can do out
15 there, where you could run errands, other
16 than go get something to eat and come back.
17 So for me, that doesn't work.
18 For some of the other people
19 that live out there, have full-time homes and
20 stuff, they could kind of come and go and do
21 stuff like that, but it didn't really work
22 out for me that way.
23 Q That's just because you lived a
24 little bit of a distance away?
25 A It was a little bit of a

1 D. Zarda 295
2 Q Did you ever try?
3 A Nope.
4 Q Now, what was your expected work
5 schedule in 2009 at Skydive Long Island?
6 A Are you asking me what dates I
7 was expected to be there?
8 Q What days of the week were you
9 expected to work?
10 A It's a seven-day-a-week operation.
11 Q I know it's a seven-day-a-week
12 operation --
13 A You're expected to work seven
14 days a week if the weather is good.
15 Q How did you happen to spend
16 weekends over at Fire Island if you were
17 working seven days a week?
18 A I didn't spend any full weekends
19 over at Fire Island, unless it was completely
20 crappy weather and we were dismissed from
21 jumping and we were not jumping, period, or
22 we were allowed to go home or any of those
23 scenarios, if they occurred. I didn't spend
24 weekends over at Fire Island.
25 Q Really? Because you testified

1 D. Zarda 294
2 distance; yeah.
3 Q It was just less convenient for
4 you; correct?
5 A Yeah. It would have been kind
6 of ridiculous to drive all the back to Coram
7 and then come all the way back to that area.
8 Q Did you ever meet any of the
9 customers of Skydive Long Island afterwards,
10 after a jump?
11 A Did I ever meet -- be more
12 specific about "after a jump." Are we
13 talking the same day, like after they just
14 made their jump and they were hanging out?
15 Q No. Did you ever make an
16 acquaintance with a customer and then meet up
17 with them at some later date?
18 A I made some acquaintances, but I
19 haven't met up with them. I made a couple of
20 acquaintances on FaceBook, one that I could
21 think of. I haven't seen him since. I mean,
22 we're still FaceBook friends.
23 Q Did you ever date any of the
24 customers you met at Skydive Long Island?
25 A No, I never have.

1 D. Zarda 296
2 before that in response to questions of, hey,
3 Don, what did you do this weekend, you would
4 share with people that you went to Fire
5 Island or you went to the Pines, or something
6 else.
7 A Yup. You can very easily get a
8 ride on down to Sayville, get on the ferry,
9 and come right back. Coram is fifteen
10 minutes from Sayville. I did it several
11 times. Come back and go to work, so I didn't
12 spend weekends on Fire Island.
13 Q Did you spend evenings there?
14 A If there was time to make it
15 over there. It just depends on the schedule.
16 If there was a way to go over there and come
17 back, then, yeah.
18 Q So some days your schedule would
19 permit it and some days your schedule
20 wouldn't; is that correct?
21 A The schedule never permitted to
22 go spend a weekend on Fire Island. It did
23 not permit that, and I did not spend any
24 weekends on Fire Island because of that. If
25 the situation warranted or the conditions

1 D. Zarda

2 permitted you to be able to go to Fire Island

3 for any amount of time, then I may have gone,

4 and I did go on some occasions.

5 Q In 2009?

6 A Yes.

7 Q And in 2010?

8 A Yes.

9 Q How many occasions in 2010 did

10 you go to Fire Island?

11 A I can't recall a specific number

12 of occasions. There's no way of me to tell

13 you that.

14 Q More than one?

15 A Oh, yes, more than one.

16 Q More than two?

17 A I'm pretty sure it was more than

18 two.

19 Q More than three?

20 A I would say so.

21 Q More than four?

22 A Would say that it was -- we're

23 talking about 2010?

24 Q Yes.

25 A I'd say it was less than ten

1 D. Zarda

2 Q Did you ever enjoy any of Long

3 Island's fine restaurants, fine dining

4 establishments?

5 A I mean, I eat out a lot, so

6 can't say as to what all restaurants I went

7 to. I think in 2010, I might have gone to a

8 restaurant -- I did go to a restaurant. I

9 just can't remember which one it was, in

10 Port Jeff Station right around the corner

11 from the condo. That was nice. I don't

12 remember which one it was.

13 Q Did you ever have occasion to go

14 into New York City --

15 A Yes.

16 Q -- when you worked in 2009

17 and 2010?

18 A Yes.

19 Q When would you go into the City?

20 A Whenever time permitted.

21 Q How much time would you need to

22 get into the City?

23 A That was always a toughy. If we

24 were busy working and we had to be at work

25 the next morning, depending on what time we

1 D. Zarda

2 times total.

3 Q Some amount between six and ten?

4 A Somewhere around there, yeah. I

5 think that's fair to say.

6 Q What about 2009?

7 A 2009, less. I'd probably say it

8 could be four to five times.

9 Q Four to five times?

10 A I managed to make it over there,

11 despite the injury, a couple of times, so

12 yeah, probably about that.

13 Q Fire Island wasn't the only

14 place you socialized on Long Island; is it?

15 A Well, there was the drop zone,

16 and then -- 2009?

17 Q 2009 or 2010.

18 A 2009, I can't think of going

19 anywhere else to socialize. 2010 on Long

20 Island, I can't think of anywhere else I went

21 to socialize.

22 Q Did you ever go to any clubs in

23 Sayville?

24 A No, never been to any clubs in

25 Sayville.

1 D. Zarda

2 got released from work or the last jump was

3 would dictate on whether or not we could get

4 down to Ronkonkoma, hop the train, get to the

5 City and come back, so I did that a few

6 times.

7 Q In 2009, how many times did you

8 do that?

9 A Did I ever go to New York from

10 Coram; is that what you're asking?

11 Q Did you ever go to New York City

12 while you were working in 2009?

13 A A couple of times.

14 Q Three or four?

15 A I don't know if it was three or

16 four, because I got hurt pretty early on, so

17 we were busy, and that was during the long

18 daylight hours, but I know I went at least

19 once, probably twice.

20 Q How about 2010?

21 A Same thing, because the only

22 thing different is that I was hurt in a

23 different way in 2010. I was fired, but it

24 was about the same amount of time.

25 Q If it was a long daylight day,

1 D. Zarda 301
2 as I believe you said --
3 A Yes.
4 Q -- what does that mean?
5 A Well, in the summer solstice,
6 the days are the longest. Skydiving goes on
7 typically all way until one half hour before
8 sunset. As the sunset gets longer and longer
9 in the summer, then so does the workday.
10 Q What is the longest day in the
11 summer?
12 A June 20.
13 Q From that point, it gets --
14 A It starts getting slowly
15 shorter.
16 Q If there's more sunlight, does
17 that mean you can perform more jumps in a
18 day?
19 A It does.
20 Q What was the most amount of
21 jumps that you had done in a day?
22 A Eighteen.
23 Q How much do you get, roughly,
24 for each jump?
25 A \$40.

1 D. Zarda 303
2 Q Did you keep track of how many
3 jumps you did in 2009?
4 A The computer kept track of it.
5 My altimeter has it. I'm not sure if we
6 provided that to you or not. It's in my
7 altimeter. It's on my computer.
8 Q What does that mean, it's in
9 your altimeter, it's on your computer?
10 A Well, the old standard way of
11 logging jumps, and some people still use it,
12 some people half-and-half it, is an actual
13 logbook, like this (indicating) spiral bound.
14 You write down the jump number and what you
15 do. Many professional jumpers don't do that
16 anymore because we're just doing so many
17 jumps, and they're all just the same thing,
18 and we have altimeters that electronically
19 record the jump.
20 Q Would that electronically record
21 a fun jump for you?
22 A Yes, it would.
23 Q Would it distinguish it as a fun
24 jump?
25 A It doesn't, but when you

1 D. Zarda 302
2 Q And that's the amount that you
3 agreed upon; correct?
4 A Right.
5 Q On a piecemeal basis, once your
6 jump is completed, that's what you get paid;
7 is that correct?
8 A Right.
9 Q Sometimes you get paid more than
10 \$40; right?
11 A As Rich was kind of explaining,
12 because the breakdown is kind of complicated
13 and depending on the kind of jump, so if it
14 was a training jump, training tandem versus
15 just a joyride, then there was a slightly
16 different schedule for that, and I don't
17 recall right off the top of my head how much
18 it was, because the majority of the jumps
19 that take place at Skydive Long Island are
20 passenger joyrides. They're not training
21 jumps, so I don't have it off the top of my
22 head.
23 There were times that if you
24 were doing a different kind of jump, you got
25 paid a different amount.

1 D. Zarda 304
2 download the jumps into your software program
3 on your computer, then you can go in and say,
4 dive type or type of jump it is, and also
5 typically, if you just forgot and you wanted
6 to look, you can tell what kind of jump it is
7 because you could look at the free fall time,
8 free fall speeds and opening altitudes that
9 the altimeter records, so it would really be
10 obvious that a tandem wasn't a fun jump and
11 you opened at 2,000 feet. That's really a
12 no-brainer.
13 Q Now, Mr. Winstock said yesterday
14 when he was critiquing one of your jumps that
15 he thought you were waiting too long to throw
16 your drogue out.
17 A Just his opinion.
18 Q Well, it's his opinion that
19 counts; isn't it?
20 A It counts for what?
21 Q He gets to review your jumps to
22 determine that you're jumping appropriately;
23 correct?
24 A No. There wasn't a review
25 process. I think that was just some

1 D. Zarda 305
2 skydiving comradery. No. So no, there was
3 not performance reviews. There was not
4 performance evaluations.
5 Q In a tandem jump, how long are
6 you supposed to wait before throwing out your
7 drogue?
8 A Three to five seconds, or until
9 stability is achieved and when the instructor
10 deems it appropriate to be able to safely
11 deploy the drogue chute.
12 Q Why do you not want to wait too
13 long to deploy your drogue chute?
14 A Well, because it could get
15 entangled with the tail of the aircraft. It
16 could get entangled with you. It can get
17 entangled with the passenger; any of the
18 those things. So you need to deploy the
19 drogue whenever the time is correct that you
20 have achieved stability and that you have
21 control and that it's safe to do so.
22 Q Right. And you don't want to
23 throw your drogue out after -- the whole
24 purpose of your drogue is to slow you down so
25 you're not hitting terminal velocity;

1 D. Zarda 307
2 know, up to seven seconds. It's fine.
3 Q Did Rich indicate that you did
4 it in about twelve seconds?
5 A We didn't look at the video
6 again, because I don't think there was
7 twelve seconds there.
8 Q Because there was time for you
9 wave before you did it; correct?
10 A Oh, there's time to give the
11 peace sign. There's time to do a couple of
12 flips. There's time to wave. There's time
13 to do all of that.
14 Q Do you flip while there is
15 somebody strapped to you?
16 A I have.
17 Q Is it recommended?
18 A Technically, it is not allowed.
19 And that reminds me of the
20 initial complaint in 2001 of that passenger
21 where I mentioned that there was something
22 that that passenger wanted me to do that I
23 wouldn't do, that just happens to be exactly
24 what it was. It was flips out of the
25 airplane.

1 D. Zarda 306
2 correct?
3 A It's just to keep the tandem
4 pair falling at the same speed, roughly, that
5 a solo jumper would fall.
6 Q And isn't it also to lessen the
7 impact of the initial shoot opening, as well?
8 A It is also for that.
9 Q Because that would put a lot of
10 stress on you; wouldn't it?
11 A It does, yes. It does also
12 serve that purpose.
13 Q So that's why you want to open
14 it in that three to five seconds?
15 A Three to five seconds is very
16 arbitrary. It could be seven.
17 Q Really? Because I thought at
18 twelve seconds, you hit terminal velocity.
19 A Actually, at nine seconds you
20 do.
21 Q Oh, you do? Then it makes sense
22 you're going to want to do it at three to
23 five as opposed to eight because you don't
24 want to hit terminal velocity; right?
25 A No, no. It's okay to wait, you

1 D. Zarda 308
2 Q Which you've done before?
3 A Every instructor has done it.
4 Q But you're not allowed to do it?
5 A Technically, you're not allowed
6 to do it.
7 Q But you've done it.
8 A And everybody does.
9 Q So if everybody does it, then it
10 makes it all right; correct?
11 A It depends. It depends on if
12 the manufacturers are wanting to enforce that
13 or not, and during the period of time in 2001
14 when that came up, it was under very extreme
15 scrutiny at that point, and it was being
16 enforced, and there were consequences if you
17 were caught doing it.
18 Q What were the consequences?
19 A You could have your license
20 revoked.
21 Q And that's actually any time if
22 you're caught doing it, you could have your
23 license revoked; correct?
24 A It is, but I've not heard of
25 that happening in years.

1 D. Zarda 309
2 Q So you've escaped detection in
3 years?
4 A Everybody has escaped detection
5 in years, even though it's broadcast on
6 YouTube thousands of times. Instructors
7 doing flips and barrel rolls with tandem
8 passengers, and somehow there still manages
9 to be licensed instructors in the country
10 doing tandems. It's a great thing.
11 Q You agreed specifically to get
12 paid on the per jump basis; did you not?
13 A That is correct.
14 Q And you were paid on a per jump
15 basis; correct?
16 A Yes.
17 Q And you were paid what you had
18 agreed to be paid; correct?
19 A Except for the jumps that Ray
20 withheld from my paycheck.
21 Q But then he gave them back to
22 you; right?
23 A (No verbal response.)
24 Q You testified that he did.
25 A He stole the TV, and then he

1 D. Zarda 311
2 A New York.
3 Q I assume you applied for
4 unemployment benefits; correct?
5 A I did.
6 Q Did you indicate on your
7 application for unemployment benefits that
8 you were a partner in a business?
9 A I would have to see the form. I
10 doubt it, because I'm a silent partner, and I
11 don't have any legal standing with the
12 business whatsoever, and I don't have
13 anything there, so I doubt it.
14 Q But you do receive income from
15 the business when the business has income;
16 correct?
17 A When the business is able to pay
18 for what it owes me for work that's been done
19 years ago, then we get some money.
20 Q And in 2010, you actually did
21 work for the business; correct?
22 A I haven't been paid for that
23 work.
24 Q But you did work; right?
25 A In 2010, I did some things here

1 D. Zarda 310
2 returned it.
3 Q You got paid everything that you
4 were agreed to be paid; correct?
5 A Yup.
6 Q Did you ever collect any Social
7 Services payments in 2009 or 2010?
8 MR. ANTOLLINO: Objection to
9 form.
10 A Define "Social Services" to me.
11 Q Anything from welfare to
12 unemployment benefits to Workers' Compensation
13 Benefits.
14 A I received Workers' Compensation
15 benefits.
16 Q When?
17 A That was in 2009.
18 Q Did you ever receive
19 unemployment benefits?
20 A Not in 2009.
21 Q Did you receive unemployment
22 benefits in 2010?
23 A Yes.
24 Q From what state did you receive
25 unemployment benefits?

1 D. Zarda 312
2 and there.
3 Q What did you do for the company
4 in 2010?
5 A In 2010, I was gone a lot, so
6 just IT stuff.
7 Q Do you recall what period of
8 time to what period of time you did IT stuff?
9 A It would have been before I
10 went.
11 Q It would have been what?
12 A It would have been before I went
13 to leave for the season to go to Skydive Long
14 Island.
15 Q Well, didn't you testify before
16 that you also worked there after you left
17 Skydive Long Island?
18 A You're talking about '10; right?
19 Q Yes.
20 A I think that -- I think that you
21 were talking about '11 when I came back and
22 doing the work that you just asked me about
23 recently.
24 Q So you're saying you didn't do
25 any work for the company in 2010, or you did

1 D. Zarda 313
2 do work in 2010?
3 A Before I went to Skydive Long
4 Island.
5 Q From what period of time to what
6 period of time did you collect unemployment
7 benefits?
8 A I don't have a -- that's a good
9 question because it took so long to get any
10 response in that broken system, that awful
11 system --
12 MR. ANTOLLINO: Just answer the
13 question.
14 Q It's an awful broken system. I
15 got you.
16 A It is. It's awful. I think
17 actually by the time I actually got any
18 benefits, it was the end of November of 2010.
19 It took that long.
20 Q How long did you receive those
21 benefits for?
22 A I think it was just until
23 January, the end of January. Maybe early
24 February.
25 Q Why did you stop receiving

1 D. Zarda 315
2 Workers' Comp, I think the Judge will see it
3 my way.
4 Q You do?
5 A I do.
6 Q Has anybody advised you on it?
7 A Like an attorney, you mean?
8 Q Yes.
9 A Not specifically.
10 Q Generally?
11 A No. They have not specifically
12 advised me on that. I'm kind of handling
13 that on my own. I think -- it's a
14 bureaucracy. I think the facts speak for
15 themselves, and then when it gets to a point
16 where a Judge can look at it, it will be
17 easy.
18 Q Do you know what the earnings
19 are of Altitude Express or Skydive Long Island?
20 A What they make as a corporation?
21 Q Yes.
22 A I don't.
23 Q Do you know the periods of time
24 in which they make their money?
25 A I don't know, specifically, but

1 D. Zarda 314
2 benefits?
3 A Because we got into a dispute
4 over a program that I applied for,
5 599 Program, and they suspended my benefits.
6 Q What is a "599 Program"?
7 A It has to do with training. If
8 you are in school or in an approved training,
9 and I'm not going to speak as if I'm an
10 expert on this, because I don't have the rule
11 in front of me because it's all very
12 complicated, you can receive benefits for
13 unemployment while you are actually in school
14 full-time, as long as you meet these specific
15 criteria that was listed in their handbook,
16 and I met that criteria, so we actually still
17 have an open case to this day, and I intend
18 to win that to get the remaining benefits
19 with unemployment.
20 Q You do?
21 A I do.
22 Q How do you intend to do that?
23 A When the Judge -- when I finally
24 get a hearing and I get to talk to the Judge,
25 I think, just as in the case with the

1 D. Zarda 316
2 I think they are capable of making money year
3 round. They can sell gift certificates over
4 the winter, even though they're not jumping.
5 They can actually do jumps in January. I've
6 seen posts for jumps in the winter, so it's
7 just not the up, main season.
8 Q Do you agree that skydiving is a
9 seasonal sport?
10 A In some areas, it is, and in
11 some areas, it is not.
12 Q Would you say that Skydive Long
13 Island is a seasonal sport, dependent to
14 operate mostly in the warmer weather?
15 A Typically so for Skydive Long
16 Island: yeah, yes.
17 Q So if you actually swore to the
18 accuracy of that statement, that would be
19 correct?
20 A I think I did say that.
21 Q I think so too.
22 A Yeah.
23 Q I believe you said the last jump
24 of each day occurred a half hour before
25 sunset; is that correct?

1 D. Zarda 317
2 A Well, if everybody is following
3 FAA rules and United States Parachute
4 Association rules and all the rules that
5 you're supposed to follow, then technically
6 speaking, the last jump is supposed to be
7 wheels up, which means takeoff, thirty
8 minutes before sunset; whatever the official
9 posted sunset is.
10 Q How long does a jump actually
11 take?
12 A That depends on the type of
13 jump, the type of aircraft that's being used
14 to take the jumpers to altitude, and the
15 altitude of the jump.
16 Q When you were at Skydive Long
17 Island, how long did your jumps take?
18 A Well --
19 Q Generally? You can give me the range.
20 A That's better because there is
21 two different aircrafts, and they operate at
22 two very different speeds and they were
23 different altitudes, so a jump could go
24 anywhere from, I would say, ten to twenty,
25 twenty-two minutes or so, somewhere in that

1 D. Zarda 319
2 variables.
3 Q Most of the jumps took between
4 fifteen and twenty minutes for which you
5 would earn the \$40; correct?
6 A Yeah. Sometimes a little less
7 if it was in the KingAir and you didn't get
8 full altitude, for whatever reason, and
9 sometimes that happened because of traffic or
10 clouds.
11 Q And again, if it was a cloudy
12 day or a rainy day, you ended up hanging out
13 around there, but you could go run errands or
14 whatever, but you didn't go home because it
15 just didn't work out for you; correct?
16 A I typically didn't go home
17 because it was too far, but it depends on the
18 kind of clouds. I know that maybe sounds a
19 little hard to understand, and the kind of
20 weather.
21 Q No, I understand. You got your
22 nimbus, your cumulonimbus, your thunder.
23 A If it was, you know, stuff is
24 moving in, it's definitely not going
25 anywhere, then you know probably we're done

1 D. Zarda 318
2 neighborhood.
3 Q In a ten to twenty-minute
4 period, you would earn somewhere around \$40;
5 is that correct?
6 A That's correct. You could do
7 pretty well, depending on which plane you're
8 in. If you're lucky and in the KingAir all
9 day, you did better because it was a faster
10 plane. You could get up and down quicker and
11 do more jumps.
12 Q That was the ten-minute jumps;
13 right?
14 A Well, the reason I said ten is
15 because that's if you are doing some kind of
16 jump mastering with a student that's not a
17 tandem and they're getting out at a low
18 altitude on the way up to a higher altitude,
19 so that's why I included that. That's not
20 the typical tandem jump. A typical tandem
21 jump is going to be fifteen to twenty
22 minutes.
23 Q Okay.
24 A Tandems were, you know, were the
25 main staple. There's all kinds of other

1 D. Zarda 320
2 for the day. If it was hit-and-miss stuff
3 coming and going, you know, you could maybe
4 get a few loads off in between the stuff, and
5 then more rain would come, so it would just
6 depend, and then it depends on the altitude
7 of the clouds.
8 Sometimes the ceiling might be
9 10,000 feet. We could still do jumps below
10 10,000 feet without breaking the law. It
11 depends.
12 Q You would judge from the weather
13 whether or not you would hang around or not;
14 correct?
15 A We wouldn't judge. The decision
16 had to come down from Lauren. Lauren, a lot
17 of times, made the call, and I think when she
18 made the call, it was probably with Ray's
19 approval. It would come down from Ray or
20 Lauren and possibly Rich on whether we're
21 done or the pilot.
22 Keep in mind, it's a little bit
23 complicated. I want everybody to be able to
24 understand this. Ray runs the drop zone, he
25 owns the drop zone, he controls most things.

321

1 D. Zarda

2 However, the drop zone cannot operate if the

3 pilot does not or cannot fly the aircraft,

4 and the pilot has the absolute final say on

5 whether anybody goes anywhere, bar none.

6 Q What was the least amount of

7 jumps that you had performed on a day?

8 A That would be easy. It would be

9 zero.

10 Q And that's if you showed up and

11 the weather just didn't permit a jump;

12 correct?

13 A That's right.

14 Q In which case, you'd --

15 A You'd just have to see what the

16 situation was going to be. It was an

17 on-the-fly thing.

18 Q But while you're waiting around

19 for the weather to clear, you can go --

20 MR. ANTOLLINO: Objection.

21 Q -- get a sandwich, order a

22 pizza, or something?

23 A It depends. I'm not going to

24 make a general statement about that because

25 it just simply depends.

323

1 D. Zarda

2 Q Who lived the closest to the

3 jump zone?

4 A I think Duncan and Willie at the

5 time and Alex Allen.

6 Q Now, you and Willie weren't that

7 close, but Duncan was a good guy, right,

8 Duncan liked you?

9 A Everybody was a good guy.

10 Q Everybody; all of the workers

11 were good guys, even Willie?

12 A Even Willie. Willie was one of

13 those people that we talked about earlier

14 that needed a little bit of work.

15 Q Did Duncan or Willie ever invite

16 you to their house to get something to eat

17 during the down times?

18 A Not during those times; no.

19 Q During any other time?

20 A Yes. I've been over to their

21 house, but not during, you know, workdays.

22 Q After work, you'd go over and

23 socialize; right?

24 A Actually, no. Believe it or

25 not, social as we are with those long days,

322

1 D. Zarda

2 Q Just some days you could, and

3 some days you couldn't?

4 A Some days you could, and some

5 days you couldn't.

6 Q Some days you could go home; and

7 some days you couldn't?

8 A Yeah.

9 Q You just wouldn't go home

10 because it was pretty far; right?

11 A Well, yup. If I had to go home

12 and come back, it would have been too far, so

13 really that wasn't an option for me, because

14 what if I'm on the way home and almost to

15 Coram, and then a hole opens up and we got

16 twenty or thirty --

17 Q Jumpers?

18 A -- customers standing there that

19 we can get in the air and I'm not there to do

20 it, that wouldn't be good.

21 Q Some people live pretty close to

22 the --

23 A They do.

24 Q -- jump zone; right?

25 A Yes, they do.

324

1 D. Zarda

2 the people that work there, the professional

3 jumpers, were the ones who didn't socialize a

4 whole lot because we were worn out. You went

5 home. You had very little time to do what

6 you needed to do for your person, in my case,

7 my errands, workouts, whatever, and then you

8 had to be back the next day, so those of us

9 that worked full-time, we didn't really,

10 during the heavy part, we didn't socialize a

11 whole lot.

12 Q Did you ever get to workout at

13 the drop zone?

14 A No.

15 Q Do pushups, sit-ups, or

16 pull-ups?

17 A No.

18 Q Never did that?

19 A No.

20 Q Were there shower facilities at

21 the drop zone?

22 A Crude, but I never used it, but

23 out behind the electrical transformer, there

24 was a stall and I think a water hose.

25 Q Well, it's always good to keep

1 D. Zarda 325
2 water hoses by electrical transformers;
3 right?
4 A Right.
5 Q But that was available for you
6 to use; right?
7 A If you felt like you could get
8 cleaner in that place, then I guess you could
9 shower there.
10 Q Were there ever beverages
11 provided in the drop zone?
12 A For sale, or -- Ray had a
13 hamburger shack that you could get soft
14 drinks from and some Coke machines.
15 Q Anybody ever bring beer to the
16 drop zone?
17 A All the time.
18 Q Who would bring beer?
19 A That could be staff, fun
20 jumpers, customers. Beer is encouraged.
21 Q But you can't jump while you're
22 drunk; can you?
23 A No, you cannot.
24 Q And you would never jump while
25 you were drunk; right?

1 D. Zarda 327
2 MR. ZABELL: No.
3 MR. ANTOLLINO: When you say,
4 "laid," are were you spelling it
5 L-E-I-D or L-A-I-D?
6 MR. ZABELL: I'm just saying
7 that you were talking about getting
8 laid yesterday, and I'm asking your
9 client if he knows what you were
10 talking about.
11 A I think that he was making
12 reference to a posting that he may have seen
13 on Skydive Long Island's website about a
14 summertime party, a luau, where it mentioned
15 something about getting laid.
16 Q Do you recall how it was spelled
17 because your attorney seems to want to know?
18 A I don't recall how it was
19 spelled. I may have seen it in passing.
20 Drop zones routinely have newsletters and
21 publicize on Dropzone.com and other websites,
22 boogie-type events for things like that, not
23 every single one of them, but it sounds like
24 something that a drop zone would have.
25 Q Were you ever at a getting-laid

1 D. Zarda 326
2 A Absolutely not.
3 Q Did you ever drink a beer at the
4 drop zone?
5 A Yes.
6 Q On occasion; right?
7 A On occasion.
8 Q It would be like, you know, once
9 a week, maybe once or twice a week?
10 A I wouldn't call it a per-week
11 thing. It would just depend on the day and
12 if there was something going on at the drop
13 zone. Typically, in the industry, or, you
14 know, culturally-wide, skydivers ended the
15 day with beer. They have a beer light. They
16 even have an actual beer light at Skydive
17 Long Island. A lot of drop zones do. It's a
18 green light or a light, and when it's turned
19 on, you're allowed to drink beer.
20 Q Your attorney had mentioned
21 something about getting laid yesterday.
22 Do you know what he was talking
23 about?
24 MR. ANTOLLINO: Objection. May
25 I clarify for the record?

1 D. Zarda 328
2 party at the drop zone --
3 A No.
4 Q -- on Long Island?
5 A No. I didn't stick around much
6 for parties at the drop zone, because I had
7 to be at work the next day, or if I didn't
8 have to be at work the next day, then I had
9 other stuff to go do (indicating).
10 Q You're pointing to your lawyer.
11 I don't know --
12 A I'm pointing as "in a way." I
13 had other stuff to go do.
14 Once you've been at the drop
15 zone for twelve hours or more and you're
16 working there, at least for me and I think
17 for Duncan sometimes and the other full-time
18 staff, we would pretty much just end up
19 leaving. Maybe have a beer and then leave.
20 Q You're unfamiliar with this
21 getting-laid party that your lawyer was
22 referring to?
23 A I think I've seen, you know, in
24 passing, this luau that they have. They have
25 all kind of quirky parties out there. They

1 D. Zarda 329
2 have some quirky parties at Skydive Long
3 Island that take place.
4 Q Did they in 2009?
5 A Yes.
6 Q What quirky parties did they
7 have?
8 A Same ones. They have the same
9 parties. The party themes tend to be similar
10 in nature or the same one regurgitated and
11 redone year after year.
12 Q What parties had occurred at
13 Skydive Long Island in 2009 when you were
14 working?
15 A Well, they have some kind of
16 disco, '80s, something-or-other party during
17 the time when the casa was supposed to be
18 there, which is a boogie that Rich mentioned,
19 and then boogie is just another word for a
20 skydiving event that involves more people and
21 typically, a specialty aircraft that doesn't
22 usually reside at the drop zone being brought
23 in for a special occasion. For those kind of
24 occasions. I think they had that luau, as
25 well. I think that was a separate occasion,

1 D. Zarda 331
2 A If I didn't go, then I'm sure I
3 made the choice.
4 Q Was there anything occurring at
5 the parties that made you uncomfortable?
6 A I can't say because I wasn't
7 there, but things do go on at some of those
8 parties at some drop zones that I don't
9 really feel it's part of my liking.
10 Q Does that have anything to do
11 with the disco music?
12 A No.
13 Q You're okay with the disco
14 music?
15 A I'm okay with it, but, you know,
16 I got other stuff to go do and other ways to
17 entertain myself than to hang around the drop
18 zone.
19 Q Well, what things go on at those
20 parties, at Skydive Long Island parties, that
21 you don't like?
22 A People get drunk.
23 Q You don't like people getting
24 drunk?
25 A I prefer not to be around drunk

1 D. Zarda 330
2 but I'm not sure.
3 In 2009, I wasn't available to
4 be able to go to too many of the parties
5 because I was on crutches.
6 Q When you were on crutches, you
7 weren't working; correct?
8 MR. ANTOLLINO: Objection.
9 A I was not.
10 Q During the period of time before
11 you busted up your ankle --
12 A It was a short period because --
13 not terribly short, a couple of months, I
14 guess.
15 Q Well, there was May and June;
16 correct?
17 A May, June, and the first day of
18 July; yeah, so -- what were you asking about?
19 Q Did you go to any of those
20 parties in 2009?
21 A Not that I recall.
22 Q Were you invited to any of those
23 parties?
24 A You're all invited; yes.
25 Q And you choose not to go?

1 D. Zarda 332
2 people, so I don't get drunk myself. It's
3 just that I don't like drunkenness. It
4 doesn't mean that you can't drink, but if
5 you're drunk and slobbering and falling all
6 over the place and being loud and whatever
7 people get like when they get drunk, I don't
8 like that.
9 Q You gave that all up in 1999 and
10 2000; right?
11 A I did.
12 Q What else goes on at the parties
13 that you don't like to participate in?
14 A Well, I can't say exactly
15 everything that goes on at some of these
16 things. I mean, you know, jumpers tend to
17 hook up with other jumpers at events like
18 that when people get drunk and start doing
19 stupid things, and so, you know, there's not
20 too many gay jumpers around, and I just got
21 other things to go do.
22 Q Slim pickings and --
23 A If you want to call it that,
24 then yeah.
25 Q I'm trying to get a handle on

1 D. Zarda 333
2 your position here.
3 A My position is that if I have an
4 opportunity to hangout at the drop zone at a
5 party and listen to disco music or to go to
6 Fire Island or something during that same
7 time period and be around some of my gay
8 friends and listen to that kind of music, I'm
9 probably going to go do that.
10 Q Is there a difference between
11 straight disco and non-straight disco?
12 A Well, disco is different than
13 some of the kind of music that we listen to.
14 The kind of music that I prefer is better
15 than the music at the parties.
16 Q Okay.
17 A I guess you could say so.
18 Q So it wasn't so much the people;
19 it was --
20 A No.
21 Q -- the music and the drinking?
22 A No, it's not so much the people.
23 If you're there all the time already, you've
24 been there all day, it's time to go do
25 something else. It's just that simple.

1 D. Zarda 335
2 it's probably okay.
3 Q Okay. Tell me when you made any
4 complaints about alleged gender or sexual
5 orientation discrimination while you were
6 employed at Skydive Long Island.
7 A I think we covered that -- I
8 think I covered that in here, in this
9 document, and I didn't make any complaints to
10 the owner, Ray, or Rich about that or any
11 supervisory personnel directly.
12 Q Did you make any complaints
13 indirectly?
14 A What would be an indirect
15 complaint?
16 Q I don't know. But when you
17 said, I didn't make any complaints directly,
18 you're qualifying --
19 A Oh, okay --
20 Q -- and I'm obligated to follow
21 up on your qualifier, so if your answer is, I
22 didn't make any complaints at all, then I
23 won't have to follow up on that question.
24 A Yeah, I see what you're saying.
25 Then I didn't make any complaints to anybody

1 D. Zarda 334
2 Q So you weren't excluded?
3 A No, I wasn't excluded.
4 Q You have in front of you
5 Defendants' Exhibit B; do you not?
6 A Right here (indicating).
7 Q And you reviewed that?
8 A I looked it over last night.
9 Q Do you know what that document
10 is?
11 A Yes. It's says, (reading),
12 Amended Response to Demand for
13 Interrogatories.
14 Q And you swore to its accuracy;
15 did you not?
16 A I would say I did, according to
17 page 13. Yeah, I think that says -- to the
18 best of my knowledge, yes.
19 Q Is there anything you want to
20 change in there?
21 A I'd have to look it over again
22 to answer that question right now, but while
23 I was reviewing it last night, I didn't see
24 anything that -- I didn't grab a pen or go
25 for anything to cross out, so no, I think

1 D. Zarda 336
2 at Skydive Long Island about it.
3 Q Did you complain to anybody
4 else?
5 A In the world?
6 Q Yes.
7 A Yes.
8 Q Who did you complain to?
9 MR. ANTOLLINO: Don't say
10 anything you said to your attorney.
11 Other than that, you can answer the
12 question.
13 Can I take a bathroom break?
14 MR. ZABELL: I think you can.
15 COURT REPORTER: Mr. Zabell,
16 there is a question pending without an
17 answer.
18 MR. ZABELL: Yes, thank you.
19 Answer the question before we
20 break please.
21 Read back that question, please.
22 (Whereupon, the requested
23 portion of the record was read by the
24 court reporter.)
25 A I made an EEOC complaint.

1 D. Zarda 337
2 Q This was after your employment
3 ended?
4 A Oh, okay.
5 Q Right?
6 A Yes.
7 Q You made no complaints while you
8 were actually employed at Skydive Long Island
9 to anybody?
10 A No.
11 Q Okay.
12 MR. ZABELL: Go to the lavatory.
13 MR. ANTOLLINO: Okay, great.
14 Thank you.
15 (Whereupon, a recess was taken
16 from 5:38 p.m. to 5:58 p.m.)
17 Q Do you recall ever signing a
18 release when you began your employment at
19 Skydive Long Island?
20 A I signed the standard waiver
21 release document that's required for anybody
22 to make a skydive at any skydiving center in
23 the United States and for most places to
24 qualify.
25 Q Did you understand that that

1 D. Zarda 339
2 With anyone other than with your
3 attorney.
4 A I've discussed it with my
5 attorney.
6 Q Just so you know, that's exactly
7 what he just told you not to say, but okay, I
8 got you. I'm fine.
9 MR. ZABELL: You tried. You
10 gave it the old college try.
11 Q When you worked at Skydive Long
12 Island --
13 MR. ZABELL: Are you okay?
14 MR. ANTOLLINO: Yes, sure.
15 MR. ZABELL: Because if you need
16 a break, I'll --
17 MR. ANTOLLINO: No, we don't
18 need a break. Keep going.
19 A I stated what I said about the
20 waiver. I know what the waiver means, what
21 its intended purpose is for, and I said what
22 that was.
23 Q And its intended purpose is to
24 release claims against Skydive Long Island;
25 correct?

1 D. Zarda 338
2 release releases Skydive Long Island from any
3 and all claims that you may make against it?
4 MR. ANTOLLINO: Objection.
5 A No.
6 Q Doesn't it, in fact, say that?
7 A If I could be provided with a
8 copy of it, it says something to that context
9 in regard to anything related to the jump,
10 not employment. It doesn't mention anything
11 about anything regarding employment in there
12 whatsoever, so no.
13 And having familiarity of jump
14 operations over almost a period of twenty
15 years, I've come to know that the standard
16 indemnification and waiver in release of
17 liability for skydiving doesn't include
18 employment matters whatsoever, and I've never
19 seen one include an employment issue
20 whatsoever.
21 Q You haven't even discussed the
22 possibility as to whether or not you've
23 waived your right to bring any claims against
24 Skydive Long Island?
25 MR. ANTOLLINO: Objection.

1 D. Zarda 340
2 A And indemnify the drop zone and
3 the instructors for any claims made in
4 relation to getting hurt or killed. It is
5 not intended for anything related to
6 employment.
7 Q And you're a lawyer?
8 MR. ANTOLLINO: Objection.
9 A I am not a lawyer. I am an
10 instructor that's been in the industry for
11 almost twenty years now and have seen this
12 paperwork a lot of times, and I know what it
13 means.
14 Q Have you actually seen any
15 decisions of courts interpreting that
16 document?
17 A Yes. Over the years, I have
18 when customers or skydivers got hurt and
19 actually went and sued a drop zone because
20 they got hurt or a family has sued because
21 somebody got killed. I have, over the years,
22 seen it put to the test in those regards.
23 Q Were there coworkers that you
24 were more senior to at Skydive Long Island?
25 A Yes.

1 D. Zarda 341
2 Q What is --
3 A That's using one of those
4 definitions that was mentioned yesterday, and
5 it can be number of jumps, number of years,
6 or number of years at a drop zone.
7 Q Were you treated better or worse
8 than those people that you were more senior
9 to?
10 A I don't think seniority has made
11 any difference.
12 Q You were all treated the same?
13 A Mostly. A newbie gets treated a
14 little differently than someone that's senior
15 in years.
16 Q You guys picked on the newbies a
17 little bit?
18 A What's that?
19 Q You guys picked on the newbies a
20 little bit?
21 A I don't.
22 Q The others do?
23 A It's just a pecking order.
24 Q Were you picked on when you were
25 a newbie?

1 D. Zarda 343
2 Q Yes. For the most part, you
3 were treated just like everybody else,
4 correct; yes or no? That's a yes-or-no
5 question, and I get to ask yes-or-no
6 questions.
7 A You do, but that's --
8 Q You said that for the most part,
9 you were treated like everybody else;
10 correct?
11 A For the most part.
12 Q So that's a yes; correct?
13 A Yes, for the most part --
14 Q Thank you.
15 A -- I was treated like everyone
16 else.
17 Q Now, could you tell me what
18 comments John made?
19 A What comments he made?
20 Q Yes.
21 A I don't know that I specified
22 John's comments in here (indicating).
23 Are you talking about when he
24 got upset with me where my stuff was located?
25 Q Any comments that he made to you

1 D. Zarda 342
2 A Everybody gets picked on a
3 little bit; yeah.
4 Q But it kind of stopped after you
5 were a newbie?
6 A No. It's skydivers.
7 Q Skydivers, they just pick on
8 everybody?
9 A They do.
10 Q So all your coworkers got picked
11 on at one point or another?
12 A Skydivers -- yeah, they had...
13 Q Sometimes the bottle would point
14 to you, and sometimes the bottle would point
15 to somebody else?
16 A That's a good way to put it.
17 Q Right?
18 A That's a good way to put it, so
19 yes.
20 Q You were treated just like
21 everybody else there; right?
22 A For the most part.
23 Q So if you swore under oath that
24 you weren't, would you be lying; correct?
25 A No. I said for the most part.

1 D. Zarda 344
2 about your sexuality.
3 A Any comments -- he could have
4 said anything.
5 Q I'm not asking what he could
6 have said.
7 What did he say?
8 A I don't recall at this moment.
9 Q What comments did Ray Maynard
10 make to you about your sexuality?
11 A Well, he said that my pink cast
12 looked gay.
13 Q Good thing you weren't at work
14 when you had your cast on; right?
15 A No, I didn't say that; you said
16 that. I was at work.
17 Q Right. But you weren't working
18 when you had your cast because you couldn't
19 work when you had your cast; correct?
20 A I was not working doing jumps,
21 and I wasn't working doing any other
22 functions, but I did attend a mandatory staff
23 meeting right after I got my pink cast that I
24 got an e-mail to attend while I was on
25 crutches, and I was at that.

1 D. Zarda 345
2 Q Do you have that e-mail?
3 A For the mandatory staff meeting?
4 Q Yes.
5 A I think I would have provided
6 that, but yes.
7 Q And it was directed to all
8 staff; correct?
9 A It was directed to all staff.
10 Q But you weren't a staff member
11 because you couldn't work at that time;
12 right?
13 A That's not correct. I'm still
14 on the staff. Just because you get hurt
15 doesn't mean you no longer are on the staff.
16 Q Well, you're no longer working
17 and on payroll; correct?
18 MR. ANTOLLINO: Objection.
19 There is no payroll.
20 A No, you're not not on staff
21 anymore because you get hurt. Instructors
22 get hurt all the time. They're still on
23 staff.
24 Q Who heard Ray make that comment
25 to you?

1 D. Zarda 347
2 mile away, or here to ten feet, twenty feet?
3 Is there walls in the middle, is there doors
4 closed? I don't know, so I can't say who
5 else could have heard that.
6 Q What else did Ray say to you?
7 A At that time?
8 Q At any time, regarding your
9 sexuality.
10 A I can't possibly recall every
11 incident at this seating.
12 He mentioned at another later
13 time when I was out at the drop zone on
14 crutches with the pink cast and I was sitting
15 on the bench by the Coke machines outside the
16 office with the pink toenails, in regard to
17 that, that I was going to have to put a sock
18 over my toe, over my foot.
19 Q Why were you at the drop zone
20 that day?
21 A Because I just came out to see
22 what was going on and to visit.
23 Q So you came out to hangout?
24 A A little bit, yeah.
25 Q And he didn't say you couldn't

1 D. Zarda 346
2 A Which one?
3 Q Your pink cast looks gay.
4 A I heard him make that to me when
5 I was coming through the door to the office
6 as he was going the other way when he first
7 saw the pink cast with the pink toenails.
8 Q Who else heard him say that?
9 MR. ANTOLLINO: Objection.
10 A I don't know who else. I don't
11 know.
12 Q So nobody else; right?
13 MR. ANTOLLINO: Objection.
14 A No. I'm not saying nobody else.
15 Somebody else could have heard him.
16 Q Well, I'm asking you to identify
17 who else heard him.
18 A I can't identify who else heard
19 it. I mean, God could have heard it. I
20 mean, Lauren could have heard it. Anybody
21 that was within earshot could have.
22 Q Who was physically within
23 earshot at that time?
24 A Well, it depends on how good
25 your hearing is, so is that from here to a

1 D. Zarda 348
2 hangout there; he just said you had to put a
3 sock on your foot; right?
4 A He wanted me to cover up the
5 pink toenails.
6 Q Could it possibly be that he
7 didn't want any customers to see somebody
8 hobbling along with a broken foot?
9 A I think the characterization
10 that you might be drawing that from Rich's
11 testimony is flawed. It's not uncommon for
12 injured jumpers to come out and hangout at
13 the drop zone. It happens all the time at
14 drop zones all over the country. Jumpers
15 hobbling around on crutches, canes, walkers.
16 There are even some in wheelchairs. They
17 come to the parties. They come hangout at
18 the drop zone.
19 Q Great. Who else at Skydive Long
20 Island in 2009 was walking around with
21 crutches and a broken foot?
22 A I'd have to stop and think.
23 There --
24 Q I'd like you to stop and think.
25 A -- were some.

1 D. Zarda 349
2 MR. ANTOLLINO: You don't need
3 to interrupt him, and don't badger him;
4 okay? Let him answer the question --
5 MR. ZABELL: Remember you said
6 that you were going to remain silent?
7 MR. ANTOLLINO: No, I don't
8 remember that I said that.
9 MR. ZABELL: You do. That's why
10 you're giggling to yourself.
11 Does everybody else remember him
12 saying he was going to remain silent?
13 Madam reporter, did you remember
14 him saying that?
15 MR. ANTOLLINO: I did not say
16 that.
17 MR. ZABELL: You did say that,
18 sir.
19 Q Just tell me the names of the
20 people who were hobbling around with broken
21 legs or feet or casts, or even crutches
22 without any of that in 2009.
23 A I don't know the names of all
24 the people. There are a lot of people that
25 jump there.

1 D. Zarda 351
2 their foot?
3 A There were more than one. I
4 just don't remember who. It's so common.
5 It's like asking me if you remember people
6 walking around on the drop zone in 2009 or
7 2010; who were they? It's not an uncommon
8 thing if you're jumping out of airplanes.
9 People get hurt. It's not unusual to see
10 hurt people hanging out at the drop zone
11 telling their story or whatever about their
12 injury or just to be there to socialize,
13 because it's a social group of people.
14 Q So you weren't there to work;
15 you were there to socialize; correct?
16 A I came out infrequently just to
17 say hi, let people know how I'm doing, see
18 what's going on, but I didn't spend very much
19 time there. I didn't stay long. I was on
20 crutches. It's not a friendly place to get
21 around when you are on crutches and people
22 are busy working.
23 Q And customers who were there who
24 are about to jump out of a plane; correct?
25 A That is also true.

1 D. Zarda 350
2 Q Give me the names of just one of
3 them.
4 A I don't recall.
5 Q Okay.
6 A I'm very bad with names and it's
7 not uncommon. I mean, people know that
8 sometimes when I would meet a person if they
9 just told me their name and I get distracted
10 for a minute, I might forget their name.
11 MR. ANTOLLINO: All right.
12 We're going to take a break now.
13 (Whereupon, a recess was taken
14 from 6:09 p.m. to 6:11 p.m.)
15 Q You're crappy with names, even
16 though you have a good memory because your
17 sister told you so; right?
18 MR. ANTOLLINO: Objection.
19 Argumentative.
20 Q You can answer.
21 A I don't remember names very
22 well. I do remember events pretty well, as I
23 said before.
24 Q Do you remember somebody walking
25 around the drop site in 2009 with a cast on

1 D. Zarda 352
2 Q You can imagine how it might be
3 off-putting for a customer to see a bunch of
4 people bobbling around with broken feet
5 around the drop zone; correct?
6 A No, I can't, and I can tell you
7 why, very simply.
8 Q Go ahead. Please do.
9 A Because it's not any different
10 than somebody hobbling around on a crutch
11 that slipped and fell on the bathtub and
12 broke their ankle in exactly the same manner,
13 like I talked to people while I was on
14 crutches with my broken ankle that had that
15 happen to them.
16 Unless the customer knows that
17 you got hurt skydiving, it's no different
18 than anybody else walking around that got
19 injured in a car accident or any other way
20 that people can get injured to include
21 getting out of bed.
22 Q You don't think they just
23 assumed it?
24 A They would have had to have
25 known that I was on staff. I didn't have a

1 D. Zarda 353
2 staff shirt on.
3 Q They can't infer that just from
4 you hanging around talking to people there;
5 is that what you're saying?
6 A I supposed -- I would suppose
7 that if they listened in and cued in on just
8 what I was saying and watched my interactions
9 with the other staff, they might be able to
10 surmise that maybe I'm on staff, I have
11 something to do with the jump operation and
12 also on crutches, maybe.
13 But from what I witnessed,
14 people are more talking on their cellphones
15 and thinking about -- watching other people
16 jumping and getting ready to do their jump,
17 so they're not watching me.
18 Q Are you Catholic?
19 A I'm agnostic, but I was brought
20 up Catholic.
21 Q Are you Scottish?
22 A German.
23 Q Are you Hispanic?
24 A No.
25 Q Did you ever mention to anyone

1 D. Zarda 355
2 Q Wasn't the complaint that you
3 were kind of hitting on Rosanna Orelana?
4 MR. ANTOLLINO: Objection.
5 A Mr. Kengle made that complaint
6 that he thought that I was trying to get
7 familiar with his girlfriend. That's what he
8 thought.
9 Q And she testified that the way
10 you were touching her made her uncomfortable;
11 correct?
12 A I think we talked about that
13 earlier. I'd have to review that testimony.
14 I'm still not sure that she thought that.
15 Q Did your lawyer give you the
16 deposition transcript yet?
17 A I haven't reviewed it, and I
18 haven't seen it yet.
19 Q Me neither. He hasn't given it
20 to me yet.
21 A It was just a few weeks ago, so
22 that's not very long.
23 MR. ANTOLLINO: Yes, we'll talk
24 about that later. Do you want to split
25 the cost?

1 D. Zarda 354
2 at Skydive that you were Catholic, Scottish
3 or Hispanic?
4 A No, I never mentioned Scottish
5 or Hispanic. People may have asked me over
6 the years what my religion was. Rainy day
7 conversation possibly, so I may have
8 mentioned that I was Catholic. That could
9 have come up, and -- what was the first one?
10 Q Catholic.
11 A Okay, so I may have mentioned
12 that somewhere along the way.
13 Q Were you offended by that?
14 A No, no. I've not been offended
15 by someone calling me a Catholic.
16 Q I'm a bit confused. It seems
17 like you were terminated because somebody
18 complained that you were acting like someone
19 whose sexual orientation was that of the
20 opposite sex as opposed to the same sex; is
21 that correct?
22 MR. ANTOLLINO: Objection.
23 A That's a little bit worded
24 confusing, so maybe you could express that a
25 little bit.

1 D. Zarda 356
2 MR. ZABELL: No.
3 MR. ANTOLLINO: All right, then
4 why don't you get it? It's a
5 non-party.
6 MR. ZABELL: We have the option
7 of sharing, of exchanging transcripts
8 with each other or not.
9 MR. ANTOLLINO: Okay, we'll talk
10 about it later. How about that?
11 MR. ZABELL: Okay.
12 Q It seems to me like her
13 complaint was not that you were gay, it's
14 that she thought you were straight.
15 MR. ANTOLLINO: Objection.
16 Q Is that correct?
17 MR. ANTOLLINO: Objection to
18 characterization.
19 A No, no. She was --
20 Q Well, he thought you were
21 straight because you were trying to get
22 familiar with her --
23 MR. ANTOLLINO: Wait, wait.
24 You're not letting him answer the
25 question --

1 D. Zarda 357
2 Q -- correct?
3 MR. ANTOLLINO: Let him answer
4 the question.
5 Q Correct? He thought you were
6 straight, because he thought you were trying
7 to get familiar with his girlfriend; correct?
8 MR. ANTOLLINO: Objection.
9 A No. And that's an if-then-us
10 question. That's an if because --
11 Q No, it's not. It's a direct
12 question to which you're required to answer.
13 A All right. Okay.
14 Q He thought you were straight,
15 because you were trying to get familiar with
16 his girlfriend; correct?
17 MR. ANTOLLINO: Objection.
18 A No.
19 Q So he thought you were gay and
20 trying to get familiar with his girlfriend.
21 A That's what he said, and he
22 said, in his testimony, that those gay guys
23 think they can get away with it because
24 they're gay. If you recall, that's what he
25 said.

1 D. Zarda 359
2 like he called and said that the complaint
3 was to Ray. That's what he said when he was
4 deposed. He said that when he was deposed.
5 Q Is it your impression that he
6 was complaining that you were gay or that you
7 were acting straight with regard to his
8 girlfriend?
9 A After listening to his
10 deposition, I'm not exactly sure what.
11 Q It could have been either one of
12 those; right?
13 A It could have been because I'm
14 gay. It could have been because he thought I
15 was hitting on his girlfriend. It could have
16 been he's just so insecure that he didn't
17 even know what he was thinking himself. I
18 don't know what was going on in that guy's
19 head.
20 Q Could it have been that he
21 thought you were straight and trying to use
22 the excuse that you're gay, so therefore, you
23 couldn't have done what he's accusing you of
24 doing?
25 MR. ANTOLLINO: You know what;

1 D. Zarda 358
2 Q I don't recall him saying that.
3 A Well, when you get the
4 transcripts, you'll be able to see that
5 that's what he said. I thought that that was
6 really strange, and I still think it's
7 strange.
8 Q Well, did you think you could
9 get away with being familiar with his
10 girlfriend?
11 A I don't get familiar with women
12 in the sense that he was saying that, so
13 there is nothing for me to think that I can
14 get away with. And I had no reason to be
15 trying to get away with anything, and I
16 wasn't getting away with anything. I was
17 just simply doing my job.
18 Q But he thought you were trying
19 to get familiar with her?
20 MR. ANTOLLINO: Objection.
21 A That's what he said.
22 Q And that's what he complained
23 about; correct?
24 MR. ANTOLLINO: Objection.
25 A No, that's not what -- it sounds

1 D. Zarda 360
2 objection.
3 A It could have been that he was
4 so shaken by the joke made because of his
5 insecurity that he may have. He was so
6 shaken by the joke made by another staff
7 member that, hey, how do you feel about your
8 girlfriend -- that he talked about getting
9 hit on so much in his deposition because
10 she's so pretty -- being strapped to another
11 guy. Maybe it was that.
12 Q Maybe it was.
13 A Maybe.
14 Q But that's not a complaint about
15 your sexuality; is it?
16 MR. ANTOLLINO: Objection.
17 A That specifically is not.
18 Q I believe you testified at the
19 beginning of this deposition that Ray Maynard
20 asked you about your specific jump with
21 Rosanna Orelana; correct?
22 A I think we talked about that;
23 yes.
24 Q And he asked you what happened
25 there; correct?

1 D. Zarda 361
2 A He was asking me questions about
3 it, about the jump.
4 Q About the jump, okay, so he was
5 asking you in order to find out what occurred
6 during the jump; correct?
7 A He briefly asked me if I
8 remembered, or he asked me about it.
9 Q And you said you don't remember;
10 correct?
11 A I did say something to that
12 effect, because it was three days ago and
13 twenty-or-thirty-jumps-plus ago.
14 Q So he kind of did ask you to
15 respond to allegations of alleged
16 inappropriate touching; correct?
17 MR. ANTOLLINO: Objection.
18 Asked and answered.
19 A No. He just asked me if you
20 took a girl named so-and-so on a jump on
21 Friday; did you, you know, or did you not.
22 He just asked me about the jump, if I took
23 the girl on the jump, and I said I don't
24 understand.
25 Q So he just asked you about the

1 D. Zarda 363
2 A Say that once more.
3 Q Correct?
4 A Say that once more, please.
5 Q Correct?
6 A Just repeat the question.
7 Q Oh. Even if he was trying to
8 investigate --
9 A Okay.
10 Q -- you couldn't assist with the
11 investigation because you had no recollection
12 of the jump, correct; yes or no?
13 A Correct. I --
14 Q Thank you.
15 A -- did not recall the jump and
16 requested to see the videos to help assist me
17 in recalling anything about the jump at the
18 time, and I was denied.
19 Q Do you view women as helpless
20 and the fact that they need to be protected?
21 A No, I don't view women and
22 needing help being protected.
23 Q Do you think your attorney does?
24 A We haven't discussed that, so I
25 don't know what he thinks.

1 D. Zarda 362
2 jump and if you took the girl on the jump?
3 A Right, yes.
4 He didn't go into detail asking
5 me questions about the jump and the manner
6 like he was investigating to find out what
7 happened. That discussion, like I mentioned
8 before, was about bringing me in there to
9 take adverse action against me, and that was
10 very clear. Ray was angry, he was irrational
11 and emotional, and he wasn't in there to find
12 out what Don Zarda did on the jump. He was
13 in there to tell Don Zarda what Ray Maynard
14 is going to do to Don Zarda.
15 Q Except that you had no
16 recollection of the jump, so you could not
17 give him any information on it; correct?
18 A At the time, I could not
19 remember specifics about the jump.
20 Q So even if he was just trying to
21 investigate, you had no information to assist
22 in the investigation; correct?
23 MR. ANTOLLINO: Objection to the
24 characterization.
25 Q Correct?

1 D. Zarda 364
2 Q Do you consider yourself to be
3 wussy?
4 A I don't.
5 Q Do you think you ever act like a
6 wussy?
7 A Nope, I don't.
8 Q What do you understand a wussy
9 to be?
10 A Depends on the connotation and
11 in the context that that word is being used
12 in saying it. Sometimes it might not mean
13 anything. It just depends on who is saying
14 it. If it's an adversary and they're calling
15 you a wussy, most guys can agree that is
16 derogatory to possibly your manliness, so I
17 think it could take on that connotation. It
18 depends on the context, the connotation, and
19 the circumstance in which someone is calling
20 you that.
21 Q Do you think you act less than
22 manly?
23 A I don't; no.
24 Q I mean, I look at you and I see
25 someone who looks particularly manly.

1 D. Zarda 365
2 A Okay, that's good.
3 Q Do you agree that that's the
4 vibe you give off?
5 A I hear that.
6 Q So if someone looks at you, you
7 believe you appear manly; is that correct?
8 A For the most part.
9 Q And that you act manly?
10 A For the most part. I have, you
11 know, moments. If they see me in different
12 social settings, they might think a different
13 thing.
14 Q Well, did people you worked with
15 at Skydive Long Island see you in different
16 social settings?
17 A Yes.
18 Q What were those different social
19 settings?
20 A Well, they didn't go to Fire
21 Island with me and they didn't go to gay
22 events with me, but they knew about some of
23 those. They knew I went to Fire Island.
24 They know I'm gay. They don't understand how
25 we enjoy ourself socially and so forth.

1 D. Zarda 367
2 bar?
3 A Right, that's what I mean.
4 Q That's kind of a cool thing to
5 do; right?
6 A Yeah.
7 Q A good way to get attention?
8 A Good for Ray possibly and
9 advertising, I suppose. They have beer there
10 laying on the beach, and so things could be
11 worse.
12 But when we did that once, and
13 it was just twice that I did that, and that
14 was in 2010, I heard all the hype about it
15 previously from the employees about how great
16 it is and this, that, and the other thing. A
17 lot of the employees kept telling me how
18 great Neptune's is, and, Don, you're really
19 going to like Neptune's, and there's all
20 kinds of guys over at Neptune's that are just
21 your type, and on and on and on and on that I
22 heard this kind of talk in 2009 and even
23 in 2010.
24 So I finally went over there and
25 got to see it for myself, because there's a

1 D. Zarda 366
2 Q By "we," are you referring to
3 you and myself?
4 A Gay people.
5 Q Oh, okay.
6 A Most of them don't understand
7 that, but when we jumped into Neptune's
8 bar -- you might be familiar with it. It's
9 in the Hamptons.
10 Q No.
11 A Neptune's is a bar --
12 Q Why are you assuming I'd be any
13 more familiar with Neptune's bar or
14 Jumping Jack's over at Cherry Grove?
15 MR. ANTOLLINO: He's not your
16 friend, Don.
17 A Well, you live there, so I just
18 thought that you might know of Neptune's bar.
19 It's a bar that's on the beach out by the
20 Hamptons. It's a favorite for Skydive Long
21 Island to be able to jump into that beach bar
22 sometimes at the end of the day on Friday,
23 Saturday, or Sunday.
24 Q When you say jump in, do you
25 mean jump from the sky and land at the beach

1 D. Zarda 368
2 bunch of shirtless guys running around over
3 there all with their tanning lotion on,
4 there's a bunch of muscle bods, and they just
5 would go on and on about that.
6 Q And is that not your type?
7 A I didn't say that.
8 Q Do you tan?
9 A No, I don't.
10 Q Are you a muscle guy?
11 A I am in good shape.
12 Q I look at you, and I'd say
13 you're pretty muscular.
14 A Okay. Well, good. I don't tan.
15 My partner and I are in the medical spa
16 business, and we encourage people to stay out
17 of the sun, hence my white skin.
18 Q SPF what?
19 A One million, if you can get it.
20 Q Okay. So you were encouraged to
21 go there because they thought there were guys
22 there that were your style; correct?
23 A They did.
24 Q Was that offensive?
25 A A little bit. It was a little

1 D. Zarda 369
2 bit offensive, but it's just part of me
3 understanding that I know they don't
4 understand my lifestyle.
5 Q What kind of guys do you like?
6 MR. ANTOLLINO: Objection. This
7 is getting --
8 A Well, I have different
9 preferences. I don't like guys that look
10 like they're on steroids, which is what a lot
11 of people looked like they were on over
12 there. I don't like that. I'm not into
13 that. I think maybe because of the way I
14 appear that maybe they draw some kind of
15 correlation there, and they think that I'd be
16 interested in that.
17 Q You got a little muscle-head
18 look to you.
19 A Maybe, yeah, but not like what I
20 saw over there.
21 Knowing that they don't probably
22 understand my lifestyle, because they're not
23 gay and there's not a lot of gay skydivers,
24 there aren't, you know.
25 Q Well, there's a whole group of

1 D. Zarda 371
2 A No. I had a pretty clear mental
3 image of what was going to be over there.
4 They described it well, and it turned out to
5 be exactly what was over there. It's just
6 simply not my crowd, so a lot of them
7 thought, wow, this will be great for Don.
8 This is his crowd. No, it's not my crowd.
9 Q But they were trying to make you
10 comfortable; is that correct?
11 A I don't think they were trying
12 to make me uncomfortable by pushing that
13 agenda, of jumping in over there, because
14 that would be malicious, and as I said
15 before, I don't think that there were people
16 there that were maliciously trying to make me
17 feel uncomfortable. They just couldn't
18 bridge that gap of understanding, so I think
19 that's the best way to describe it.
20 Q Okay, so --
21 A When we got over there, there
22 was a transvestite at the bar that was
23 dressed up, and they -- you know, several of
24 the staff, and I think some of them are in
25 the pictures that we submitted to you about

1 D. Zarda 370
2 them.
3 A Yeah. It's small when you look
4 at the numbers compared to skydivers, it's
5 small, so there's not a lot. They don't
6 interact with gay people a lot. They don't
7 know our social norms and so forth like that.
8 Q But your coworkers tried to
9 interact with you in a social setting; right?
10 A Yes, yes, they did.
11 Q And they tried to include you in
12 their socialization; correct?
13 A Yes. And the reason I'm saying
14 I wasn't offended about that so much was
15 because I know they just don't understand,
16 but I didn't like that they were trying to
17 sort of force upon me the idea that I was
18 going to be into all these greased up,
19 steroid-like, shirtless guys over at
20 Neptune's bar on the beach. I kind of didn't
21 like that. That bothered me some, but I
22 dealt with it.
23 Q Did it bother you because they
24 were wrong about the assumption of the type
25 of person you like?

1 D. Zarda 372
2 that night at Neptune's bar when Ray and much
3 of the staff was there on FaceBook, and so a
4 lot of people were in there. It would be
5 easy to identify who was there -- wanted me
6 to get pictures with the transvestite, like
7 it was a little bit of a spectacle. It
8 didn't offend me. It made me feel a little
9 uncomfortable. It made me feel a little
10 uncomfortable that it was taking place in the
11 setting that this is after work, but it's
12 with all my colleagues that I work with, and
13 it was also still in front of my boss, Ray
14 Maynard. That made me feel a little bit
15 uncomfortable.
16 Q But you were free to excuse
17 yourself from the situation; were you not?
18 A Not unless I wanted to figure
19 out how I was going to get back to the drop
20 zone by myself.
21 Q You mean like take a cab?
22 A I would have had to have done
23 that, but when you jump into -- we already
24 had prearranged rides. You don't typically
25 jump with your credit card, billfolds, and

373

1 D. Zarda

2 cellphones when you're jumping over the water

3 in the beach, because there is a good chance

4 that you'll lose that stuff, so I didn't

5 have -- it was free beer. You didn't need

6 any money. You jumped in, stashed your gear

7 in the bag, and had some beer.

8 Then when everybody was done, go

9 back to the drop zone and either stay there

10 and drink some more beer or go home.

11 Q And that's kind of what you did;

12 jumped in, stashed your stuff in a bag, and

13 had some beer; right?

14 A That's exactly what I did, and

15 saw Neptune's bar.

16 Q You just went there that once;

17 correct?

18 A I went there twice.

19 Q Oh, you went there again after

20 that?

21 A Yes.

22 Q Because it was so horrible?

23 A No. Because getting to do a

24 beach jump at the end of the day at sunset,

25 skydiving can be kind of like a spiritual

375

1 D. Zarda

2 it looks like a bunch of screen shots of

3 FaceBook.

4 Q Whose FaceBook is this?

5 A It looks like most of them --

6 well, there's some e-mails in here too from

7 FaceBook. It's mostly FaceBook stuff, and

8 it's my profile and e-mails from a FaceBook

9 account that I have.

10 Q Who's the bare-chested guy on

11 page 1?

12 A That's me.

13 Q In all your splendid glory?

14 A I don't know what that means.

15 Q Is that kind of like a cape that

16 you're wearing?

17 A No, that's a wingsuit.

18 Q It looks like a little flying

19 squirrel suit.

20 A For lack of a better word, since

21 the public sees that a lot, that's what they

22 think it is, but that's the slang version.

23 It's -- again, it's a wingsuit.

24 Q And you like wearing that;

25 right?

374

1 D. Zarda

2 thing for some people. I like sunsets, I

3 like the outdoors, and it's just pretty. So

4 being able to jump in, make a skydive at

5 sunset over the water, it's gorgeous, so why

6 not?

7 Q So it was so horrible the first

8 time that you decided to try it again?

9 MR. ANTOLLINO: Objection.

10 A It had nothing to do with the

11 bar. Getting a free beer after a jump,

12 that's nice. It's about the jump.

13 MR. ZABELL: Mark this, please.

14 (Multi-page document consisting

15 of copies of various screen shots from

16 Mr. Zarda's FaceBook page was marked as

17 Defendants' Exhibit C, for

18 identification, as of this date.)

19 Q I'm going to show you Exhibit C.

20 A Okay.

21 Q Take a look at it.

22 A (Witness complies.)

23 Q Do you know what that is?

24 A Without going through each and

25 every single page just flipping through them,

376

1 D. Zarda

2 A I like jumping in it.

3 Q You like more than jumping in

4 it; you like taking your picture in it;

5 right?

6 A It was a unique prop for that

7 picture.

8 Q Who was taking your picture that

9 day?

10 A A photographer.

11 Q Oh, so you had your picture

12 professionally taken in that outfit?

13 A I did.

14 Q Was that just to post on your

15 FaceBook page?

16 A No. It was actually in trade

17 for me getting a nice photo of pictures and

18 for the photographer to be able to have a

19 subject to take photos of for his personal

20 portfolio.

21 Q So he said that if you take

22 pictures, if you allow me to take pictures of

23 you for free, all you'll have to do is strip

24 your top down and wear this, for lack of a

25 better term, squirrel suit?

1 D. Zarda 377
2 A No, it wasn't like that. It was
3 just a matter of I wanted to be able to have
4 a photo shoot, and he wanted to be able to
5 have a subject for his portfolio.
6 Q Are you aware of that picture
7 showing up on any websites?
8 A Yes, you know I am.
9 Q What websites have they shown up
10 on?
11 A I think it would probably be an
12 easier question to say what websites they, at
13 this point, haven't shown up on.
14 Q Are you happy with all of the
15 websites that that picture has shown up on?
16 A I think, you know, I'm not happy
17 that the media went to my FaceBook profile
18 and got that picture and put it on the
19 websites, but there certainly could have been
20 worse pictures, like a mug shot that people
21 would get, so I'm glad that it's not that
22 kind of picture.
23 Q Are there any mug shot pictures
24 of you out there?
25 A Who knows what kind of pictures

1 D. Zarda 379
2 through this before.
3 MR. ZABELL: I don't care what
4 you think you've been through before,
5 and you're oh so successful at them,
6 I'm sure. I get to ask him this
7 question.
8 MR. ANTOLLINO: You do not.
9 Q Have you been arrested, sir?
10 MR. ANTOLLINO: Don't answer the
11 question.
12 MR. ZABELL: On what basis?
13 MR. ANTOLLINO: On the basis
14 that if an arrest was later resulted in
15 a termination in favor of the accused,
16 it's confidential; okay?
17 MR. ZABELL: No, it's not
18 confidential --
19 MR. ANTOLLINO: It is.
20 MR. ZABELL: -- and if he has
21 been arrested and it has added to his
22 stress, I am absolutely entitled to ask
23 that question.
24 MR. ANTOLLINO: No --
25 Q So sir, have you been arrested --

1 D. Zarda 378
2 there are in this digital world where
3 everybody's got in iPhone and takes a picture
4 and puts it on FaceBook or e-mails it to
5 somebody. I have no idea what's out there.
6 Q Well, have you ever been
7 arrested?
8 A No, I haven't been arrested.
9 MR. ANTOLLINO: Well, hold on a
10 second. I think the question, have you
11 ever been arrested, is improper. You
12 can ask him --
13 MR. ZABELL: Counselor --
14 MR. ANTOLLINO: No, no, no. I'm
15 directing --
16 MR. ZABELL: Counselor,
17 objection to form, and nothing else.
18 MR. ANTOLLINO: I'm going to
19 direct him not to answer, but I will
20 allow the question: Have you ever been
21 convicted?
22 MR. ZABELL: You're smiling as
23 if you're saying something that is
24 absolutely intelligent, and it's not.
25 MR. ANTOLLINO: Okay, I've be

1 D. Zarda 380
2 MR. ANTOLLINO: I'm not going to
3 let him answer --
4 Q -- within the last three years?
5 MR. ANTOLLINO: I'm not going to --
6 A No.
7 MR. ANTOLLINO: -- answer.
8 Q Thank you.
9 Have you been accused of any
10 crimes in the last three years?
11 MR. ANTOLLINO: Objection to
12 form.
13 A A speeding ticket or a seatbelt
14 violation?
15 Q No, no, no, no. You can even
16 have spoken in your car on your cellphone
17 while texting. That's not what I'm
18 interested in.
19 A I just want to be clear.
20 Q Okay.
21 A So, no.
22 Q Anybody on your website talk to
23 you about molesting people?
24 A On my website?
25 Q Yes.

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1 D. Zarda

2 A My website is DonZarda.com, so --

3 Q Oh, I'm sorry. On your FaceBook

4 page.

5 A Okay, I got you. Well, my

6 FaceBook page, that's open game for years,

7 for like two or three years now, and who

8 knows what people put on there, so --

9 Q What does "trick fuck," mean?

10 A It's a good question. Oh, okay.

11 I don't see it in here, but now I could think

12 of what it could mean. Let me think of a

13 good way to define that.

14 I think that's just a different

15 way of saying fuck somebody over.

16 Q Trick fuck means to fuck

17 somebody over?

18 A If I was going to use that and

19 maybe I have, that's probably what it would

20 have meant. Is there a place --

21 MR. ANTOLLINO: Do you want to

22 refer to something?

23 A -- that I could look and see --

24 MR. ZABELL: No. Do you want to

25 remain silent?

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1 D. Zarda

2 Q This is all stuff you turned

3 over to us?

4 A Oh, did I turn this over to you?

5 Q Yes, you did. Your lawyer may

6 not have informed you of it, but yes, you

7 have.

8 A I haven't had a chance to

9 refresh myself on 185 pages of FaceBook

10 material that dates back to 2009.

11 Q Do you talk about your cat on

12 your FaceBook page or pages?

13 A I probably have something about

14 my cat.

15 Q Do you talk about how sad you

16 are on the anniversary of her death?

17 A I may have said something about

18 that. I guess while I'm sitting here, I

19 might as well just go ahead and --

20 MR. ANTOLLINO: No, no. You

21 might as well just sit, and wait for

22 the question.

23 THE WITNESS: Okay.

24 MR. ANTOLLINO: You'll wait for

25 the question.

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1 D. Zarda

2 MR. ANTOLLINO: No.

3 MR. ZABELL: You should. That's

4 your role here today.

5 A Is there a place where I could

6 see the context of where I might have used

7 that?

8 Q It's a question based on this

9 exhibit.

10 A Okay, could I see it?

11 Q No, I mean, we'll be here a lot

12 later --

13 MR. ANTOLLINO: All right. Let

14 it go.

15 THE WITNESS: Okay.

16 Q Are there things on your

17 FaceBook page that you turned over to us that

18 you're unhappy with?

19 A Now, when you say FaceBook

20 pages, which pages?

21 Q All of this stuff, Exhibit C.

22 A Exhibit C?

23 Q Yes, C.

24 A Well, I haven't had a chance to

25 look through 185 pages.

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1 D. Zarda

2 THE WITNESS: All right.

3 Q You don't have to let him yell

4 at you like that.

5 A It's okay. He's not yelling.

6 Q He kind of is.

7 Now, there are people who

8 responded to your FaceBook page indicating

9 that they thought you were wrong when you

10 filed your lawsuit; did they not?

11 A I don't know. That was awhile

12 ago, and I can't recall.

13 MR. ZABELL: Counsel, please

14 stop hitting your client.

15 MR. ANTOLLINO: I'm not hitting

16 my client.

17 MR. ZABELL: It appears as if

18 you might be.

19 MR. ANTOLLINO: I'm not hitting

20 my client. I put his hand -- I put the

21 paper down that he was picking up.

22 You're referring to an exhibit,

23 and you're reading --

24 MR. ZABELL: Counselor, there is

25 not a set of circumstances where it is

1 D. Zarda 385
2 professionally appropriate for you to
3 hit your client or talk during this
4 deposition, so please remain silent.
5 MR. ANTOLLINO: I did not hit my
6 client.
7 MR. ZABELL: I'm trying to get
8 you guys out of here at a normal time.
9 MR. ANTOLLINO: All right.
10 Okay, fine. Continue.
11 A Anyway, so there is so much
12 information that can be put on FaceBook, that
13 goes through FaceBook. To have immediate
14 recollection and knowledge of it is virtually
15 impossible.
16 MR. ZABELL: Let's take a quick
17 break and see if I can get you guys out
18 of here.
19 (Whereupon, a recess was taken
20 from 6:44 p.m. to 6:45 p.m.)
21 MR. ZABELL: I reserve the right
22 to call you back for a deposition on
23 behalf of Mr. Maynard.
24 In addition, I expect to be able
25 to, in the future, call you back for

1 D. Zarda 387
2 year later, for all I know. It is
3 almost; right?
4 MR. ZABELL: Off the record.
5 (Whereupon, a discussion was
6 held off the record.)
7 MR. ZABELL: This record is now
8 closed.
9 (Time noted: 6:46 p.m.)
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1 D. Zarda 386
2 purposes of questioning you about the
3 various lines of questions that your
4 attorney has directed you not to
5 answer. Barring that, I am shutting
6 the deposition down.
7 MR. ANTOLLINO: I would just
8 like to mark this as Plaintiff's
9 Exhibit A, this would be the Notice of
10 Deposition in which you have noticed,
11 on behalf of Altitude Express and
12 Mr. Maynard, this deposition. I would
13 like the court reporter, if I could --
14 MR. ZABELL: You can't.
15 MR. ANTOLLINO: I'm going to
16 object to your recalling on the grounds
17 that I have your signed Notice of
18 Deposition.
19 MR. ZABELL: What's the date on
20 that deposition notice?
21 MR. ANTOLLINO: December 16,
22 2010, and it hasn't been amended.
23 MR. ZABELL: Okay, December 16,
24 2010, and what's today's date?
25 MR. ANTOLLINO: It might be a

1 388
2 A C K N O W L E D G E M E N T
3
4 STATE OF NEW YORK)
5 : ss
6 COUNTY OF)
7
8 I, DONALD ZARDA, hereby certify that I
9 have read the transcript of my testimony
10 taken under oath in my deposition of
11 December 9, 2011; that the transcript is a
12 true, complete and correct record of my
13 testimony; and that the answers on the record
14 as given by me are true and correct.
15
16 _____
17 DONALD ZARDA
18
19
20 Signed and subscribed to
21 before me, this day
22 of _____, 20__
23
24 _____
25 Notary Public, State of New York

1			
2		INDEX TO TESTIMONY	
3			
4	WITNESS	EXAMINATION BY	PAGE
5	Donald Zarda	Mr. Zabell	4
6			
7		EXHIBITS	
8	DEFENDANTS'	DESCRIPTION	PAGE
9	A	Four-page document	
10		consisting of a copy of	
11		Supplemental Response to	
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14		Thirteen-page document	
15		consisting of a copy of	
16		Amended Response to Demand	
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19		Multi-page document	
20		consisting of copies of	
21		various screen shots from	
22		Mr. Zarda's FaceBook	
23		page	374
24			
25			

1

2 C E R T I F I C A T E

3 I, KAREN M. LaMENDOLA, a Notary Public

4 in and for the State of New York, do hereby certify:

5 THAT the witness whose testimony is

6 hereinbefore set forth, was duly sworn by me;

7 and

8 THAT the within transcript is a true

9 record of the testimony given by said

10 witness.

11 I further certify that I am not

12 related, either by blood or marriage, to any

13 of the parties in this action; and

14 THAT I am in no way interested in the

15 outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto set

17 my hand this 29th day of December, 2011.

18

19

20 KAREN M. LaMENDOLA

21

22

23

24

25

List of Plaintiff's page designations, highlighted in document filed in trial record at document number 190

It would probably have been wasteful and certainly cost another appendix volume to print plaintiff's deposition twice, and the letters on both sides encapsulate the objections. However at docket # 190, plaintiff proposed most, or at least some, of the following pages from plaintiff's be read at the trial, most of which did not overlap plaintiff's designations, though some did:

Pages one, 4 to 5, 21 to 26, 31 to 32, 36 to 45, 51 to 64, 67 to 68, 71 to 82, 86, 109, 112 to 113, 116 to 117, 119, 120 to 122, 126, 129 to 134, 137 to 143, 147 to 153, 155 to 56, 159 to 60, 164 to 77, 183 to 185, 199 to 211, 213 to 18, 220 to 223, 226 to 233, 241 to 244, 252, 254 to 55, 266 to 267, 269, 274 to 278, 280 to 282, 284 to 286, 344, 346, 359 to 360, and 364 to 374.

Exhibit A, defendant's Objections to plaintiff's designations of plaintiff's deposition

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

designations, highlighted starting at page 94.

DONALD ZARDA,

Plaintiff,

CASE NO.: 10-CV-4334(JFB)(ARL)

- against -

**ALTITUDE EXPRESS, INC. d/b/a SKYDIVE
LONG ISLAND, and RAY MAYNARD,**

Defendants.

Defendants' objections to Plaintiff's proposed deposition testimony to be read at trial:

- 4:2-11 – Defendants object on the grounds that this is not the deponent's words;
- 5:13-22 – Defendants object on the grounds that this testimony is wholly irrelevant;
- 6:2-13 – Defendants object on the grounds that this testimony is irrelevant;
- 21:3-23 – Defendants object on the grounds that this testimony contains impermissible hearsay;
- 40:2-11; 17-25 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 12 through 14 to provide the jury with the entire context of the testimony;
- 44:17-25; 45:2-6 – Defendants object on the grounds that this testimony contains impermissible hearsay;
- 52:9-25; 53:3-2 - Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer line 2 on page 53 to provide the jury with the entire context of the testimony;
- 40:7-25 – Defendants object on the grounds that this testimony contains impermissible hearsay;
- 67:2-17; 67:23-25; 68:2-7 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 18 through 20 on page 67 to provide the jury with the entire context of the testimony;
- 74:21-25; 75:2-11 – Defendants object on the ground that this testimony is wholly irrelevant and contains impermissible hearsay;

- 78:2-11; 78:18-22 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 11 through 17 to provide the jury with the entire context of the testimony;
- 81:20-21 – Defendants object on the ground that this testimony is irrelevant;
- 85:21-22; 86:2-16 - Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 23 through 25 on page 85 and line 2 on page 86 to provide the jury with the entire context of the testimony;
- 109:2-4; 109:12-15 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 5 through 11 to provide the jury with the entire context of the testimony;
- 113:12-19 – Defendants object on the ground that this testimony contains impermissible hearsay;
- 119:3-9 – Defendants object on the ground that this testimony is wholly irrelevant;
- 130:16-25 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 18 through 23 to provide the jury with the entire context of the testimony;
- 131:22-22; 131:25; 132:2-10 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 23 through 24 on page 131 to provide the jury with the entire context of the testimony;
- 133:2-5 – Defendants object on the ground that this testimony beginning with the word “but” on line 2 contains impermissible hearsay;
- 133:13-24 – Defendants object on the ground that this testimony beginning with the word “I felt” on line 13 contains impermissible hearsay;
- 134:12-22 – Defendants object on the ground that this testimony contains impermissible hearsay;
- 137:18-24; 138:2-25; 139:2 - Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 2 through 12 on page 138 to provide the jury with the entire context of the testimony;
- 139:8-10 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer line 11 to provide the jury with the entire context of the testimony;
- 147:18-25; 148:2-10 – Defendants object on the ground that this testimony is wholly irrelevant;

- 183:15-25; 184:2-25 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer line 2 on page 184 to provide the jury with the entire context of the testimony;
- 210:25; 211:2-13 – Defendants object on the ground that this testimony contains impermissible hearsay.
- 226:2-14 – Defendants object on the ground that this testimony is wholly irrelevant;
- 227:6-22 – Defendants object on the ground that this testimony is wholly irrelevant;
- 229:16-18; 230:16-25; 231:2-25; 232:2-7 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer line 19 through 23 on page 229 to provide the jury with the entire context of the testimony;
- 252:7-15; 254:20-15; 255:2-22 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer lines 2 through 25 on page 253 and lines 2 through 19 on page 254 to provide the jury with the entire context of the testimony; and
- 281:21-25; 282:3-15 – Defendants object on the ground that this testimony does not provide the context of the testimony for the jury. However, Defendants will not object to this testimony should Plaintiff also offer line 2 on page 282 to provide the jury with the entire context of the testimony.

EXHIBIT B

List of defendant's page designations, which were highlighted

It would probably have been wasteful and certainly cost another appendix volume to print plaintiff's deposition twice, and the letters on both sides encapsulate the objections. However in Exhibit B to its in limine motion filed on 3/19/15, defendant proposed most, or at least some, of the following pages from plaintiff's be read at the trial, most of which did not overlap plaintiff's designations, though some did:

Pages 1, 5-6, 19, 20, 22 to 25, 28 to 36, 39, 40, 45 to 59, 61, 63 to 72, 70, 74 to 123, 125 to 128, 131, 134 to 148, 150 to 151, 153 to 164, 171 to 177, 178 to 188, 191 to 200, 205-2207, 211 to 229, 233 to 244, 246, 248, 249, 250, 253 to 254, 256 to 265, 269 to 275, 278 to 280, 282 to 294, 297, 301-2302, 307 to 312, 316 to 323, 326, 329 to 331, 331 to 352, 354 to 363, 370, 375 to 377, 380 to 381. See document 191, # 2 (Exhibit B)

Plaintiff's amended objections to defendants' deposition designations, originally filed 3/28/15

Gregory Antollino, Esq.
275 Seventh Avenue Suite 705
New York, NY 10001
(212) 334-7397

April 21, 2015

U.S. District Judge Joseph F. Bianco
Long Island Federal Courthouse
814 Federal Plaza
Central Islip, New York 11722

RE: Zarda v. Altitude Express, Inc. & Ray Maynard, 10 Civ 4334 (JFB)

Dear Judge Bianco:

I re-read my second letter of March 28 and noticed two minor errors. For convenience sake I will simply repeat the letter here, and note the changes in red, and one clarification. Sorry about this. What follows is the letter with two important corrections in ¶¶ 5, 14, 16:

I represent the plaintiff in this action and write regarding the defendant's cross designations in relation to plaintiff's deposition. While most of them are unobjectionable background information, I won't be reading it because it is so lengthy that it will put the jury to sleep. Mr. Zabell acted as a cross examiner in his deposition, and the "asked and answered" objection doesn't work in the deposition context. He asked and asked and asked several areas, some of which are not in contention anymore. These issues need not be delved into. Further, get ready for this, because the defense is out to accuse plaintiff of being a sleaze. The Court might have ruled that there was a complaint that he touched a woman improperly, but there was no ounce of evidence that plaintiff was sexually perverted, or interested in women. Summary judgment is one thing, but I beg you not to let them turn this trial into a cloak for defamation, without a good faith basis.

To be clear: Plaintiff's minimum wage claim is not worth the effort, so I am dropping it, as I said in an earlier letter. You have dismissed plaintiff's hostile work environment claim, which was never pled, but only implied. You also dismissed the overtime aspect of the complaint, which I never prosecuted. To be sufficiently clear, this is what plaintiff seeks relief on: Discrimination on the grounds of sexual orientation, by Ray Maynard that caused the adverse job actions of discipline, further loss of a job, and loss of the use of one weeks pay which was withheld from him. Part of our damages is the shame he felt in being accused of touching a woman, but the community didn't believe it, therefore it was not defamation and truth is not a defense - it was how *he* felt being accused of such a horrible thing. It's fair game for the defense to argue that the improper touching did happen, but it is not fair game to suggest how plaintiff felt was true – that he was a homo-pervert so sexually confused that he would hit on anyone. There is no evidence to that effect.

JA0197

I will try to be as specific as possible regarding these designations, but there are some that come up again and again that I will mention them by subject matter and refer to the page number as best I can. The designations I object to are as follows:

1. 19-20: Questions about what medications plaintiff was taking. You ruled that inadmissible.
2. 22-23: The rules of depositions, e.g., answer verbally, etc. Why does the jury need to hear that?
3. 30-33, 264-65, 269-294: These refer to my client's belief in the truthworthiness of various members at the dropzone. There is no relevance to whether my client believes various members of the dropzone.
4. 99-reference to my client's drinking habits (which were mild). He was not a drinker, nor was fired for drinking. To ask the question would be prejudicial to suggest as much.
5. 55: Whether there was any physical contact between my client and girls he dated in high school. This goes to suggest that he had deep, deep down a feeling for women and he used it to grope Rosanna, the complainant. Propensity is inadmissible, even if you are trying to prove the absurd position that a gay man holds a residual propensity for women and that, on top of that, he acted out on it on Rosanna. That is not only absurd and inadmissible, but would discriminate against bi-sexuals – it suggests that **mostly gay people who identify as bisexual** who **nevertheless** hold a tiny bit of desire for the **opposite** sex will demonstrate it through criminal touching – or worse.
6. 57-58: Why plaintiff believes he was fired in 1990. Discrimination against gays was legal at the time. Plaintiff did not believe – at the time – that he was fired because he was gay. Maynard said he was fired for telling two women, who cried to Maynard, that he, Zarda, is gay. If this testimony comes in, I will ask for jury instructions as to whether discrimination against gays was legal in 1990. This request to exclude in some ways helps the defense, but it also prejudices my client because of juror confusion and the fact that it would it them to speculate as to what he told 1990 customers, whether that was illegal or evidence of gay discrimination, and what it has to do with 2010 when gay discrimination was illegal?
7. 68-69: Mention that I had a discussion with my client during a break is irrelevant unless Zabell established that I improperly coached Mr. Zarda, which was not asked.
8. 90: Whether my client suffers from a prior back injury? What difference would that make – he wasn't fired for that and to mention it would suggest that there was another reason why plaintiff was fired, where counsel has no good faith basis in suggesting.
9. 111-112: All discussions of Mrs. Maynard and my client's conversations must come out or I will be able to call Mrs. Maynard as a rebuttal witness. Do we want to go down that road?
10. 180: Zabell's question to Zarda as to whether he would meet me as a guest in Europe or vice versa suggests we had a relationship outside of being lawyers - and that would be irrelevant and potentially prejudicial – either to him or to

me as his lawyer, which would ultimately be to him. (I won't say whether we had a relationship outside of the attorney-client relationship, because I don't have to defeat this testimony.) There is no other reason such testimony would be designated and I am going to ask you now to control Mr. Zabell and not to allow him to attempt to bully me. I should not be put in the position of choosing whether to fight him back, and possibly be disliked by the jurors. ***Please, Judge, for trial: control Mr. Zabell.***

11. 205: Zabell asks a question, and the response is "could you repeat the question." This suggests that my client was dumb because he couldn't remember a question simply because he asked the questioner to repeat it. There could have been noise, or that the mere request to repeat question is no evidence of perjury. He shows no other example, and there is not even the propensity to ask for questions to be repeated.
12. 239-40, 257:60; 334, 335, 337, 347, 239-40: Irrelevant because this testimony it goes to the question of hostile work environment – there was gay-joking around and I'll concede there was not a hostile one. Defendant pled an opposition to one broader than we had alleged. You ruled against hostile work environment anyway; so why would it be relevant other than to suggest that the one decision maker in this case was Maynard was not a person who caused discriminatory hostility, in a quiet, singular way? He was the hostile in hostile work environment, notwithstanding the gay banter that went on with co-workers. Therefore that evidence is misleading, and by being misleading tends to suggest that my client is so untruthful that he brought a hostile-work environment claim against this place of great people. Plaintiff surely thought the people of his workplace were great – except one.
13. 212-Zabell asks Zarda "as to his attorney's press releases." There is no evidence that I issued a press release, I declare under perjury. The case was publicly filed and I got a call about it from a nearby reporter with nothing better to do. That's not evidence.
14. 278, 244, 223-267, etc. This whole discussion of worker's compensation should be stricken. Plaintiff took worker's compensation in 2009. It is illegal to discriminate against a person who takes worker's compensation. Ray Maynard testified (and I can show the testimony) that he **had not** discriminated against plaintiff because of Worker's Compensation Discrimination. For Zabell to raise that issue would allow the jury to infer that it is ok to discriminate against a person against one thing that is illegal and not another thing against the law. Additionally this Court must agree that, an unlawful, unarticulated reason may never be a legitimate reason to fire someone as a matter of law. To go into worker's compensation would suggest otherwise, and would be tantamount it's ok to break the antidiscrimination laws, just break the right one you won't get caught one. (Whether or not Maynard actually did fire plaintiff because of his use of conversation is a claim that cannot be brought in this forum. Even if that is irrelevant, we never accused Maynard of it and to get into it would confuse the jury.
15. 380-81: Zabell asks several offensive questions about whether my client has ever been called a child molester, or talked about taking Viagra, had porn on

his phone. That's too low. One of Mr. Maynard's employee's said that plaintiff was a child molester and notwithstanding, we lost the hostile work environment claim; *you can't let them take that in now on an unnoticed, disgusting reason that my client was actually a child molester.*

16. Defendant refers repeatedly to defendant's release of all liability in this case. That release does not refer to employment - just injury or death. It cannot be suggested to the jury that plaintiff did or may not contract against himself the right to be discriminated against, otherwise the condition for any job would be to believe that one was going to be treated badly, and that would be bad public policy and illegal. The release doesn't refer to employment. It might come up in another context: The fact that the flyer would certainly be touched **is in the release**, but to raise the specter that my client signed a release pertaining to this lawsuit is a fraud on the jury.
17. Fifth Amendment. My client took the fifth amendment as to whether he used Marijuana or recreational drugs. If defendant can get into that, it is prejudicial because my client was not fired because of his drug use, as admits Maynard. Thus to raise the issue would suggest that my client was fired for something that had nothing to with his firing - as admitted by the defense. The focus must be on sexual orientation discrimination and the other stated reasons unless there is evidence that both the plaintiff and the defendant are lying. If Mr. Zabell believes that, then he must be accusing his client of commit perjury in his defense, which you don't want me bringing up to the jury in summation. Therefore, he Mr. Zabell should not argue that Mr. Zarda was fired for any reason other than that Maynard articulated, otherwise, it will be fair comment for me to say Mr. Zabell wants you to believe that Mr. Maynard is a liar. That would be fair comment under the circumstances, so to eliminate prejudice to the defense there should be no raising of suspicions by the defense that my client was fired for anything other than what Maynard testified or testifies to.

Sincerely,

/s/

Gregory Antollino

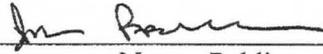
Cc: Saul Zabell by ecf

8. Similarly, my failure to correct my errata sheet was in error.



DAVID KENGLÉ

Sworn to before me this
11 day of May 2012



Notary Public

JOHN G PAPADOPOULOS
NOTARY PUBLIC-STATE OF NEW YORK
No. 02PA6255311
Qualified in Nassau County
My Commission Expires February 06, 2016

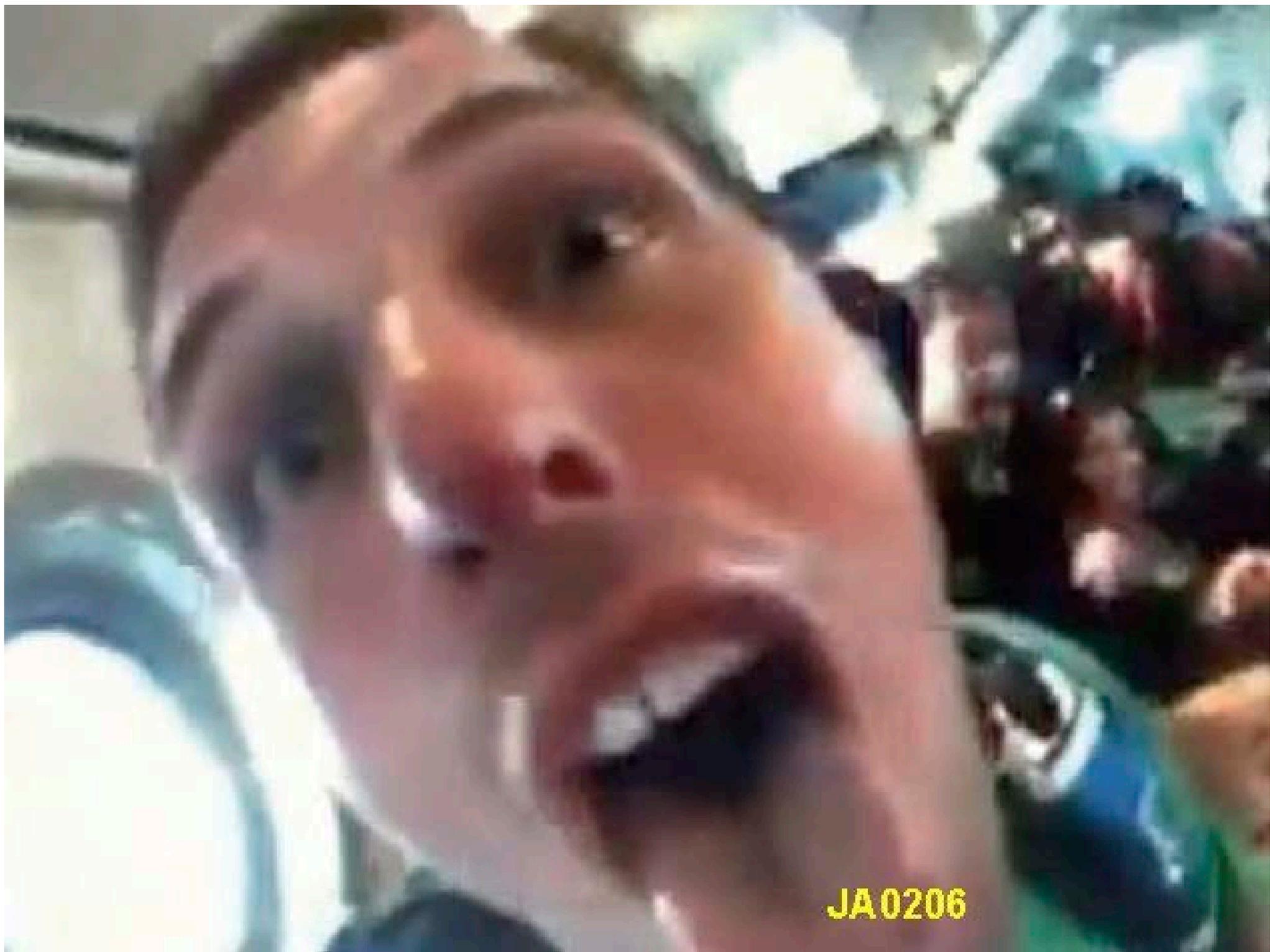
PAGE 203 IS INTENTIONALLY BLANK



JA0204



JA205



JA0206



JA0207



JA208



JA0209