

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 II

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March, 2015

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² Though not admitted as an exhibit at trial, the reporter’s deposition transcription of the recording is available at Vol. II, p. 586, as part of the summary judgment record.

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1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NEW YORK
 3 -----X
 4 DONALD ZARDA,
 5 Plaintiff,
 6 -against-
 7 ALTITUDE EXPRESS, ET ANO.,
 8 Defendant,
 9 Civil Action No.: 10-9334
 10 -----X
 11 90 John Street
 12 New York, New York
 13 December 14, 2011
 14 10:15 a.m.
 15
 16 Videotaped Deposition of RAYMOND
 17 MAYNARD, pursuant to Notice, before Sophie
 18 Nolan, a Notary Public of the State of New
 19 York.
 20
 21
 22
 23 ELLEN GRAUER COURT REPORTING CO. LLC
 24 126 East 56th Street, Fifth Floor
 25 New York, New York 10022
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 25

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: This is tape
 3 one. We are now on the record at 10:15
 4 a.m. on Wednesday December 14, 2011.
 5 This is the deposition of Raymond Maynard
 6 in the matter of Donald Zarda versus
 7 Altitude Express, et ano.

8 This deposition is being held at
 9 the offices of Reporters Ink located at
 10 90 John Street, New York, New York. The
 11 court reporter is Sophie Nolan with Ellen
 12 Grauer Court Reporting. I am the legal
 13 videographer, Vincenzo Petula, also with
 14 Ellen Grauer Court Reporting.

15 Would counsel please introduce
 16 themselves.

17 MR. ANTOLLINO: I'm Gregory
 18 Antollino for Mr. Zarda and with me is
 19 John Sanchez who's also an attorney
 20 that's loosely affiliated with my office.

21 MR. ZABELL: Saul Zabell, the law
 22 firm of Zabell & Associates for the
 23 Defendant.

24 THE VIDEOGRAPHER: Will the court
 25 reporter please swear in the witness.

1 R A Y M O N D M A Y N A R D, called as a
 2 witness, having been first duly sworn,
 3 was examined and testified as follows:
 4 5 EXAMINATION BY
 6 MR. ANTOLLINO:
 7 Q. Good morning, Mr. Maynard.
 8 A. Good morning.
 9 Q. I'm Greg Antollino. We haven't had
 10 a chance to meet before.
 11 MR. ZABELL: Prior to beginning
 12 questioning, I'm reserving my client's
 13 rights to review this transcript at the
 14 conclusion of the deposition.
 15 MR. ANTOLLINO: Certainly.
 16 Q. Have you ever had a deposition
 17 taken before?
 18 MR. ZABELL: Objection to the form.
 19 You may answer.
 20 A. I was in one deposition many years
 21 ago.
 22 Q. What kind of case?
 23 MR. ZABELL: Objection to the form.
 24 You may answer.
 25 A. It was an air show at the airport

1 MAYNARD

2 that I worked closely with the organizer.

3 Q. And what happened?

4 A. There was a gentleman suing the
 5 organizer because he wanted to be part of it
 6 and I was at a lot of meetings so they wanted
 7 to hear what I had to say.

8 Q. You were not a subject of the
 9 lawsuit?

10 A. No.

11 Q. Just a witness?

12 A. Just a witness.

13 Q. Other than that, never any
 14 depositions?

15 A. No.

16 Q. How about testimony in court?

17 MR. ZABELL: Objection to the form.

18 You may answer.

19 A. No.

20 Q. Do you understand that you're under
 21 oath?

22 A. Yes.

23 Q. All right. And that means you're
 24 sworn to tell the truth?

25 A. Yes.

1 MAYNARD
 2 Q. Even though we're in an informal
 3 setting here in this office, your answers, you
 4 understand, save the same force and effect as
 5 if we were in a courtroom with a judge and a
 6 jury; correct?
 7 A. Yes.
 8 Q. Are you prepared to answer my
 9 questions today?
 10 A. Yes.
 11 Q. And there's nothing that will
 12 prevent you from giving me your full attention?
 13 A. No.
 14 Q. Are you taking any medications or
 15 suffering from any illness that will prevent
 16 you from understanding my questions and
 17 answering them fully?
 18 A. No.
 19 Q. If you don't understand one of my
 20 questions, will you let me know?
 21 A. Yes.
 22 Q. If you need a break at any time,
 23 will you tell me and we'll take a break?
 24 A. Yes.
 25 Q. Okay. And your current employment

1 MAYNARD
 2 is what?
 3 MR. ZABELL: Objection to the form.
 4 You may answer.
 5 A. My current employment?
 6 Q. Yes.
 7 A. Business owner.
 8 Q. And the business you own is?
 9 A. Altitude Express.
 10 Q. And that does business as Skydive
 11 Long Island; is that correct?
 12 A. That's correct.
 13 Q. What is your highest level of
 14 education?
 15 A. I graduated high school.
 16 Q. When was that?
 17 A. 1965.
 18 Q. How long have you been flying?
 19 MR. ZABELL: Objection to the form.
 20 Q. I mean, not flying, sky diving.
 21 MR. ZABELL: Objection to the form
 22 of the question. Are you withdrawing the
 23 previous question?
 24 MR. ANTOLLINO: Yes.
 25 Q. You can answer the second one. How

1 MAYNARD
 2 long have you been been skydiving?
 3 MR. ZABELL: Wait, wait. Are you
 4 withdrawing the two previous questions
 5 and now asking that question?
 6 Q. The second question, the question
 7 I'm asking, is how long have you been
 8 skydiving?
 9 A. Over 40 years.
 10 Q. How many jumps have you taken?
 11 MR. ZABELL: Objection to the form.
 12 You may answer.
 13 A. Just under 4,000.
 14 Q. Do you have any certifications?
 15 MR. ZABELL: Objection to the form.
 16 You may answer.
 17 A. Yes.
 18 Q. What are they?
 19 A. A tandem instructor. I'm a coach.
 20 Q. Anything else?
 21 A. I'm a FAA rigger.
 22 Q. Anything else?
 23 A. I think that's it.
 24 Q. Skydiving is not for everyone,
 25 would you agree with that statement?

1 MAYNARD
 2 MR. ZABELL: Objection to the form
 3 of the question.
 4 You may answer.
 5 A. Yes.
 6 Q. And, in fact, you once told a
 7 newspaper that; right?
 8 A. Yes.
 9 Q. That's some Hamptons.com newspaper,
 10 you had an interview with them in 2008 or
 11 thereabouts; is that correct?
 12 MR. ZABELL: Objection to the form
 13 of the multiple questions.
 14 You may pick a question and provide
 15 an answer to it.
 16 Q. You can answer.
 17 A. Well --
 18 Q. Why don't I withdraw the question
 19 and just mark an exhibit, all right?
 20 MR. ZABELL: Are you asking him if
 21 that's okay?
 22 MR. ANTOLLINO: I don't want to
 23 engage in any colloquy, Counsel.
 24 I'd like to mark this -- I've
 25 premarked it as R-1. I don't know if we

1 MAYNARD
2 need to remark it -- remark it R-1 or is
3 my little stamp enough, Counsel?
4 MR. ZABELL: How ever you prefer.
5 This is your deposition. As long as you
6 give me copies.
7 (Exhibit R-1, article from
8 Hamptons.com, marked for Identification.)
9 Q. I'm going to hand this to you. Do
10 you recognize what I've handed to you?
11 A. Yes.
12 Q. And this is an article about you
13 that was written by a journalist on
14 Hamptons.com; is that correct?
15 A. Yes.
16 Q. And in it you describe at the very
17 end that "Skydiving is not for everyone";
18 correct?
19 A. Yes.
20 Q. And you describe to the reporter
21 that you -- even your wife at the time never
22 went up on a skydive; is that correct?
23 A. That's correct.
24 Q. And your wife at the time was
25 Joanne Maynard?

1 MAYNARD
2 A. That's correct.
3 Q. And your marriage to her has ended
4 now; is that correct?
5 A. No.
6 Q. It's not? Okay. I had looked
7 online and it says that the case was disposed.
8 You're not legally divorced yet?
9 A. No.
10 MR. ZABELL: Mr. Maynard, I'm
11 advising you that just because
12 Mr. Antollino makes a statement, he is
13 not under oath and you are no obligation
14 to believe the words that he is saying
15 are accurate.
16 Q. All right. Why did you tell the
17 Hamptons.com that skydiving is not for
18 everyone?
19 MR. ZABELL: Objection to the form.
20 You may answer.
21 A. Because skydiving is not for
22 everyone. People who don't want to go
23 skydiving should not go skydiving because
24 people might be trying to talk them into it.
25 Skydiving is for people who have

1 MAYNARD
2 that feeling inside of them and they want to
3 experience that.
4 Q. What about people who are
5 claustrophobic, are they good candidates for
6 tandem skydiving?
7 A. I'm not an expert on
8 claustrophobia. I don't know if that would be
9 a problem or not. It's going to be an
10 individual feeling and choice.
11 Q. Well, what is your understanding of
12 what a claustrophobic is?
13 A. When I think being claustrophobic,
14 I would think of being in a closet, a confined
15 area.
16 Q. Claustrophobic, would it be fair to
17 say, is someone who's afraid of being in a
18 confined area; correct?
19 MR. ZABELL: Objection to the form.
20 You may answer if you can.
21 A. I'm not sure.
22 Q. Are passengers in a tandem skydive
23 situation placed in a confined area?
24 A. The cab of the aircraft is a fairly
25 small area.

1 MAYNARD
2 Q. And it's often filled with many
3 people; correct?
4 A. Correct.
5 Q. And they're also very closely
6 strapped to another person; correct?
7 A. That's correct.
8 Q. What about someone who doesn't want
9 to be touched, is that a good candidate for
10 someone -- withdrawn.
11 What about someone who wants to be
12 touched? Is someone who wants to be touched a
13 good -- who doesn't want to be touched a good
14 candidate for skydiving?
15 MR. ZABELL: I'm going to object to
16 the three questions you just asked.
17 MR. ANTOLLINO: I'll be draw the
18 question and ask it again.
19 MR. ZABELL: Are you going to
20 withdraw the last question?
21 MR. ANTOLLINO: I'll withdraw what
22 I said and ask it again.
23 MR. ZABELL: Okay.
24 Q. Is someone who does not want to be
25 touched a good candidate for skydiving?

1 MAYNARD
2 MR. ZABELL: Objection to the form.
3 If you can, you may answer.
4 A. I don't know that. I don't know
5 that.
6 Q. You don't know one way or the
7 other?
8 A. No.
9 Q. So if someone said to you, I'm
10 afraid of being touched, I don't like to be
11 touched, do you think I should go up on a
12 skydive, what would you say to that person?
13 A. If someone said that to me like
14 that, I would say, then maybe you should not
15 skydive.
16 Q. Why not?
17 A. Because they just expressed
18 something that they're going to be
19 uncomfortable with.
20 Q. What did they express they'd be
21 uncomfortable with?
22 A. What you just said.
23 Q. Being touched?
24 A. Yeah.
25 MR. ZABELL: When he makes a

1 MAYNARD
2 statement like that, that's a statement
3 to which no response is required.
4 Q. Why is someone who does not want to
5 be touched not a candidate for skydiving, for
6 tandem skydiving?
7 MR. ZABELL: Objection to the form.
8 If you can, you may.
9 A. You're asking me to answer a
10 question of someone else's feeling. I can't
11 give you that answer.
12 Q. Well, I'm asking you as a tandem
13 instructor if someone came to you and said, I
14 don't like to be touched, do you think I should
15 go up in a tandem skydive, what would be your
16 answer?
17 A. I would tell that in order to do a
18 tandem skydive, you will be touched and hooked
19 up in a harness. And that's all explained to
20 them. There will be close contact with another
21 person.
22 Q. Therefore, what would be your
23 recommendation to that person?
24 A. I would tell him those are the
25 facts and you have to make a choice.

1 MAYNARD
2 Q. What if that person went up in a
3 skydive and then afterwards made a complaint to
4 you and said, I was touched, I went up in the
5 skydive and I was touched, is that a legitimate
6 complaint?
7 MR. ZABELL: Objection to the form
8 of the question.
9 You may answer.
10 A. I would ask them to give me more
11 detail.
12 Q. Okay. Well, the person was
13 adjusting straps around my body and I felt
14 uncomfortable, what would -- would that be a
15 legitimate complaint?
16 MR. ZABELL: Objection to the form.
17 You may answer.
18 A. No.
19 Q. Okay. At how many points does the
20 and instructor have to be attached to the
21 passenger?
22 MR. ZABELL: Objection to the form.
23 You may answer.
24 A. At how many points?
25 Q. Yeah.

1 MAYNARD
2 A. There's four points of attachment.
3 Q. Are there any other points of
4 attachment other than the four points?
5 A. No.
6 Q. Where are the four points of
7 attachment?
8 A. There's two -- there's one on each
9 shoulder and one on each hip.
10 Q. This article in Drop Zone -- I'm
11 sorry, not Drop Zone, Hamptons.com
12 indicates there's about one injury per year at
13 Skydive Long Island. Is that a true statement?
14 A. For a while we average about one a
15 year.
16 Q. And are those injuries of
17 passengers, of skydivers or both?
18 MR. ZABELL: Objection to the form.
19 A. Both.
20 Q. When you say one injury per year,
21 it's one injury and it's either a passenger or
22 a skydiver?
23 A. Yes.
24 Q. Okay. And there was one death in
25 1989; correct?

1 MAYNARD
2 A. That's correct.
3 Q. All right. It says here that this
4 death was an apparent suicide; is that correct?
5 A. Yes.
6 Q. Why was it believed to be an
7 apparent suicide?
8 A. Because the student himself
9 released himself from the parachute 200 feet
10 off the ground.
11 Q. And was there any indication that
12 he was suicidal?
13 A. No.
14 Q. So it's possible that he just made
15 a mistake?
16 A. It's possible.
17 Q. But it was his fault?
18 A. Absolutely.
19 MR. ZABELL: Objection to the form.
20 Q. Did the family complain?
21 MR. ZABELL: Objection to the form.
22 Q. About his death?
23 MR. ZABELL: Objection to the form.
24 A. Did they complain?
25 Q. Yeah.

1 MAYNARD
2 A. Well, they started a lawsuit.
3 Q. They did? And what happened?
4 A. It was dismissed.
5 Q. Okay. Did you give them their
6 money back?
7 A. No.
8 Q. Why not?
9 MR. ZABELL: Objection to the form.
10 A. Because I didn't.
11 Q. Well, did they ask for it back?
12 A. No.
13 Q. And you thought that their
14 complaint was illegitimate?
15 MR. ZABELL: Objection to the form.
16 Did you say "illegitimate"?
17 Q. You felt that their claim was
18 illegitimate; correct?
19 MR. ZABELL: Objection to the form.
20 A. Yes.
21 Q. And this particular lawsuit was
22 dismissed without you being deposed?
23 A. I believe.
24 MR. ZABELL: Objection to the form.
25 A. I don't really remember, to tell

1 MAYNARD
2 you the truth.
3 Q. Was there any testimony taken in
4 that case?
5 A. No. It didn't get that far.
6 Q. And it was dismissed that she
7 had -- that the jumper had signed a waiver;
8 correct?
9 A. I don't really remember.
10 Q. And that was in Suffolk County in
11 1989, around there?
12 A. Yes.
13 Q. Was it Suffolk Supreme Court, if
14 you can recall?
15 A. I don't recall.
16 Q. I want to show you -- I premarked
17 as Exhibit 3 and these are all R-3 -- is my
18 memory for Ray. And I'm going to ask you if
19 you recognize this document?
20 MR. ZABELL: I'm going to object to
21 the statements of counsel.
22 MR. ANTOLLINO: Okay. You can take
23 a look --
24 (Exhibit R-3, four-page document
25 starting with 43:121, marked for

1 MAYNARD
2 Identification.)
3 Q. Take a look at R-3 and I'm going to
4 ask you if you recognize any of these
5 documents.
6 A. Yes.
7 Q. What is this?
8 A. It's showing you the attachment
9 points of the tandem passenger harness
10 attaching to a tandem master.
11 Q. Does it fairly and accurate
12 represent how a tandem master is strapped to a
13 passenger?
14 A. Yes.
15 MR. ZABELL: Counselor, before your
16 question, I notice that these pages -- is
17 there an order to these pages because
18 they appear to be numbered but it looks
19 like the second -- the third page is the
20 page that's identified as R-3.
21 MR. ANTOLLINO: I think they're out
22 of order.
23 MR. ZABELL: And what is the order
24 that you'd like them in?
25 MR. ANTOLLINO: The order they're

1 MAYNARD
2 in. There are four pages and they start
3 with 43:121, 44:121 and then after that
4 41:121, and then after that 42:121. So
5 they're slightly out of order, but that's
6 the order I'd like them in.
7 A. I have three pages.
8 Q. You have three pages. So I'll give
9 you my fourth page. Let's show what you have.
10 You have that one.
11 MR. ZABELL: So the record should
12 reflect that you just gave him a
13 duplicate copy of 42:121.
14 MR. ANTOLLINO: You know, it's a
15 three-page document. I'm sorry, maybe
16 you were missing --
17 MR. ZABELL: Really? Because you
18 gave me four pages. You gave me 43:121,
19 44:121, 41:121 and then 42:121.
20 MR. ANTOLLINO: All right. Let me
21 look at what Ray has.
22 MR. ZABELL: It appears he might be
23 missing --
24 MR. ANTOLLINO: Yes, he is and
25 that's the one he said was the duplicate

1 MAYNARD
2 that I handed him, but no it's not.
3 MR. ZABELL: No, it was, because
4 you now have -- you've taken all the
5 papers back and you've got multiple
6 copies in front of you that you're
7 pulling from.
8 MR. ANTOLLINO: I have -- I'm
9 giving the witness now what was the
10 four-page intended exhibit.
11 MR. ZABELL: It was a four-page
12 exhibit not a three-page as you just
13 articulated.
14 MR. ANTOLLINO: That's correct.
15 MR. ZABELL: Okay.
16 Q. What is the Tandem Vector owner's
17 manual?
18 A. Excuse me?
19 Q. What is the Tandem Vector II?
20 MR. ZABELL: Objection to form.
21 Of the multiple questions before
22 you, you may pick a question and then
23 answer it.
24 A. Tandem Vector II is what we call a
25 rig. It's a harness and container, a harness

1 MAYNARD
2 container, and parachutes.
3 Q. And do you own that at your drop
4 zone?
5 A. Yes.
6 Q. Do you own more than one?
7 A. Yes.
8 Q. And do you recognize this to be the
9 manual that comes with this particular rig?
10 A. It appears to be an old one
11 because -- it appears to be an old one.
12 Q. Is there anything in this portion
13 of the manual that I've handed marked as an
14 exhibit that needs to -- that is incorrect?
15 Why don't you take a minute and look through
16 it.
17 A. (Reviewing.)
18 No, they seem to be correct.
19 Q. So the document on the first page
20 points out several straps and points of
21 attachment, do you see that, on page 43:121?
22 A. Yes.
23 Q. All right. And all of those straps
24 need to be adjusted; correct?
25 A. Correct.

1 MAYNARD
2 Q. And they need to be adjusted for
3 the safety and comfort of the passenger;
4 correct?
5 A. That's correct.
6 Q. And would you agree that safety is
7 more important than comfort?
8 A. Safety is number one.
9 Q. And comfort is number two?
10 MR. ZABELL: You need to answer
11 verbally.
12 A. Yes.
13 Q. And I see that two of those
14 attachments are approximately at the hips; is
15 that correct?
16 A. Correct.
17 Q. What about someone who's afraid of
18 heights? If someone went to you and said, I'm
19 afraid of heights do you think I should go up
20 on a skydive?
21 MR. ZABELL: Objection to the form
22 of the questions.
23 Q. What would you say -- what would
24 you recommend to that person?
25 MR. ZABELL: Counsel, are you

1 MAYNARD
2 withdrawing the previous question and
3 just asking that last question?
4 Q. You can answer.
5 MR. ZABELL: You can pick one of
6 the questions and provide an answer to
7 it.
8 A. Which question do you want me to
9 answer?
10 MR. ANTOLLINO: Would you read it
11 back, please? Colloquy doesn't count in
12 my seven hours. If you want to come
13 back, that's fine with me.
14 MR. ZABELL: Counselor, just ask
15 one question at a time.
16 MR. ANTOLLINO: No, no. We'll read
17 it back.
18 MR. ZABELL: Which question are you
19 having read back?
20 MR. ANTOLLINO: The last question.
21 (Record read.)
22 MR. ANTOLLINO: Read the first part
23 of that, before that.
24 (Record read.)
25 A. If someone comes to us and tells us

1 MAYNARD
2 that they are afraid of heights, the first
3 thing we tell them is that this is not like you
4 standing on the side of a building and being in
5 a tree or on a ladder. It's a totally
6 different feeling and, in my opinion, it's not
7 the same -- it's not the same sensation and
8 they would probably be okay.
9 Q. And what if that person went up
10 into the airplane and experienced a skydive and
11 later complained that the plane went up to
12 12,000 feet?
13 A. They're told that we're going up to
14 13,500 feet most of the time.
15 Q. Okay. So if someone told you that
16 they were afraid of heights and you told them
17 that it would be -- you thought it would be
18 okay and he went up to 12,000 feet and later
19 complained that they went up to 12,000 feet,
20 that would be an illegitimate complaint;
21 correct?
22 MR. ZABELL: Objection to the form.
23 You may answer.
24 A. No one is forced to get in the
25 airplane and jump from any altitude. It was

1 MAYNARD
2 their choice. We're not telling them that it's
3 going to be okay and you can do this. It's
4 their choice to get in the plane or not get in
5 the airplane knowing they're going to go to at
6 least 10,000 feet.
7 Q. And, therefore, a complaint that
8 the plane went up to 12,000 feet would be an
9 illegitimate complaint; correct?
10 MR. ZABELL: Objection to the form
11 of the question.
12 A. Yes.
13 Q. Would you agree or disagree, people
14 think skydivers are just a bunch of crazies,
15 you don't have to be crazy, though it helps?
16 MR. ZABELL: Objection to the form.
17 You can answer.
18 A. That's something I've said.
19 Q. In fact, let's mark what I've
20 premarked as R-2, you told this to the
21 Independent which is a newspaper on the east
22 end of Long Island; correct?
23 A. Yes.
24 (Exhibit R-2, article from the
25 Independent, marked for Identification.)

1 MAYNARD
2 Q. That's exactly what you said to
3 this reporter, Mariah Quinn, in or around 2006;
4 correct?
5 A. According to this, yes.
6 Q. And you recognize this article?
7 A. Yes.
8 Q. And when you spoke to that
9 reporter, you weren't saying anything that was
10 untrue; is that correct?
11 A. That was my opinion.
12 Q. Okay. Would you agree that --
13 okay, I'm finished with that exhibit.
14 Would you agree that the behavior
15 at the drop zone can get a little bawdy at
16 times?
17 MR. ZABELL: Objection to the form.
18 You may answer.
19 A. Could you explain what you mean
20 "bawdy"?
21 Q. Have you heard the word "bawdy"
22 before?
23 A. No.
24 Q. Okay. A little racy?
25 MR. ZABELL: Same objection.

1 MAYNARD
2 A. I don't know what you mean by being
3 racy.
4 Q. Suggestive?
5 MR. ZABELL: Same objection.
6 A. Suggestive in what way?
7 Q. Sexually suggestive.
8 MR. ZABELL: If you can answer, you
9 may.
10 A. I don't remember.
11 Q. All right. Well, you don't
12 remember? You don't remember any times when
13 behavior has gotten sexually suggestive at the
14 drop zone?
15 A. Not any more than anything else.
16 Q. Well, what does that mean, not any
17 more than anything else?
18 MR. ZABELL: Objection to the form.
19 You may answer.
20 A. It's not a major topic. We're
21 there to skydive.
22 Q. Well, you have read the lawsuit
23 that Don has filed in this case; correct?
24 A. Yes.
25 Q. You were sent a copy in the mail;

1 MAYNARD
2 correct?
3 A. Yes.
4 Q. And you read it before you sought
5 counsel; correct?
6 A. I guess. I don't remember.
7 Q. Well, did you read the lawsuit at
8 any time?
9 A. Yes.
10 MR. ZABELL: Objection, asked and
11 answered.
12 You may answer.
13 A. Yes.
14 Q. There's an allegation in that
15 lawsuit that it's very common at the drop zone
16 for people to make sexually suggestive jokes
17 when men are being strapped to women.
18 Do you remember that allegation
19 being made?
20 A. Yes.
21 Q. And isn't it -- isn't it true that
22 those types of jokes are often made in the rig
23 as men are being strapped to women?
24 MR. ZABELL: Objection to the form.
25 You may answer.

1 MAYNARD
2 A. There are remarks that are made to
3 keep people calm and let them know -- you know,
4 keep them calm that we're going to make a
5 skydive.
6 + MR. ANTOLLINO: Motion to strike
7 as nonresponsive.
8 MR. ZABELL: Motion is denied to
9 the extent that I'm permitted to deny
10 your motion, Counsel.
11 Q. I'm asking, of those jokes, do they
12 include jokes about men being strapped to
13 women?
14 A. Yes.
15 MR. ZABELL: Objection to the form.
16 You may answer.
17 Q. Are there jokes when men are being
18 strapped to men?
19 MR. ZABELL: Objection to the form.
20 You may answer.
21 A. Yes.
22 Q. And the tenor of those jokes is, "I
23 bet you didn't think you were going to be
24 strapped to a man today, did you?"
25 MR. ZABELL: Objection to the form.

1 MAYNARD
2 You may answer.
3 A. That's been said.
4 Q. All right. That's been said many
5 times; correct?
6 A. It's been said.
7 Q. It's been said how many times?
8 A. I don't know.
9 Q. Probably more times that you can
10 remember; correct?
11 A. Not physically at that place where
12 people are being dressed all the time. I'm
13 running the place so I'm not right in that
14 dressing area all the time and hear what
15 everybody says to everybody.
16 Q. But you have been up in the plane
17 and you've heard that before?
18 A. Yes.
19 Q. Okay. So many times that you
20 cannot remember; correct?
21 MR. ZABELL: Objection to the form.
22 Objection, asked and answered.
23 You may answer it if you can.
24 A. Yes.
25 Q. Do you know that Rich of

1 MAYNARD
2 was deposed in this case?
3 A. Yes.
4 Q. Did you speak to Rich about his
5 testimony?
6 A. He just called me and told me it
7 was a long --
8 Q. It was a what?
9 A. It was a long deposition.
10 Q. It was a long deposition. It was
11 only two hours. Did he say anything else about
12 it?
13 A. No.
14 Q. Did you learn anything else about
15 his testimony?
16 MR. ZABELL: Objection to the form
17 of the question.
18 You may answer.
19 A. He said that it was long and that
20 you covered everything.
21 Q. Okay. Do you know that both Rosana
22 Orelana and David Kengle were deposed in this
23 case?
24 A. Yes.
25 Q. Did you know that they both

1 MAYNARD
2 testified that an instructor other than Don
3 attempted to joke with them to the effect that,
4 I bet you didn't know that your girlfriend was
5 going to be strapped to another guy?
6 A. I didn't know that.
7 Q. Do you doubt that that occurred?
8 A. No.
9 Q. And you heard that type of joke
10 before; correct?
11 A. That statement. I don't know if it
12 was a joke.
13 Q. Well, does joking occur in the rig
14 to loosen the tension?
15 MR. ZABELL: Objection to the form
16 of the multiple questions.
17 You may answer.
18 A. Yes.
19 Q. All right. Have you ever had a
20 situation -- first of all, do you have any
21 female instructors?
22 A. Female tandem instructors?
23 Q. Yes.
24 A. Yes.
25 Q. How many?

1 MAYNARD
2 A. One.
3 Q. And the rest are -- how many do you
4 have --
5 MR. ZABELL: Objection to the
6 form --
7 Q. -- total?
8 MR. ZABELL: -- of the multiple
9 questions.
10 MR. ANTOLLINO: Just put an
11 objection. Just make an objection.
12 We're going to be here longer if you have
13 to make speaking objections.
14 MR. ZABELL: You have my objection.
15 You may pick a question and answer it.
16 A. I believe we have 17 instructors.
17 Q. All right. So most of the time,
18 just statistically, you're going to have male
19 instructors with passengers in a skydive;
20 correct?
21 A. That's correct.
22 Q. And many times couples will come to
23 the sky -- to a skydive at your drop zone;
24 correct?
25 A. Correct.

1 MAYNARD
2 Q. Okay. Boyfriend and girlfriend or
3 married couples; correct?
4 A. Correct.
5 Q. And have you ever had a
6 situation -- and, in that case, one -- it is
7 more than likely that there will be one male
8 instructor strapped to the male and one male
9 instructor strapped to the female; correct?
10 A. Correct.
11 Q. And it will be known to the
12 instructor, both instructors, that these two
13 people are in a relationship; correct?
14 A. Correct.
15 Q. All right. And a joke will be made
16 suggesting that the boyfriend didn't know that
17 the girlfriend was going to be strapped up to
18 another guy; correct?
19 MR. ZABELL: Objection to the form.
20 A. That statement is not made all the
21 time, no.
22 Q. It's made sometimes though;
23 correct?
24 A. Correct.
25 Q. Have you ever fired someone for

1 MAYNARD
2 making a statement like that?
3 A. No.
4 Q. If someone complained about that
5 statement, would you fire the instructor that
6 made -- made the joke?
7 A. There's never been a complaint.
8 Q. But if someone did make a
9 complaint, would you?
10 MR. ZABELL: Are you asking him a
11 hypothetical question?
12 Q. You can answer.
13 A. I'd have to deal with that at the
14 time.
15 Q. I'm asking, do you think that
16 that's grounds for termination?
17 MR. ZABELL: Objection to the form.
18 You may answer.
19 A. That you can be strapped to a man,
20 no.
21 Q. Have you ever fired an instructor
22 where a passenger had an injury?
23 A. No.
24 Q. You make each passenger sign a
25 waiver; is that correct?

1 MAYNARD
2 A. That's correct.
3 Q. And I'm going to show you what I
4 premarked as Exhibit 4.
5 (Exhibit R-4, waiver, marked for
6 Identification.)
7 Q. What I believe to be the waiver you
8 have every skydiver sign.
9 A. That's correct.
10 Q. This is, is it not, the release
11 that you have everyone at the skydive sign?
12 A. Yes, it is.
13 Q. All right. And you make them not
14 only sign it, but initial each paragraph;
15 correct?
16 A. That's correct.
17 Q. And the reason you want everyone to
18 initial each paragraph is that you don't want
19 someone to come back and say, oh, that wasn't
20 included in the waiver that I signed even
21 though my signature is on the last page, the
22 first three are a forgery; correct?
23 MR. ZABELL: I'm going to object to
24 the form of the question and advise you
25 that if your answer requires you to

1 MAYNARD
2 provide information that was given to you
3 by your attorney, you need not answer the
4 question.
5 A. My attorney prepared this, so --
6 Q. Well, let me ask you, why do you
7 have the person -- why do you think it's
8 necessary to have the person initial each
9 paragraph?
10 MR. ZABELL: Same objection. If
11 your attorney advised you why you need to
12 have each paragraph initialed, then you
13 need not answer the question. You need
14 simply state that that is covered by the
15 attorney/client confidentiality
16 privilege.
17 A. It's covered by the attorney/client
18 confidentiality.
19 Q. And you don't want to waive that
20 attorney/client confidentiality privilege;
21 correct?
22 MR. ZABELL: No, he does not.
23 A. No.
24 Q. All right. I would like you to
25 read paragraph 13. Turn to the third page of

1 MAYNARD
2 the waiver and read that aloud for the record.
3 A. "If I am making a student jump, I
4 understand that I will wearing a harness that
5 will need to be adjusted by the jump master.
6 If my jump is a tandem jump, I understand the
7 tandem master will attach my harness to his and
8 this will be put on my body in close proximity
9 of the tandem master. I specifically agree to
10 the physical contact between the tandem master
11 and myself."
12 Q. Okay. You have seen many waivers
13 at many drop zones, have you not, including
14 this one?
15 A. Yes.
16 Q. And they all have a paragraph like
17 that in there, isn't that true?
18 A. Yes, they do.
19 Q. Okay. And why is -- in general,
20 why is that an industry standard paragraph to
21 have in a waiver for someone who's going to go
22 up on a tandem skydive?
23 MR. ZABELL: I object to the form
24 of the question and advise you that if
25 your answer requires you to divulge

1 MAYNARD
2 information that was provided to you by
3 your attorney, you simply need state that
4 the information is covered by the
5 attorney/client confidentiality
6 provision.
7 Q. And I'm asking you as your -- in
8 your experience, in your 40 years experience,
9 why is it your personal understanding that that
10 is there? I don't want to know what your
11 attorney told you.
12 MR. ZABELL: If your personal
13 understanding was derived because your
14 attorney explained to you why that needs
15 to be there, then you simply need state
16 that that information is covered by the
17 attorney/client confidentiality
18 privilege.
19 Q. You can answer.
20 A. It's covered by the attorney
21 confidentiality.
22 Q. All right. When was the first time
23 you spoke to an attorney about this particular
24 clause?
25 A. I don't remember what year it was.

1 MAYNARD
2 Q. Well, was it before you started
3 Skydive Long Island?
4 A. No.
5 Q. Okay. And was it in -- was it
6 before 2000?
7 A. I'm not sure.
8 Q. Was it before 1995?
9 A. I'm not sure.
10 Q. Okay. When did you start Skydive
11 Long Island?
12 A. 1986.
13 Q. Okay. So, in 1986 you had been
14 jumping for 17 years approximately?
15 A. Yes.
16 Q. Okay. And between 1969 and 1986
17 you had seen many releases similar to this one;
18 correct?
19 A. Yes.
20 Q. And you had seen many clauses
21 similar to clause 13; correct?
22 A. I'm not sure between 1969 and 1986
23 when that clause was put in.
24 Q. Well, is this a industry-wide
25 clause --

1 MAYNARD
2 MR. ZABELL: Objection.
3 Q. I mean, is this an industry-wide --
4 well, you have -- let's see, in between 1986 --
5 MR. ZABELL: Counselor, are you
6 withdrawing the previous question?
7 Q. Well, let me ask you this. You
8 said you don't know if it was put in before
9 1986, but this is a Skydive Long Island waiver;
10 correct?
11 A. Yes, this is. It's the current
12 Skydive Long Island waiver.
13 Q. Right, okay. Now, you had seen
14 waivers like this before 1986; correct?
15 A. Yes.
16 Q. All right. And you signed many of
17 them as a fun jumper; correct?
18 A. Yes.
19 Q. Okay. What is a fun jumper?
20 A. It's an experienced jumper that's
21 no longer on student status who normally owns
22 their own gear.
23 Q. But you signed -- you signed these
24 waivers and you initialed paragraphs saying
25 that you're making a student jump; correct?

1 MAYNARD
2 MR. ZABELL: Objection to the form
3 of the question.
4 Q. That you know that you're going to
5 be in close contact to --
6 MR. ANTOLLINO: Let me finish my
7 question before you make an objection.
8 Q. You signed waivers saying that if
9 you're making a student jump you know you're
10 going to be in close proximity to the
11 instructor; correct?
12 MR. ZABELL: Objection to the form
13 of the multiple questions posed before
14 you. You may pick any one of those
15 questions and provide an answer to it.
16 A. Okay. When I was a student jumper,
17 there were no tandem jumps. It evolved after
18 my student status. So there was no gigantic
19 waiver like this back then. The waivers have
20 evolved over the years.
21 Q. When was the first time you saw a
22 waiver that included clause 13?
23 A. I don't remember.
24 Q. But it was before 1986; correct?
25 A. No.

MAYNARD

1
2 Q. It was not? This was the first --
3 your waiver that you developed for Skydive Long
4 Island was the first time that you ever saw a
5 clause like that?
6 A. I didn't say that.
7 Q. Okay. When was the first time you
8 saw the clause?
9 A. I don't remember the first time I
10 saw that clause in a waiver.
11 Q. And you don't know if it was before
12 1986?
13 A. It was not before 1986. It was
14 sometime after 1986. I do not remember the
15 year.
16 Q. Okay. So your first waiver at
17 Skydive Long Island did not have this clause in
18 it?
19 A. No, it did not.
20 Q. And when did you put this clause
21 into your waiver at Skydive Long Island?
22 A. I don't remember the year.
23 Q. Do you have copies of these old
24 waivers?
25 A. Probably not.

MAYNARD

1
2 Q. Why did you think that it would be
3 appropriate for you to put this in a waiver?
4 MR. ZABELL: I'm going to object to
5 the form. To the extent that the answer
6 requires you to reveal communications had
7 between your counsel and yourself, you
8 may assert the attorney/client
9 confidentiality privilege.
10 A. And I assert the attorney/client
11 confidentiality.
12 Q. Well, do you remember the attorney?
13 MR. ZABELL: Objection to the form.
14 You can answer.
15 A. I'm not -- I don't remember what
16 attorney I had at the time.
17 Q. Are you certain that an attorney
18 told you to put that clause in there?
19 A. Am I certain that an attorney told
20 me to do that?
21 Q. Yes.
22 A. Any waiver that I've given to
23 anybody at the place was reviewed by an
24 attorney.
25 Q. Okay. That's not my question. My

MAYNARD

1
2 question is, are you certain that an attorney
3 advised you to put that clause in there?
4 MR. ZABELL: Objection, asked and
5 answered. You may answer it again.
6 A. My attorney advised me that that
7 should be in there.
8 MR. ZABELL: Objection. Do not
9 disclose what your attorney advised you.
10 THE WITNESS: Okay.
11 Q. Do you think that this clause
12 should continue to be in the waiver?
13 A. Yes.
14 MR. ZABELL: Objection to the form.
15 Q. Do you think that someone who is
16 going up in a jump should know that they're
17 going to be in close proximity to an
18 instructor?
19 A. Yes.
20 Q. And would you agree that the tandem
21 instructor, when strapping himself in to a
22 passenger, is essentially violating the
23 passenger's personal space?
24 MR. ZABELL: Objection to the form.
25 A. No.

MAYNARD

1
2 Q. Were you aware that that's what
3 Rich Winstock testified to?
4 A. No.
5 Q. So you would disagree with Rich if
6 he did say that?
7 A. I disagree with the statement that
8 you're violating the personal space, just out
9 of that statement.
10 Q. Well, let me ask you this, would
11 you agree that if I came over and asked you to
12 stand up and strapped myself to you in the way
13 that is represented in Exhibit 2, that I would
14 be invading your personal space?
15 MR. ZABELL: Objection to the form
16 of the question.
17 You may answer.
18 A. What you're saying, yes.
19 Q. Okay. Were you aware that when
20 Ms. Orelana testified she said she didn't even
21 read this waiver?
22 MR. ZABELL: Objection to the form
23 of the question. To the extent it is a
24 question and you understand it, you may
25 answer.

1 MAYNARD
2 A. No.
3 Q. Are you aware that she testified
4 that she was asked to read the waiver at the
5 same time that she watched the video?
6 MR. ZABELL: Same objection.
7 A. No.
8 Q. All right. Do you believe that if
9 she said that that she was inaccurate?
10 A. I'm not going to give an opinion
11 about what she's saying is inaccurate.
12 Q. I'm saying, is it your practice at
13 the drop zone to give people the waiver and to
14 read the waiver at the same time they watched
15 the videotape?
16 A. No.
17 Q. That would be a bad practice, would
18 you agree?
19 A. Yes.
20 Q. Because if that happens, the person
21 is not going to be paying full attention to the
22 videotape and is not going to be paying full
23 attention to reading the waiver; correct?
24 A. Correct.
25 Q. You believe that every customer

1 MAYNARD
2 should read this waiver very carefully;
3 correct?
4 A. That's my opinion, yes, they
5 should.
6 Q. And what is in the video?
7 MR. ZABELL: Objection to the form.
8 You may answer.
9 A. The video is a short videotape that
10 an attorney is explaining the waiver to a point
11 and the other part of it is basically how to
12 help your tandem master get out of the airplane
13 together; what to do to make it easier for both
14 of you and the correct body position you should
15 have in free fall.
16 Q. It's an attorney explaining this or
17 is it you?
18 A. It was an attorney and now this
19 past two years it's been me.
20 Q. So you've got two tapes -- you
21 still have two tapes at the drop zone, one that
22 you used to use with an attorney and one of
23 you; correct?
24 A. Correct.
25 Q. Okay.

1 MAYNARD
2 + MR. ANTOLLINO: Just mark that.
3 I'll call for the production and I'll
4 follow up with something in paper. Just
5 for my memory.
6 Q. You never talked to Rosana Orelana,
7 did you?
8 A. No.
9 Q. Have there been any complaints
10 about SDLI?
11 A. Have there been complaints about
12 SDLI?
13 Q. Yes, over the years.
14 MR. ZABELL: Objection to the form.
15 You can answer. If you know what
16 it is. If you know what he's asking you.
17 THE WITNESS: I have an idea.
18 MR. ZABELL: You may follow up on
19 that idea and provide the best answer you
20 can.
21 A. There's been no direct complaint to
22 me personally. I know there's something out
23 there on the internet that there's responses to
24 it that I don't even believe that it's a true
25 customer. It's probably a competitor that

1 MAYNARD
2 wants to make us look bad.
3 Q. Well, what website is that on?
4 A. There's -- I don't know the name of
5 the website. It's not a very nice one.
6 Q. Yelp, is that the website?
7 A. I'm not sure.
8 Q. What does the complaint say?
9 A. The complaint probably mentions
10 everything that could possibly be bad that can
11 be said about a drop zone.
12 Q. Like what?
13 A. Anything that would be derogatory,
14 from A to Z.
15 Q. Well, I'm going to show you what
16 I've premarked as Exhibits 5 and 6.
17 (Exhibit R-5, review, marked for
18 Identification.)
19 (Exhibit R-6, review, marked for
20 Identification.)
21 Q. And ask you if either of these are
22 the complaints you're talking about?
23 MR. ZABELL: Counsel? Thank you.
24 Counselor, when you get to a logical
25 conclusion in your questioning, I just

1 MAYNARD
 2 need to take a two-minute bathroom break.
 3 A. (Reviewing.)
 4 And what's your question?
 5 Q. Okay, the question is, is one of
 6 these complaints the complaints you were
 7 talking about?
 8 A. No.
 9 Q. So there's a third complaint out
 10 there on another website we're not aware of?
 11 MR. ZABELL: Objection.
 12 You may answer.
 13 A. Yes.
 14 Q. You don't remember the name of the
 15 website?
 16 A. No.
 17 Q. Is it wegoplaces.com?
 18 A. I don't know.
 19 MR. ZABELL: Objection.
 20 MR. ANTOLLINO: Why don't we take
 21 your break now, Counsel. We're still
 22 going to talk about complaints but --
 23 MR. ZABELL: That's fine. I just
 24 didn't want to interrupt your flow.
 25 THE VIDEOGRAPHER: We are now off

1 MAYNARD
 2 the record at 11:03 a.m.
 3 (Recess taken.)
 4 THE VIDEOGRAPHER: This is tape two
 5 of the deposition of Raymond Maynard. We
 6 are now on the record at 11:16 a.m.
 7 Q. In addition to the Tandem Vector
 8 II, there was also a rig called the Vector
 9 Sigma; is that correct?
 10 A. Correct.
 11 Q. And that has additional attachment
 12 points on it; isn't that correct?
 13 A. Between the passenger and the
 14 tandem master?
 15 Q. Yes.
 16 A. No.
 17 Q. No. All right. I guess the
 18 instruction manual would say for sure where all
 19 the attachments were on the Vector Sigma;
 20 correct?
 21 A. Correct.
 22 Q. All right. In September you
 23 attended a social media summit; is that
 24 correct?
 25 A. In September?

1 MAYNARD
 2 Q. Yeah.
 3 A. A social media summit?
 4 Q. Yeah.
 5 A. I did?
 6 Q. Did you?
 7 MR. ZABELL: If you remember, you
 8 can answer.
 9 A. I don't remember.
 10 Q. You have Facebook pages, various
 11 Facebook pages, that you make comments on for
 12 Skydive Long Island; is that correct?
 13 A. Correct.
 14 Q. You have your own personal Facebook
 15 page Ray Maynard; correct?
 16 A. Correct.
 17 Q. That's not open to the public?
 18 A. I'm not sure. I very rarely go
 19 there.
 20 Q. There's also two other Skydive Long
 21 Island Facebook pages; correct?
 22 A. Correct.
 23 Q. And recently you asked people to
 24 put good reviews on wegoplaces.com; is that
 25 correct?

1 MAYNARD
 2 A. Correct.
 3 Q. Does anyone put any reviews?
 4 A. I don't know.
 5 Q. So this is the type of review that
 6 can affect your reputation; correct?
 7 MR. ZABELL: Objection to the form.
 8 A. I would imagine.
 9 Q. I'd like you to look at Exhibits 5
 10 and 6 and the first, Exhibit 5, refers to
 11 Anthony F. and his review of Skydive Long
 12 Island?
 13 A. Okay.
 14 Q. And he has -- he basically says he
 15 enjoyed it but he had some problems with it;
 16 correct?
 17 A. According to this, yes.
 18 Q. Okay. Do you believe what he said
 19 there, his criticisms?
 20 A. Some of this might have validity.
 21 I think a lot of it is his opinion.
 22 Q. Okay, but nevertheless he did
 23 complain; right?
 24 A. In this publication, yes.
 25 Q. The first complaint is -- although

1 MAYNARD
2 he said he enjoyed the jump, the first
3 complaint he said is that the website is
4 misleading on prices; correct?
5 A. That's what he says.
6 Q. All right. Do you know if he's
7 right about that?
8 A. There were times that they had to
9 be fixed.
10 Q. Did you fire the webmaster?
11 A. No.
12 Q. He also said the photography is
13 average because they're just constant shots
14 rather than particularized shots; correct?
15 A. That's what he's saying.
16 Q. Yes, he said that.
17 A. Okay.
18 Q. Do you believe that?
19 A. No.
20 Q. Are you going to fire the
21 photographer?
22 A. No.
23 Q. Do you think -- who is your
24 photographer?
25 A. We have several.

1 MAYNARD
2 Q. All right. And how do you
3 photograph the dive?
4 A. There's a camera attached to the
5 helmet and they have a switch that they bite on
6 to shoot individual shots.
7 Q. All right. And he also said that
8 "the wait was interminable." Do you think that
9 that was an inaccurate complaint?
10 A. Everybody is told to plan on being
11 there a half a day.
12 Q. Where -- go ahead.
13 A. Because there can be delays of
14 weather. There's a lot of variables out there.
15 There's no way there can be a guarantee that
16 you're going to come there at 9 o'clock and
17 jump at 9:30 and everyone is told that.
18 Q. At what point?
19 A. When they're making the
20 reservation.
21 Q. Okay. So that was basically an
22 unfair complaint that the wait was
23 interminable?
24 A. Yes.
25 MR. ZABELL: Objection.

1 MAYNARD
2 You may answer.
3 Q. So the answer is yes?
4 A. Yes.
5 Q. The last complaint he has is that
6 the ladies in the office are rude?
7 A. Are what?
8 Q. It says basically -- the last check
9 that I have on there that I put in, he says
10 that the ladies in the office are rude.
11 MR. ZABELL: That's not a question.
12 That's a statement to which no response
13 is required.
14 Q. Is that correct?
15 A. No.
16 Q. What does he say, the last check
17 point, if you could just read it for the
18 record?
19 A. "The ladies in the office, I know
20 you're busy, but please don't get frustrated
21 with me when after two hours I'm checking in to
22 see how much longer my wait is and when you
23 tell me 30 minutes and another hour goes by,
24 don't be surprised when I'm back asking you
25 again."

1 MAYNARD
2 Q. Do you not think that that's a
3 characterization of rudeness?
4 A. A characterization --
5 Q. Of the ladies in the office
6 treating him rudely?
7 A. No. This is one side of what he's
8 telling you. You don't know the story.
9 Q. Okay. Are you going -- are you
10 going to fire any of the ladies in the office?
11 A. No.
12 Q. Who are the ladies in the office?
13 A. Lauren, Megan and Jesse.
14 Q. Take a look at Exhibit 6. Have you
15 read Exhibit 6 the Kevin W. complaint?
16 A. (Reviewing.)
17 MR. ANTOLLINO: What was the
18 question?
19 (Record read.)
20 A. Yes.
21 Q. Do you remember that incident?
22 A. No.
23 Q. All right. Do you think that Kevin
24 W. had a legitimate complaint?
25 A. If what he said is true. I don't

1 MAYNARD
2 know that to be a fact.
3 Q. So it might not be true?
4 A. Correct.
5 Q. If it was true, would you take any
6 corrective action?
7 A. If I was convinced of everything he
8 was saying is here, I would probably give him
9 back his money for the video and probably give
10 him a deal on another jump if he wanted to do
11 it.
12 Q. Okay. But you would investigate if
13 what he is saying is true?
14 A. Like I said, if he convinced me
15 that what he's saying is true, I would look
16 into it.
17 Q. Okay. What other -- what verbal
18 complaints -- well, let me ask you this.
19 Withdrawn.
20 You've been in business since 1986;
21 correct?
22 A. Yes.
23 Q. All right. And you've hired over
24 that course of time approximately how many
25 tandem skydive instructors?

1 MAYNARD
2 A. I don't know the number offhand, a
3 lot.
4 Q. More than 100?
5 A. Probably.
6 Q. All right. More than 200?
7 A. I don't know.
8 Q. In all of that time, have there
9 been any times other than Don's -- other than
10 Don's -- withdrawn.
11 During all of that time with all of
12 those tandem jumps that have taken place since
13 1986, has anyone ever complained about an
14 instructor other than Don?
15 A. No one has complained to me. I
16 never heard of any other thing.
17 Q. So Don was the only instructor that
18 anyone ever complained about in your 20 --
19 approximately 26-year history at Skydive Long
20 Island?
21 A. Yes.
22 Q. How many jumps do you do in a
23 season approximately?
24 MR. ZABELL: Objection to the form.
25 You may answer.

1 MAYNARD
2 A. We do several thousand.
3 Q. Okay. And I'm talking about just
4 tandem jumps.
5 A. Yes.
6 Q. Several thousand?
7 A. Yes.
8 Q. When you say "several," is several
9 more than 3,000 less than 10,000?
10 A. What year?
11 Q. Let's start with 1986.
12 A. It was probably a couple of
13 hundred, if we did that.
14 Q. All right, a couple of hundred.
15 And then when did it start getting into the
16 thousands?
17 MR. ZABELL: Objection to the form.
18 You may answer.
19 A. Probably 2001 maybe, 2002.
20 Q. Okay, 2001, 2002 you started
21 getting into the thousands. About how many
22 thousands in 2001, 2002?
23 A. Probably 1,000 or 2.
24 Q. And in 2005, were you doing more?
25 MR. ZABELL: Objection to the form.

1 MAYNARD
2 You may answer.
3 A. Yes, it increased most years a
4 little bit.
5 Q. Okay. So what was it last year,
6 how many jumps or I guess you're still in the
7 season, maybe someone is even jumping now?
8 MR. ZABELL: Objection to the form.
9 Objection to the multiple questions,
10 Counsel --
11 MR. ANTOLLINO: Withdrawn. Don't
12 argue with me.
13 Q. How many jumps in 2011?
14 A. Tandem jumps?
15 Q. Yeah.
16 A. We did just under 8,000.
17 Q. And in 2010?
18 A. It was right around 8,000.
19 Q. And do you remember 2009?
20 A. It was I'm going to take a guess --
21 Q. Guesstimate.
22 A. Guesstimate maybe 6,500.
23 Q. Okay. So it appears that
24 approximately you could say that since 2001
25 there have been between 30 and 50,000 jumps at

1 MAYNARD
2 Skydive Long Island, would that be roughly
3 fair?
4 MR. ZABELL: Objection to the form.
5 A. I don't know. I'd have to look
6 back.
7 Q. Many thousands?
8 A. Yes.
9 Q. And your testimony is that the only
10 two complaints about any tandem instructor were
11 about Don in those many thousand jumps?
12 MR. ZABELL: Objection to the form.
13 You may answer.
14 A. Yes.
15 Q. There are parties that occur at the
16 drop zone one or two times a summer; is that
17 correct?
18 A. We have an annual event.
19 Q. And who is invited to the annual
20 event?
21 A. It's open to the public. When I
22 say "annual event" we bring in specialty
23 aircraft. It's an annual skydiving event.
24 Q. Was it a party?
25 A. They call it a boogie.

1 MAYNARD
2 Q. In 2006 you had a luau; is that
3 correct?
4 A. Yes.
5 Q. And what was the name of that luau?
6 A. I don't think it had a name.
7 Q. And are you familiar with
8 dropzone.com?
9 A. Yes, I am.
10 Q. Do you have a handle on
11 dropzone.com?
12 A. Do I have a handle on it?
13 Q. Are you a member of dropzone.com?
14 MR. ZABELL: Objection to the form
15 of the multiple questions that are posed
16 before this witness.
17 MR. ANTOLLINO: Withdrawn.
18 Q. Are you a member of dropzone.com?
19 A. Skydive Long Island is, yes.
20 Q. And what Skydive Long Island's
21 handle?
22 MR. ZABELL: Objection to the form.
23 You may answer.
24 A. I don't know.
25 Q. When you log on to dropzone.com you

1 MAYNARD
2 have to input a user name and a password;
3 correct?
4 MR. ZABELL: Again, I'm going to
5 advise you that counsel for Mr. Zarda is
6 not under oath. You are under no
7 obligation to believe that the words that
8 come out of his mouth are accurate. You
9 may answer, keeping that in mind.
10 A. What was the question?
11 MR. ANTOLLINO: Could you read it
12 back?
13 MR. ZABELL: Please.
14 (Record read.)
15 A. Yes.
16 Q. All right. What is your user name?
17 A. I personally don't do that so I
18 don't know what it is.
19 Q. So you have your employees --
20 A. Yes.
21 Q. -- who are authorized to go on to
22 dropzone.com?
23 A. Yes.
24 Q. And make announcements?
25 A. Not all of them, but yes.

1 MAYNARD
2 Q. Who is authorized to make an
3 announcement?
4 A. It's normally Lauren.
5 Q. Anyone else?
6 A. Not that I can recall.
7 Q. Has there ever been a time that you
8 have authorized a skydive instructor to make a
9 post on dropzone.com about the Skydive Long
10 Island?
11 A. I don't believe I gave any
12 authorization, but they might have gone on
13 there.
14 Q. All right. I'm going to show you
15 what I've premarked as Exhibit 7 and I'd ask
16 you to read that.
17 (Exhibit R-7, website post, marked
18 for identification.)
19 A. I don't know who posted this.
20 Q. Does this refresh your recollection
21 about what the name of the luau was at Skydive
22 Long Island?
23 A. No.
24 Q. All right. Well, the title of the
25 post is "Skydive Long Island, Get Laid Luau,"

1 MAYNARD
2 do you see that?
3 A. Uh-huh.
4 Q. Was that the name of the party?
5 A. I did not give the party a name and
6 they are referring to a lei that you wear
7 around your neck.
8 Q. Well, it appears that he hasn't
9 spelled --
10 A. I see that.
11 Q. He hasn't spelled it right. It's
12 referring to -- he's referring to a lei but he
13 didn't spell it right; correct?
14 MR. ZABELL: I'm going to advise
15 you that you need not make the assumption
16 that counselor made that there was a man
17 that wrote this e-mail and you may answer
18 the question.
19 A. Okay.
20 Q. The person who wrote this -- well,
21 withdrawn.
22 Do you know Jordan Miles?
23 A. Jordan is one of my employees.
24 Q. Is he a good employee?
25 A. Yes.

1 MAYNARD
2 Q. All right. If he wrote, "You
3 pulled your pork with us now come and get laid
4 at Skydive Long Island luau on dropzone.com,"
5 are you going to fire him?
6 A. Am I going to fire him now?
7 Q. Yeah.
8 A. I'm not sure. I'm going to go talk
9 to him.
10 Q. Why would you fire him for posting
11 that?
12 MR. ZABELL: Objection.
13 Q. Why might you fire him? You said
14 you're not sure.
15 MR. ZABELL: Objection to the
16 multiple questions. If you'd like to
17 withdraw any of them, you may.
18 If you like, you may pick one of
19 them and provide an answer to it.
20 A. I will talk to him.
21 Q. And what are you going to say when
22 you talk to him?
23 A. I will find out if he actually said
24 this or posted this.
25 Q. And if he says yes, are you going

1 MAYNARD
2 to fire him?
3 A. I don't know.
4 MR. ZABELL: Objection, asked and
5 answered.
6 Q. Why might you fire him?
7 MR. ZABELL: Objection.
8 You may answer.
9 A. I would have to think about it.
10 Q. He's a good -- he's a good
11 employee, isn't it?
12 MR. ZABELL: Objection, asked and
13 answered. You can answer it again.
14 A. Yes.
15 Q. Does it seem like something that
16 you would fire someone for?
17 MR. ZABELL: Objection to the form
18 of the question.
19 You may answer.
20 A. I'm not sure.
21 Q. Have you fired people in the past
22 other than Don?
23 A. I have let some ground crew people
24 go.
25 Q. Who?

1 MAYNARD
2 A. I don't remember the names. It was
3 a while ago.
4 Q. Any other instructors?
5 MR. ZABELL: Objection to the form
6 of the question.
7 You may answer.
8 A. I don't remember.
9 Q. You don't remember anyone that you
10 fired over how many years? You can't remember
11 a single instructor that you fired?
12 MR. ANTOLLINO: Objection to the
13 multiple questions posed.
14 You may pick a question and answer
15 it.
16 A. No.
17 Q. What about Willie?
18 A. What about Willie?
19 Q. Did you fire Willie?
20 A. No.
21 Q. What about Ben Lowe?
22 A. No.
23 Q. You didn't fire Ben Lowe?
24 A. No.
25 Q. What about Alex Allen?

1 MAYNARD
2 A. Yes.
3 Q. Okay. He was an instructor?
4 A. Yes.
5 Q. Why did you fire Alex Allen?
6 A. Because Alex Allen put his nose in
7 the business where it was not -- it did not
8 belong, questioning me about what I was doing
9 with another video guy and then he went on
10 videotape and gave me the finger and he was
11 fired.
12 Q. What do you mean he was questioning
13 you with what you were doing with another video
14 guy. Did he need that video guy on a jump or
15 something?
16 A. No.
17 Q. Explain it -- explain what his
18 problem was.
19 A. His problem was that he was trying
20 to tell me how to run my business. He was -- I
21 was on my way home and he called me up and
22 wanted to know why this guy was doing a video
23 and somebody else wasn't.
24 Q. When was that?
25 A. I think it was two years ago.

1 MAYNARD
2 Q. Why did he want the other guy in
3 the video?
4 A. It was none of his business, so it
5 didn't matter why he wanted the other guy in
6 the video.
7 MR. ZABELL: Just answer the
8 question that's asked of you if you know
9 the answer.
10 Q. Can you answer?
11 A. He wanted the other guy in the
12 video because the person that I was putting in
13 the video was somebody new that needed some
14 more experience. Everybody had equal number of
15 jumps across the day and the only way someone
16 is going to get experience is to give them the
17 chance to get to jump.
18 Q. And that's why you decided to
19 assign the video guy where you assigned him?
20 A. Yes.
21 Q. And would you say Alex's giving you
22 the finger is what you made fire him?
23 A. No, that was the icing on the cake.
24 Q. Okay. So what -- so the real
25 reason was his questioning you?

1 MAYNARD
2 MR. ZABELL: Objection to the form.
3 You may answer.
4 A. He was fired for putting himself in
5 the place of the business where he had no place
6 being.
7 Q. Did you ever fire Jerry Hannon?
8 A. Yes, I did.
9 Q. And Jerry Hannon was an instructor?
10 A. Yes.
11 Q. Was he a good instructor?
12 MR. ZABELL: Objection to the form.
13 You may answer.
14 A. He was -- I believe he was a
15 videographer when he was fired.
16 Q. And why was he fired?
17 A. He got into an altercation with
18 another employee.
19 Q. What altercation?
20 A. They had words and they went in the
21 back and he punched him.
22 Q. Who was the employee he punched?
23 A. Duncan Shaw.
24 Q. Did Duncan Shaw require any medical
25 treatment?

1 MAYNARD
2 A. No.
3 Q. Was Duncan Shaw hurt?
4 A. Jerry hit him once.
5 Q. It was inappropriate at the
6 workplace?
7 A. Yes.
8 Q. But you eventually rehired Jerry
9 Hannon, didn't you?
10 A. Yes, I did.
11 Q. Why did you rehire him?
12 A. I rehired Jerry because he is a
13 good man. It was over a year that went by. He
14 was egged on, as I would put it, by Duncan.
15 Duncan called him out to come in the back and
16 Jerry loss his temperature -- I mean, his
17 temper.
18 Q. Okay. How did Duncan egg him on?
19 A. Duncan didn't like Jerry so there
20 was always a little pushing going on, saying
21 things and they didn't see eye-to-eye.
22 Q. Did you ever fire Duncan Shaw?
23 A. Duncan was suspended.
24 Q. Why was Duncan suspended?
25 A. Because he was the victim of

1 MAYNARD
2 getting hit.
3 Q. So there are lots of level of
4 discipline that you can use at the workplace;
5 correct?
6 MR. ZABELL: Objection to the form.
7 You may answer.
8 A. Yes.
9 Q. All right. Short of termination,
10 you can suspend someone; correct?
11 A. Right.
12 MR. ZABELL: Objection to the form.
13 You may answer.
14 A. Yes.
15 Q. And you can reprimand them?
16 A. Yeah.
17 MR. ZABELL: That's a statement to
18 which no response is required.
19 Q. Correct? Correct?
20 A. Yes.
21 Q. You can counsel them; correct?
22 A. I don't know if "counsel" is the
23 correct word.
24 Q. Well, you can retrain them;
25 correct?

1 MAYNARD
2 A. Yes.
3 Q. When these parties that occur at
4 the drop zone there is alcohol involved;
5 correct?
6 A. Correct.
7 Q. And some people use recreational
8 drugs?
9 A. No.
10 Q. Are you aware of any of your sky
11 divers who, over the course of 26 years, have
12 used recreational drugs at the drop zone?
13 A. I've seen it.
14 Q. Okay. Who have you seen use
15 recreational drugs at the drop zone?
16 A. I'm talking years ago. I don't
17 even remember. I don't condone any of that.
18 Q. So you don't allow it to take place
19 in the drop zone?
20 A. No.
21 Q. Do you know anything about Don
22 Zarda using any illegal drugs?
23 A. No.
24 Q. Do these parties at the drop zone
25 get a little lewd --

1 MAYNARD
2 MR. ZABELL: Objection to the form.
3 Q. -- as the night goes on?
4 MR. ZABELL: Objection to the
5 multiple questions.
6 A. I don't know what you mean by
7 "lewd."
8 Q. Well, do women take their shirts
9 off?
10 A. I never saw that.
11 Q. All right. So you post -- you make
12 postings on your Facebook pages, your two
13 Skydive Long Island Facebook pages, yourself;
14 correct?
15 A. No, very rarely.
16 Q. Very rarely, mostly it's Lauren?
17 A. Yes.
18 Q. But you do make some postings
19 sometimes?
20 A. I can't remember the last time I
21 made a post.
22 Q. Well, I have a few here. Did you
23 make a posting about -- did you ever make a
24 joke, what's grass -- what's green and has
25 wheels?

1 MAYNARD
2 A. Not that I remember.
3 Q. And the answer being, grass, I lied
4 about the wheels? Does that ring a bell?
5 A. No.
6 Q. Are there videos of these parties
7 that you have at the drop zone?
8 A. A video of the party itself?
9 Q. Yeah.
10 A. You're talking about nighttime?
11 Q. Yeah.
12 A. Not that I know of.
13 Q. What the practice of keeping videos
14 of the tandem jumps? Who keeps them?
15 A. I believe they're kept on a file
16 server now or I know they used to be videotapes
17 we keep.
18 Q. When did you change from tape to
19 file server?
20 A. With the technology.
21 Q. When was that?
22 A. Just started last year at some
23 point in time.
24 Q. All right. And you keep the tapes
25 as well, the ones from before the new

1 MAYNARD
2 technology?
3 A. That's how we did it before, yes.
4 Q. All right. And are there out takes
5 of video jumps that remain at the drop site?
6 A. What's kept at the drop zone is the
7 raw footage.
8 Q. So the raw footage is edited and
9 put into, like, a five-minute presentation for
10 the customer; correct?
11 A. Correct.
12 Q. And how long is the raw footage
13 itself?
14 A. I'm not a videographer. I would
15 guess maybe ten minutes. I'm not sure.
16 Q. Would it be fair to say there was
17 raw footage in the jumps that were recorded by
18 David Kengle and Rosana Orellana?
19 MR. ZABELL: Objection to the form.
20 A. Yes. Every video is done the same
21 so there's always -- there's raw footage and
22 then they convert it to a CD.
23 + MR. ANTOLLINO: Just make a note
24 I'll call for production and I'll follow
25 it up with a demand.

1 MAYNARD
2 MR. ZABELL: Please.
3 Q. Have you ever flown to video a jump
4 yourself?
5 MR. ZABELL: Objection to the form.
6 A. You mean as a videographer?
7 Q. Uh-huh.
8 A. No.
9 Q. There are lots of pictures of Don
10 on your -- one of your business Facebook pages;
11 is that right?
12 A. I don't know.
13 Q. Well, I'll show you what I've
14 marked as Exhibit 8?
15 (Exhibit R-8, photographs from
16 Facebook page, marked for
17 Identification.)
18 Q. I'm handing a one, two, three,
19 four, five, six, seven page document and I'd
20 like you to look at those and see if you
21 recognize Don on every single one of those
22 pages.
23 MR. ZABELL: Just wait until he
24 provides me with a copy.
25 A. (Reviewing.)

1 MAYNARD
2 MR. ZABELL: How many pages?
3 MR. ANTOLLINO: What did I say?
4 (Record read.)
5 MR. ANTOLLINO: Could you read the
6 question back?
7 MR. ZABELL: Please.
8 (Record read.)
9 A. Yes.
10 Q. All right. And those are currently
11 on the Facebook page for Skydive Long Island;
12 correct?
13 A. I don't know that.
14 Q. I see we have wifi, but we'll do it
15 later, but you have no reason to believe that
16 they're not there, do you?
17 MR. ZABELL: Objection to the form.
18 A. No, I don't. I know there's two
19 different Facebook pages and I think one is not
20 being maintained and I'm not sure.
21 Q. Well, if they are there, are you
22 going to take them down?
23 A. Yes.
24 Q. Why?
25 A. It's a practice that we try to keep

1 MAYNARD
2 anything that's out there from Skydive Long
3 Island to its current employees and I know
4 there's probably others.
5 Q. I'm going to show you what I've
6 marked as Exhibit 9. What is that?
7 A. That's a picture of Richie
8 Winstock.
9 Q. And what is he wearing?
10 A. A towel.
11 Q. Is he on his way to the shower?
12 A. Yes, or on the way back.
13 Q. Why did you think that it would be
14 appropriate to put a picture of Rich Winstock
15 with a towel around him on your business
16 Facebook page?
17 A. I did not do that.
18 Q. Do you think it's appropriate?
19 A. I'm not sure.
20 Q. It's a little personal, isn't it?
21 MR. ZABELL: Objection to the form.
22 A. That's an opinion.
23 Q. Well, what is your opinion? Is it
24 your opinion that it's a little personal or
25 not?

1 MAYNARD
2 MR. ZABELL: Objection to the form.
3 You may answer.
4 A. It's not showing anything.
5 Q. Well, he has his shirt off;
6 correct?
7 A. Yes.
8 Q. All right. Do you like your
9 instructors to walk around the drop zone in
10 front of the customers with towels around them?
11 A. No, and this was at the end of the
12 day or very early in the morning when there was
13 nobody around.
14 Q. Okay. But it's on your Facebook
15 page; correct?
16 A. I guess so.
17 Q. All right. So would it be
18 appropriate -- I'm just asking you, would it be
19 appropriate for Rich to be walking around with
20 a towel around him in front of the customers?
21 A. No.
22 Q. Okay.
23 (Exhibit R-11, photograph, marked
24 for identification.)
25 Q. I'm going to show you what I have

1 MAYNARD
2 marked as Exhibit 12 and ask if you recognize
3 this. I'm sorry, is that Exhibit 12 or 11?
4 A. 11.
5 Q. Do you recognize this?
6 A. Yes.
7 Q. And that is a picture of you and
8 your current girlfriend; correct?
9 A. Yes.
10 Q. What is her name?
11 A. Barbara.
12 Q. What's her last name?
13 A. Schiano.
14 Q. So would you agree that you're
15 sharing to your Facebook followers your
16 relationship with Barbara Schiano?
17 A. I guess so.
18 Q. That's personal information, isn't
19 it?
20 A. It's my girlfriend.
21 Q. Okay. And that's personal
22 information; correct?
23 A. It depends on how one interprets
24 it.
25 Q. Well, what would you define as

1 MAYNARD
2 "personal information"?
3 A. Certainly not that I'm dating
4 somebody. I mean, it's common -- it's common
5 knowledge.
6 Q. Okay. It also conveys the
7 impression that you're heterosexual; correct?
8 MR. ZABELL: Objection to the form.
9 A. Yes.
10 Q. Okay. And that's personal
11 information; correct?
12 A. Yes.
13 Q. Are there any escapades going on in
14 this picture?
15 MR. ZABELL: Objection to the form.
16 A. Escapades?
17 Q. Yeah, any escapades?
18 A. I had my picture taken. I don't
19 understand.
20 Q. I'm wondering if you believe that
21 there are any escapades going on in that
22 picture?
23 MR. ZABELL: Objection to the form.
24 You may answer.
25 A. No.

1 MAYNARD
2 (Exhibit R-12, photograph, marked
3 for identification.)
4 Q. Let me show you what I've marked as
5 Exhibit 12. And I'd ask you if you could
6 identify that.
7 A. That's a picture of myself and
8 Barbara after she made a jump and obviously I
9 did too.
10 Q. And you put that there; right?
11 A. Yes.
12 Q. Okay. And there are some comments
13 under the photo; isn't that correct?
14 A. Yes.
15 Q. And when did this occur?
16 A. Well, I would say in June.
17 Q. And this is on your business
18 Facebook page; correct?
19 A. Yes.
20 Q. All right. The very last comment
21 is a comment made by you; correct?
22 A. Yes.
23 Q. Can you read it for the record?
24 A. "Skydive Long Island: Thanks
25 everyone. Unfortunately my pathetic ex will

1 MAYNARD
2 not leave us alone and continues to try to
3 disrupt our lives by dancing as close as she
4 can to get to me at Dockers last Tuesday night.
5 It did not work. Barbara and I could not be
6 happier. As a matter of fact, this Wednesday,
7 June 29, 2011, will be the first of many
8 anniversaries we will share. That's the first
9 night we met and I have never been happier."
10 Q. All right. And in that post you
11 were talking about Joanne Maynard; correct?
12 A. Yes.
13 Q. And you referred to her as
14 pathetic; correct?
15 A. Yes.
16 Q. Because you believe she's pathetic?
17 A. Yes.
18 Q. And you said that she was trying to
19 make your life miserable; correct?
20 A. Correct.
21 Q. And one of the ways she was trying
22 to make your life miserable was by dancing too
23 close to you at Boxers?
24 A. Yes.
25 Q. What is Boxers?

1 MAYNARD
2 A. Dockers is a bar.
3 Q. Dockers is a bar?
4 A. It's a restaurant.
5 Q. And did you just happen to show up
6 there coincidentally, both of you, or do you
7 think she was following you?
8 A. I think -- I know that that is
9 where Barbara and I would hang out and all of a
10 sudden Joanne started coming down there.
11 Q. Is it close to where Joanne lives?
12 A. It's probably ten miles away.
13 Q. And how far is it from where you
14 live?
15 A. Maybe seven.
16 Q. So it's relatively close to both of
17 you?
18 A. Yeah.
19 Q. And they have dancing?
20 A. Yes.
21 Q. And was Joanne with someone else?
22 A. She was with some friends.
23 Q. All right. And you believe that
24 she purposefully tried dancing too close to
25 you?

1 MAYNARD
2 A. Absolutely.
3 Q. Why do you believe that?
4 A. Because Barbara and I were the only
5 two people out on the dance floor and she came
6 out by herself and got about two inches away
7 from me.
8 Q. She was dancing right next to you?
9 A. Right next to me, trying to evoke
10 whatever.
11 Q. Why did you feel a need to mention
12 this on your business Facebook page?
13 A. I just did.
14 Q. It's personal information, isn't
15 it?
16 A. Yes.
17 Q. All right. You put some of those
18 words in capitals, didn't you?
19 A. Yes.
20 Q. Why did you put some of those words
21 in capitals? Were you trying to emphasize
22 them?
23 A. Yes.
24 Q. All right. I believe you made a
25 mistake about the date there?

1 MAYNARD
2 A. Oh, right.
3 Q. You put 2001. It was really 2011
4 you should have put there; right?
5 A. It was actually 2010.
6 Q. So you met Barbara when? You met
7 her in 2010?
8 A. Correct.
9 Q. Did you meet her the same day you
10 fired Ray?
11 A. What?
12 Q. Did you meet her the same day you
13 fired Ray?
14 A. That I fired who?
15 Q. I'm sorry, withdrawn.
16 Did you meet her the same day you
17 fired Don?
18 A. No.
19 Q. There was a document I received --
20 you don't have to take this as truth, but do
21 you know of any reason why Barbara Schiano, is
22 that how you pronounce the name?
23 A. Yes.
24 Q. Was list -- would be listed as a
25 witness with information about this case?

1 MAYNARD
2 A. No.
3 Q. Did you ever learn that Barbara
4 Schiano was listed by your attorney on a
5 document as a person with discoverable
6 information in this case?
7 A. I might have heard something like
8 that.
9 Q. And did you discuss this with
10 Barbara?
11 A. Discussed what?
12 Q. Discussed her being listed as a
13 witness, with Barbara?
14 A. Yes, I might have.
15 Q. And what did you discuss with
16 Barbara about her being listed as a witness?
17 A. That I don't understand why she
18 would be because she doesn't know anything
19 about this.
20 Q. And so did she ask to be taken off
21 the list?
22 A. I don't remember.
23 Q. Do you have any -- do you know any
24 reason why she would have been listed as a
25 witness in this case?

1 MAYNARD
2 A. No, I do not.
3 Q. What have you discussed --
4 withdrawm.
5 What is an escapade?
6 A. What is a what?
7 Q. What is an escapade?
8 A. You go out somewhere and you have a
9 drink, if you have go out and have dinner, if
10 you have go to an event, if you go to a
11 football game.
12 Q. All of those are escapades?
13 A. Sure.
14 Q. It seems like --
15 A. It's a general term.
16 Q. -- it seems like there were some
17 escapades going on at Dockers then; correct?
18 A. Yeah.
19 Q. And it seems like in that earlier
20 exhibit where you're posing with Barbara,
21 you've got a drink in your hand, that there's
22 some escapades going on there; correct?
23 A. Well, I looked at that as a picture
24 being taken of us, so, yes.
25 Q. Okay. When you said in that post

1 MAYNARD
2 about Mrs. Maynard, that that did not work or
3 her dancing close to you at the -- at the
4 Docker -- is it Dockers?
5 A. Dockers.
6 Q. At Dockers. When you said that --
7 MR. ZABELL: How many questions are
8 you asking at once?
9 MR. ANTOLLINO: Please, please.
10 MR. ZABELL: Please what? I will
11 be more than happy to help you when you
12 say "please," but you have to identify
13 what question you need help with.
14 MR. ANTOLLINO: Be quiet. Remain
15 silent like you told me last week.
16 MR. ZABELL: Counselor, you will
17 keep a civil tongue in your mouth at this
18 deposition do you understand?
19 MR. ANTOLLINO: I am keeping a
20 civil tongue and I told you to remain
21 silent just like you told me last week.
22 MR. ZABELL: Okay. Form
23 appropriate questions and I will not
24 object to them and if you ask please,
25 tell me what you're asking please about.

1 MAYNARD
2 MR. ANTOLLINO: To remain silent.
3 Remember, the colloquy doesn't count to
4 the seven hours that I have for your
5 client. If you want to keep talking,
6 it's just stopping the clock.
7 MR. ZABELL: Counsel, ask
8 appropriate questions and I will not make
9 objections to your questions, if you're
10 capable.
11 Q. In the post -- there's no question
12 pending. I will withdraw whatever question or
13 questions were asked.
14 MR. ZABELL: Thank you.
15 Q. In your post you mentioned that
16 something did not work by Joanne getting close
17 to you on the dance floor at Dockers; correct?
18 A. Correct.
19 Q. What was it that did not work?
20 A. I didn't get upset and Barbara
21 didn't get upset and there was no scene.
22 Q. Has she tried -- has she --
23 withdrawm.
24 What other things has Joanne done
25 to make your life miserable?

1 MAYNARD
2 + MR. ZABELL: Objection to the
3 form. Counsel, I'm not going to allow
4 this question because I believe you are
5 attempting to harass my client.
6 You need not answer that question.
7 MR. ANTOLLINO: Well, I will say
8 that I think that Mrs. Maynard's
9 relationship to this case is relevant and
10 I'm trying to explore what the judge
11 suggested I do at the conference before
12 we litigate your motion to strike the
13 subpoena of Mrs. Maynard.
14 I'm trying to explore that and if
15 you're not going to allow me, that will
16 give me additional grounds to depose
17 Mrs. Maynard. So if you'd like to direct
18 him not to answer, that's fine. I'll
19 just point it out to the judge when I my
20 application or we actually litigate your
21 motion.
22 Q. Were you on a reality show? Did
23 you ever sign you up for a reality show?
24 A. It never got there, no.
25 Q. The name of the reality show that

1 MAYNARD
2 you agreed to participate in was The Marriage
3 Ref; is that correct?
4 A. Correct.
5 Q. And in that agreement that you made
6 with the company that produces The Marriage Ref
7 you invited videographers and other people into
8 your home; correct?
9 A. They were the producers, yes.
10 Q. Okay. You invited them into your
11 home to -- you just met with the producers?
12 A. No.
13 MR. ZABELL: Objection to the form.
14 You may answer.
15 A. It was the whole -- the workings of
16 what those people do, the video guys, the sound
17 guys, the crew.
18 Q. Okay. How long were they there
19 for, how many days?
20 A. They came to the house twice for an
21 hour or two.
22 Q. Okay. And they recorded you having
23 discussions with Mrs. Maynard?
24 A. Yes.
25 Q. And this is while you were still

1 MAYNARD
2 married?
3 A. Yes.
4 Q. Why did you agree to allow them
5 into your home?
6 A. Joanne wanted to be on TV.
7 Q. And you went along with it?
8 A. Yes.
9 Q. And there were things discussed
10 between you and Joanne while they were filming
11 you?
12 A. Yes.
13 Q. And they were only there for two
14 hours?
15 A. Yes.
16 MR. ZABELL: Objection. That was a
17 statement to which no response is
18 required. And I'm reminding you,
19 Mr. Antollino is not under oath. You,
20 therefore, may treat everything that
21 comes out of his mouth as suspect and you
22 are under no obligation to believe it is
23 accurate.
24 Q. Why did you not get put on the
25 show, do you know?

1 MAYNARD
2 MR. ZABELL: Objection to the form.
3 You may answer.
4 A. They said we didn't make the final
5 cut.
6 Q. Did they say why?
7 A. No.
8 Q. So The Marriage Ref is a reality
9 show. If you had made the final -- let me
10 withdraw that question, let me withdraw that
11 question and --
12 MR. ZABELL: The one question or
13 the three questions?
14 MR. ANTOLLINO: Counsel, your
15 comments and your derisive, insulting
16 behavior is taking away from the time of
17 the deposition. If you're going to
18 complain about me having two questions,
19 I'm going to withdraw the question. I
20 don't want you laughing if I change
21 questions and I am videotaping this
22 because of you, because I want to get all
23 of your comments and improper objections
24 on the record.
25 MR. ZABELL: Counsel, you asked

1 MAYNARD
 2 three questions and withdrew one of them.
 3 MR. ANTOLLINO: All right, but I
 4 withdraw -- I withdrew everything. All
 5 right.
 6 MR. ZABELL: Okay. As long as you
 7 clarify that you're withdrawing
 8 everything then I won't have to ask you
 9 to clarify that.
 10 Q. Did you see the show?
 11 MR. ZABELL: Objection to the form.
 12 You may answer.
 13 A. I have seen the show.
 14 Q. All right. And the show is
 15 essentially a husband and wife that have some
 16 issues; correct?
 17 MR. ZABELL: Objection to the form.
 18 A. Correct.
 19 MR. ZABELL: You may answer.
 20 Q. And they present their issues to a
 21 panel of celebrities; correct?
 22 MR. ZABELL: Objection to the form.
 23 You may answer.
 24 A. Correct.
 25 Q. And were you told who the

1 MAYNARD
 2 celebrities might be?
 3 A. No.
 4 Q. And the celebrities come up with a
 5 decision as to who's right; correct?
 6 A. Correct.
 7 Q. And you were willing to submit
 8 yourself to that circumstance?
 9 MR. ZABELL: Objection to the form.
 10 You may answer.
 11 A. Yes.
 12 Q. Have you ever used the word
 13 "gay" -- withdrawn.
 14 Do you know what the word
 15 "pejorative" means?
 16 A. The word what?
 17 Q. "Pejorative."
 18 A. No.
 19 Q. Have you ever used the word "gay"
 20 in a nasty sense?
 21 MR. ZABELL: Objection to the form.
 22 You may answer.
 23 A. No.
 24 Q. So have you ever heard anyone say,
 25 oh, that's really gay, to signify that that's

1 MAYNARD
 2 really -- that really stinks?
 3 MR. ZABELL: Objection to the form.
 4 You may answer.
 5 A. I've heard people say that.
 6 Q. Okay. Have you yourself ever said
 7 it?
 8 A. No.
 9 Q. Have you ever used the word
 10 "faggot"?
 11 A. No.
 12 Q. In your entire life you've never
 13 used the word "faggot"?
 14 A. Maybe I have when I was younger.
 15 Q. What age?
 16 A. I don't remember.
 17 Q. When did you stop using the word
 18 "faggot"?
 19 A. I don't remember.
 20 Q. Have you ever used the word
 21 "queen"?
 22 A. What?
 23 MR. ZABELL: Objection to the form.
 24 Q. "Queen"?
 25 A. No.

1 MAYNARD
 2 Q. You've never used the word "queen"
 3 at all, even when referring to the Queen of
 4 England?
 5 A. Yes.
 6 Q. But you've never used the word
 7 Queen in referring to a gay person?
 8 A. No.
 9 Q. Have you ever said anything
 10 derogatory about gay people?
 11 A. No.
 12 Q. Do you have any gay friends?
 13 A. Yes.
 14 Q. Who?
 15 A. Well, my sister was gay. She
 16 passed away.
 17 Q. She passed away. Who else?
 18 A. I don't remember names, you know.
 19 Not personally, I've known other people that
 20 were gay.
 21 Q. So really you don't have any
 22 friends that are gay right now?
 23 A. Not that I know of.
 24 Q. Tell me about your sister. When
 25 did she -- do you know what the phrase "coming

1 MAYNARD
2 out" means?
3 A. Yes.
4 Q. What does it mean?
5 A. I interpret that as when they
6 decided to go the other way, in the open, I
7 guess.
8 Q. So, did there come a point where --
9 what was your sister's name?
10 A. Mary Lou.
11 Q. When did she pass?
12 A. Last Mother's Day.
13 Q. I'm sorry. When did she come out
14 of the closet?
15 A. She was about 19 years old.
16 Q. So that was several years -- that
17 was many years ago. Was it the '60s?
18 A. Yes.
19 Q. And did that surprise you in any
20 way when she came out?
21 A. Yes.
22 Q. Did you ever tell her that you
23 wished she wasn't gay?
24 A. No.
25 Q. What was your parents' reaction to

1 MAYNARD
2 it?
3 A. They were surprised.
4 Q. Did they like it?
5 MR. ZABELL: Objection to the form.
6 You may answer.
7 A. I didn't ask them.
8 Q. Did they ever express an opinion?
9 A. Not to me.
10 Q. Did your sister ever tell you that
11 they had expressed an opinion about her being
12 gay?
13 A. No.
14 Q. Did she live openly as a gay woman
15 from the '60s to the date of her passing?
16 A. Yes.
17 Q. She had a partner?
18 A. One partner her whole life.
19 Q. She had one partner her whole life?
20 A. Yeah.
21 Q. And how did she introduce herself
22 to this partner? I'm sorry, how did she
23 introduce this partner? What was the partner's
24 name?
25 A. Santine.

1 MAYNARD
2 Q. Santine?
3 A. Yes.
4 Q. Is she deceased also?
5 A. Excuse me?
6 Q. Is she also deceased?
7 A. No.
8 Q. What's her last name?
9 A. Megneco.
10 Q. And where did they live?
11 A. They lived last in Holbrook, New
12 York.
13 Q. Holbrook?
14 A. Yes.
15 Q. Have you kept in contact with
16 Santine?
17 A. Yes.
18 Q. And have you talked to her about
19 this lawsuit?
20 A. No.
21 Q. Does she know about it, if you
22 know?
23 A. I don't think so.
24 Q. So, does Santine still live in
25 Holbrook?

1 MAYNARD
2 A. I believe she does, yes.
3 Q. Do you know -- do you remember her
4 address?
5 A. I should know this.
6 MR. ZABELL: You're under no
7 obligation to provide it and, in fact,
8 I'm going to advise you not to provide
9 it. If counsel wants it, he'll have to
10 make an application to the court to get
11 it.
12 MR. ANTOLLINO: I think she has
13 discoverable information.
14 Q. Are you unwilling to provide it?
15 MR. ZABELL: I've advised you not
16 to provide it.
17 Q. And, therefore, you're not going to
18 provide it; correct?
19 MR. ZABELL: I've advised him not
20 to provide it.
21 MR. ANTOLLINO: I just want --
22 MR. ZABELL: You need not ask him
23 anything further.
24 Q. Did your sister marry Santine?
25 A. No.

1 MAYNARD
2 Q. When Don was fired gay marriage
3 wasn't legal; is that correct?
4 A. I believe.
5 Q. Okay. You agree that gay
6 marriage --
7 MR. ZABELL: I'm going to object to
8 the form of that question. Are you
9 specifying a locale?
10 Q. In New York, in New York.
11 MR. ZABELL: Why don't you ask your
12 question again.
13 MR. ANTOLLINO: Fair enough.
14 Q. When Don was fired gay marriage was
15 not legal in New York; correct?
16 A. I guess.
17 Q. Okay. Do you know where it was
18 legal?
19 A. I know there were several states
20 that legalized it. I didn't follow it.
21 Q. Did you ever discuss it with your
22 sister?
23 A. No.
24 Q. Did you ever socialize with your
25 sister and her partner?

1 MAYNARD
2 A. Yes.
3 Q. Have you ever been to a gay
4 establishment?
5 MR. ZABELL: Objection.
6 A. No.
7 MR. ZABELL: Objection to the form.
8 Q. Do you know what I mean by a gay
9 establishment, a gay bar, a gay restaurant?
10 A. Yes.
11 Q. It's probably pretty certain that
12 you've had gay customers; correct?
13 A. I would assume.
14 Q. Have you had any gay skydivers
15 other than Don?
16 MR. ZABELL: Objection to the form.
17 A. I don't ask anybody what their
18 preferences are in that. I'm not -- I don't
19 know.
20 Q. Do you think that it's a preference
21 or an orientation --
22 MR. ZABELL: Objection to the form.
23 Q. -- being gay?
24 MR. ZABELL: Objection to the form.
25 A. I don't know -- I don't ask people

1 MAYNARD
2 what they do outside of my workplace. So if
3 someone else is gay and they haven't expressed
4 it, I don't know that. I don't ask that
5 question.
6 Q. Okay. I'm just asking you whether
7 you think being gay is an orientation or a
8 preference?
9 MR. ZABELL: Objection to the form.
10 You may answer, if you can.
11 A. I don't know.
12 Q. Do you think that gay people are
13 born that way?
14 MR. ZABELL: Objection to the form.
15 A. I don't have an opinion on that.
16 Q. Did your sister ever say that she
17 was born that way?
18 A. No.
19 Q. Did Santine ever say that she was
20 born that way?
21 A. No.
22 Q. So you believe that homosexuality
23 is a choice?
24 MR. ZABELL: Objection to the form.
25 If you can, you can answer.

1 MAYNARD
2 A. I don't know if somebody is born
3 one way or they choose something else. I know
4 how I am and what someone else does, that's
5 in -- I don't know how they think or how
6 anybody does anything else.
7 Q. Did you choose -- you're
8 heterosexual, correct?
9 A. Yes, I am.
10 Q. Did you choose to be heterosexual
11 or were you just born that way?
12 A. I've always been heterosexual.
13 Q. So, therefore, it would be fair to
14 assume that you were born that way?
15 A. That's your assumption, I guess. I
16 don't know.
17 Q. Did you ever make a choice in your
18 life and say, you know what, I'm going to --
19 I'm going to date women rather than men?
20 A. I only dated women. I never
21 thought about dating a man.
22 Q. But it doesn't sound like it was a
23 choice, it was just natural; correct?
24 MR. ZABELL: Objection to the form
25 of that question.

1 MAYNARD
 2 If you can answer it, you may.
 3 A. It's my choice, yes.
 4 MR. ANTOLLINO: Could you read back
 5 the question and the answer?
 6 (Record read.)
 7 Q. So you believe it's a choice?
 8 MR. ZABELL: Objection.
 9 Q. Or that it's natural, it just
 10 happened naturally?
 11 MR. ZABELL: Objection, asked and
 12 answered.
 13 You may answer it again if you can.
 14 A. I don't know if I can answer that
 15 question. There's probably some people that
 16 it's a -- that's what -- I don't know. I don't
 17 know.
 18 Q. Okay. I want to show you what I
 19 have marked as Exhibit 18.
 20 (Exhibit R-17, e-mail, marked for
 21 Identification.)
 22 MR. ZABELL: 18 or 17?
 23 MR. ANTOLLINO: I'm sorry, 17.
 24 Q. I'd like you to read that to
 25 yourself and let me know when you're done.

1 MAYNARD
 2 MR. ZABELL: Please.
 3 A. (Reviewing.)
 4 You want me to read this and what?
 5 Q. Just let me know when you're done
 6 reading it.
 7 A. Yeah.
 8 Q. All right. This appears to be --
 9 have you seen this before?
 10 A. No.
 11 MR. ZABELL: Objection to the form
 12 of the multiple questions.
 13 Q. Do you know Kevin Beisler?
 14 MR. ZABELL: Objection to the form
 15 of the multiple questions.
 16 A. I do not know Kevin.
 17 Q. Do you recognize him as someone
 18 who's been to Skydive Long Island?
 19 A. No.
 20 Q. It says in the e-mail that he's
 21 been there five times; correct?
 22 A. Yes.
 23 Q. And how much does he pay for each
 24 jump if he goes on a student jump?
 25 MR. ZABELL: Objection to the form.

1 MAYNARD
 2 You may answer.
 3 A. I don't know if he's a student or
 4 if he's up -- a fun jumper.
 5 Q. What are the different prices?
 6 A. If you're a fun jumper and you have
 7 your own gear, it's \$25 a jump at 13,5.
 8 Student jumps are, I believe -- I think -- I'm
 9 not sure of the price structure, 70, 75, 80.
 10 Q. And video?
 11 A. Most video is for tandems. If the
 12 video is for tandem, it's 125. If you're
 13 getting video as a student, I believe it's
 14 about \$80.
 15 Q. And if you're going on a tandem
 16 jump, how much is that?
 17 MR. ZABELL: Objection.
 18 A. That's 125.
 19 Q. But without the video, how much is
 20 it?
 21 MR. ZABELL: Objection.
 22 A. A tandem jump?
 23 Q. Yeah.
 24 MR. ZABELL: Objection.
 25 A. If you come out there by yourself

1 MAYNARD
 2 on a weekend it's 125, but there's also group
 3 rates, weekday rates. There's many different
 4 price structures.
 5 Q. All right. So it looks like you've
 6 lost a customer in Kevin Beisler, according to
 7 this e-mail if it's true; is that correct?
 8 MR. ZABELL: Objection to the
 9 multiple questions.
 10 You can pick one and answer.
 11 Q. You can answer.
 12 A. According to this, I guess we have.
 13 Q. I'd like you to take a look at
 14 Exhibit 18.
 15 (Exhibit R-18, letter, marked for
 16 Identification.)
 17 Q. And read that and tell me when
 18 you're done.
 19 A. (Reviewing.)
 20 I'm done.
 21 Q. Have you read it?
 22 A. I'm done.
 23 Q. Have you seen this before?
 24 A. No.
 25 Q. Do you remember a time in 2010 when

1 MAYNARD
 2 a group of gay sky divers went to Skydive Long
 3 Island?
 4 A. No, I don't.
 5 Q. All right. If there were a group
 6 of 24 people, how much would you charge them if
 7 they were going up in tandem instruction and
 8 video, what would be the group rate for that?
 9 And if you need a second to calculate that,
 10 take as much time as you want.
 11 A. We don't discount the video. The
 12 group rate for 24 people -- it's over 20 people
 13 they get, I believe, \$20 off each and either
 14 two or three other people go for free. And if
 15 they choose to take that amount and split it
 16 between the whole group, they can also do that.
 17 Q. All right, so let me just get my
 18 numbers straight. The tandem price itself, I
 19 just want to get this clear in my mind --
 20 MR. ZABELL: So you've moved on to
 21 a different question?
 22 MR. ANTOLLINO: There's no question
 23 pending before the witness. Is there a
 24 question pending before the witness? You
 25 want to continue colloquy, it's just

1 MAYNARD
 2 adding to the seven hours.
 3 MR. ZABELL: Are you asking madam
 4 reporter if there was a question pending
 5 before the witness before you asked the
 6 other question? If you were, then you
 7 should give her an opportunity to answer
 8 you before you start yelling at me,
 9 Counselor.
 10 (Record read.)
 11 MR. ANTOLLINO: So there was no
 12 question pending, Counselor.
 13 MR. ZABELL: If you read the
 14 answer, you did ask him to follow-up on
 15 his answer.
 16 MR. ANTOLLINO: And that's what I'm
 17 doing now. You want to continue to do
 18 this, Counsel? It's just increasing the
 19 time your client has to sit here.
 20 Q. All right. Now, let me take it
 21 step-by-step for my own clarification. Is it
 22 true that a tandem price in itself without
 23 video is between 199 and 225?
 24 A. We never charged 199. 225 is a
 25 person goes out by themselves on a weekend, the

1 MAYNARD
 2 weekend price is 225.
 3 Q. Okay.
 4 A. Do you want the whole breakdown?
 5 Q. No. I want to take it
 6 step-by-step. And the video would be an
 7 additional 125?
 8 A. Correct.
 9 Q. Okay. And that's on a weekend or
 10 is that the price for any time?
 11 A. That's the price for video.
 12 Q. Okay. So if 24 gay guys came out
 13 or a group of 24 guys, whether they're gay or
 14 not, came out, how much would you reduce the
 15 225 to?
 16 A. It would be reduced to -- if it's
 17 over 20, I think it's either 20 or 25 dollars
 18 off per person, so it's either 205 or 200.
 19 Q. All right. So let's say it's 200.
 20 A. And, in addition to that, they
 21 would give two people for free.
 22 Q. So if there were 24, two people
 23 would go for free?
 24 A. Right. A lot of times, the group
 25 would take that amount of money and then the

1 MAYNARD
 2 whole group would whack it up and decide how
 3 much it would be.
 4 Q. But that's between them?
 5 A. Correct.
 6 Q. Okay. So if there are 24 gay guys
 7 that are out there and just getting tandems, no
 8 video, that's \$4,000 coming in to the drop
 9 zone; correct?
 10 A. If that's what you computed.
 11 Q. All right. If you'd like to do the
 12 computation yourself, but it sounds about
 13 right; correct?
 14 A. Uh-huh.
 15 Q. All right. And if they also all --
 16 all 24 gay guys got video, that would be -- I
 17 can't do hand calculations anymore.
 18 MR. ZABELL: I don't doubt that.
 19 Q. That would be another \$3,000; is
 20 that fair to say?
 21 A. Yes.
 22 Q. So if 24 gay guys go there and go
 23 on tandems with video, that's bringing \$7,000
 24 into your business; correct?
 25 A. Correct.

1 MAYNARD
 2 Q. And, according to this e-mail,
 3 Scott Ryan is not going to bring his gay group
 4 there anymore; correct?
 5 A. According to the e-mail, you're
 6 right.
 7 Q. All right.
 8 MR. ANTOLLINO: Do you want to take
 9 the break now?
 10 THE VIDEOGRAPHER: Whenever you
 11 want. We have four minutes left.
 12 Q. It says in this e-mail that the
 13 instructors who went up in the tandems were
 14 telling the gay guys about the gay skydiver.
 15 Do you see that?
 16 A. Yes.
 17 Q. Was that inappropriate for them to
 18 do?
 19 A. I can't answer that. I don't know
 20 who started what or who said what. I don't
 21 even know -- I don't even know that --
 22 Q. Well what --
 23 A. -- if this is even true.
 24 Q. We're just assuming that it's true.
 25 A. Hypothetically.

1 MAYNARD
 2 MR. ZABELL: You're under no
 3 obligation to assume it's true,
 4 Mr. Maynard.
 5 Q. We're assuming it's true and if
 6 your skydivers mentioned Don's sexuality, was
 7 that inappropriate?
 8 MR. ZABELL: Objection to the form.
 9 A. It would depend on what's being
 10 said.
 11 Q. It's personal information, isn't
 12 it?
 13 A. I guess so.
 14 MR. ZABELL: Objection to the form.
 15 You may answer.
 16 MR. ANTOLLINO: You got the answer?
 17 Q. If someone told these jumpers that
 18 Don was gay, are you going to fire any of them?
 19 A. No.
 20 MR. ANTOLLINO: All right. Good
 21 break.
 22 THE VIDEOGRAPHER: We are now off
 23 the record at 12:27 p.m.
 24 (Luncheon recess taken at 12:27 p.m.)
 25

1 MAYNARD
 2 A F T E R N O O N S E S S I O N
 3 (Time noted: 1:03 p.m.)
 4 R A Y M O N D M A Y N A R D, resumed and
 5 testified as follows:
 6 CONTINUED EXAMINATION
 7 BY MR. ANTOLLINO:
 8 THE VIDEOGRAPHER: This is tape
 9 three of the deposition of Raymond
 10 Maynard, we are now on the record at 1:03
 11 p.m.
 12 Q. So, that we were looking earlier at
 13 Exhibits 17 and 18 and it appears on its face
 14 that there are some gay people who will not go
 15 back to Skydive Long Island because of what
 16 happened to Don?
 17 MR. ZABELL: Objection.
 18 Q. It appears on its face; correct?
 19 MR. ZABELL: Objection.
 20 Q. Is that correct? That's what these
 21 e-mails say basically.
 22 MR. ZABELL: No, they don't.
 23 A. They say they won't be going back
 24 there any time soon.
 25 Q. And the other one says --

1 MAYNARD
 2 A. "Sorry to hear about this."
 3 Q. Well, what does it say about
 4 returning?
 5 A. It doesn't say anything.
 6 Q. You're right. How do you feel
 7 about the guy who won't return?
 8 MR. ZABELL: Objection to the form.
 9 Q. How do you feel about that? How to
 10 you feel that he won't come back soon? Do you
 11 want him to come back soon?
 12 MR. ZABELL: Objection to the form
 13 of the multiple questions asked.
 14 You may pick any one of those
 15 questions asked and provide an answer to
 16 one of them.
 17 A. I'm in business and I have
 18 thousands of people come through my place every
 19 year. You can't have everybody happy and you
 20 can't have everybody return. For whatever
 21 reason it is, I don't know -- I don't know if
 22 any of this is true. So how do I feel about
 23 somebody not coming back? We'd like everybody
 24 to come back if possible.
 25 Q. He's a paying customer, this guy.

1 MAYNARD
 2 A. Yup.
 3 Q. You didn't give him a free jump?
 4 A. No.
 5 MR. ZABELL: Objection to the form
 6 of the multiple questions.
 7 MR. ANTOLLINO: He answered the
 8 first question and I'm asking the second
 9 one.
 10 Q. You didn't give him a free jump,
 11 did you?
 12 MR. ZABELL: You may pick a
 13 question and respond to it.
 14 A. The question is?
 15 Q. You never gave him a free jump, did
 16 you?
 17 A. No.
 18 Q. Is Jordan Miles a good tandem
 19 instructor?
 20 A. Yes, he is.
 21 Q. And he has a military background, I
 22 understand?
 23 A. Yes, he does.
 24 Q. All right. Has he ever revealed to
 25 any customers that he is a veteran?

1 MAYNARD
 2 A. That what?
 3 Q. Has he ever revealed to any
 4 customers that he is a veteran?
 5 A. I don't know.
 6 Q. Would you think it inappropriate
 7 for him to do so?
 8 A. No.
 9 Q. What if he was, say, diving with
 10 someone and someone complained that this guy
 11 Jordan Miles told me that he was a vet and I
 12 didn't want to hear that information.
 13 What if somebody called you and
 14 complained about that? Would you consider that
 15 a legitimate complaint?
 16 A. I'm an American and I would not
 17 take that very well at all. Without the vets
 18 we wouldn't be having freedom.
 19 Q. But his military service is
 20 personal information, isn't it?
 21 MR. ZABELL: Objection to the form.
 22 A. It's personal information that's
 23 not upsetting people and ruining the day.
 24 Q. But it's personal information;
 25 correct?

1 MAYNARD
 2 A. It's personal information.
 3 Q. What if it did ruin someone's day?
 4 A. It would depend on what it is.
 5 Q. Well, if he said -- if you got a
 6 complaint, someone said, I don't want to hear
 7 about war when I'm on a jump. I want to enjoy
 8 the scenery. That ruined my jump. Does Jordan
 9 get fired for saying that?
 10 MR. ZABELL: That's an
 11 objectionable question, but you can go
 12 ahead and answer his objectionable
 13 question.
 14 A. No, he would not.
 15 Q. Have you ever chatted about this
 16 lawsuit on your personal Facebook page?
 17 MR. ZABELL: Objection.
 18 You may answer.
 19 A. I don't remember if I have or not.
 20 + MR. ANTOLLINO: All right. I'm
 21 going to call for production of any
 22 comments made about this lawsuit on his
 23 Facebook page.
 24 And I remind you of the --
 25 MR. ZABELL: You may remind me of

1 MAYNARD
 2 absolutely nothing. Remain silent.
 3 MR. ANTOLLINO: Remain silent? I
 4 remain silent at the deposition where I'm
 5 taking questions?
 6 MR. ZABELL: One can only hope.
 7 Q. Did you ever complain about Joanne
 8 at the drop zone in front of other employees?
 9 A. I probably had.
 10 Q. Pretty often?
 11 A. Yes.
 12 Q. Did you ever complain about Joanne
 13 within the earshot of other customers?
 14 A. I don't think so.
 15 Q. So you're not certain one way or
 16 the other?
 17 A. Probably not.
 18 Q. But you're not certain?
 19 A. No.
 20 Q. But if you had, it would be sharing
 21 personal information with customers; correct?
 22 MR. ZABELL: Objection to form.
 23 A. If they heard me, I wasn't speaking
 24 with them, so I would not be sharing something
 25 with them.

1 MAYNARD
2 Q. Did you ever hear any situation
3 where a big busted woman is caught on videotape
4 in free fall and instructors rushing to the
5 video room to watch what it looks like?
6 MR. ZABELL: Objection to the form.
7 You may answer.
8 A. Yes.
9 Q. And have you participated in that?
10 A. I have been informed that they had
11 a videotape similar to that.
12 Q. And what was your reaction to that?
13 A. I don't remember.
14 Q. Did you fire anyone as a result of
15 looking at someone in a lewd manner on a video?
16 MR. ZABELL: Objection to the form
17 of the question.
18 You may answer.
19 A. I wasn't looking at anybody in a
20 lewd manner.
21 Q. Did you fire anyone else for
22 looking at this particular passenger in a lewd
23 manner to see her big breasts in free fall?
24 MR. ZABELL: Objection to the form
25 of the multiple questions.

1 MAYNARD
2 You may pick any one of those
3 questions and provide an answer to it.
4 A. No.
5 Q. Did you get any complaints about
6 Don from any other employees at Skydive Long
7 Island?
8 MR. ZABELL: During any particular
9 time period?
10 MR. ANTOLLINO: At any time.
11 A. There were no formal complaints,
12 no.
13 Q. Were there any informal complaints?
14 A. No.
15 Q. Don was well liked at the drop
16 zone, is that a fair statement?
17 A. Yeah.
18 MR. ZABELL: Objection to the form.
19 You may answer.
20 A. Yes, he was.
21 Q. When did you meet Don?
22 A. When did I what?
23 Q. When did you first meet Don?
24 A. In 2001.
25 Q. Under what circumstances?

1 MAYNARD
2 A. I believe my friend Kurt. I'm not
3 sure if he was working with us at the time or
4 not. He probably was. I met Don at another
5 drop zone. I believe he was working in Vermont
6 or New Hampshire and Kurt told Don about our
7 busy drop zone and we could use some help and I
8 encouraged him to come down and work for us.
9 Q. And what happened then?
10 MR. ZABELL: Objection to the form.
11 A. Don came to work for us.
12 Q. So you met Don in 2001 and what did
13 you know about Don at that time?
14 A. I knew he was an experienced
15 skydiver, an experienced tandem master.
16 Q. Anything else?
17 A. He told me he was gay.
18 Q. He told you he was gay. When did
19 he tell you he was gay?
20 A. When I first met him.
21 Q. What did he say to you?
22 A. I don't remember the exact words.
23 It came up in conversation just to let me know.
24 Q. What did you say in response?
25 A. "It doesn't matter to me."

1 MAYNARD
2 Q. Did you tell him not to reveal his
3 sexual orientation to anyone else?
4 A. No.
5 Q. Did you tell him not to reveal his
6 sexual orientation to any passengers?
7 A. All of my employees are told to
8 just report to their job. One is to make sure
9 that they are totally safe from the time that
10 they get into the airplane and back to the
11 ground; that they be safe and the only
12 responsibility of the tandem master is to make
13 sure they have a good time and not do or say
14 anything that's going to upset them.
15 + MR. ANTOLLINO: Motion to strike
16 as nonresponsive.
17 MR. ZABELL: Your motion is denied,
18 Counsel, to the extent that I'm permitted
19 to do so.
20 Q. Did you specifically ask Don not to
21 reveal his sexual orientation to any customers,
22 yes or no?
23 A. No.
24 Q. How long did Don work for you in
25 2001?

1 MAYNARD
2 A. It was several months, I believe.
3 Q. And was it discussed during those
4 several months that Don was gay among the
5 students at -- among the instructors at Skydive
6 Long Island?
7 A. Did you say was it discussed?
8 Q. Yeah.
9 A. It might have been.
10 Q. You don't remember one way or the
11 other?
12 A. It probably was.
13 Q. Was Don referred to as gay Don?
14 A. He referred to himself as gay Don.
15 Q. When you say "he referred to
16 himself as gay Don," when was that? When did
17 he refer to himself as gay Don?
18 A. In 2001.
19 Q. He said, I'm gay Don?
20 A. He would make jokes about it. He
21 was not always called gay Don. He was not
22 referred to as gay Don.
23 Q. Rich Winstock testified that, and
24 you don't have to accept this as true, that he
25 was introduced to Don by another person as gay

1 MAYNARD
2 Don. Do you believe that to be true?
3 A. It could be true. I don't know who
4 the person is.
5 Q. It could be true that other people
6 at the drop zone referred to Don as gay Don?
7 A. Very possible.
8 Q. You don't know where the phrase gay
9 Don originated, do you?
10 A. No.
11 Q. So you don't know if it originated
12 with Don or with someone else; correct?
13 A. Correct.
14 Q. Did there come a time in 2001 that
15 a passenger complained about Don?
16 A. There were several instances when
17 Don would be upset that he was taking the women
18 and the other guys were taking the guys and
19 there was more than one person that came down
20 upset about being told things by Don and there
21 was -- actually, I know of two women that were
22 almost in tears after their jump with Don. I
23 don't know their names. I don't know the date.
24 Q. And can you describe the
25 circumstance, why they were in tears?

1 MAYNARD
2 A. Because he was carrying on about
3 his after-hours activities and they didn't want
4 to hear it.
5 Q. In 2001?
6 A. Yes.
7 Q. And there was some women who were
8 crying because of this?
9 A. Yes.
10 Q. And what did they look like?
11 A. I don't remember.
12 Q. Did it happen more than once?
13 MR. ZABELL: He testified there
14 were two women.
15 A. There were two incidents that I
16 remember.
17 Q. Okay. Did they happen on the same
18 day?
19 A. It wasn't the same day. It was
20 close proximity. I would say within a month,
21 maybe two weeks.
22 Q. And what was it that Don said that
23 made these women cry?
24 A. Him talking about being gay.
25 Q. Anything else?

1 MAYNARD
2 A. No.
3 Q. All right. But, yet, even then you
4 didn't tell him not to tell customers that he's
5 gay; correct?
6 A. Say that one more time.
7 MR. ANTOLLINO: Could you read it
8 back?
9 MR. ZABELL: Please.
10 (Record read.)
11 A. I didn't tell him not to tell them.
12 Q. And you don't remember -- you don't
13 have any documentation whatsoever about these
14 complaints?
15 A. No, I don't.
16 Q. Do you have any record of any of
17 the passengers Don took on a flight in 2001?
18 A. No.
19 Q. Have you ever heard other
20 instructors ask to get women instead of men?
21 A. No.
22 Q. Have you ever heard instructors
23 or -- well, have you heard of instructors
24 agreeing to trade passengers?
25 A. I've heard of instructors agreeing

1 MAYNARD
2 to trade passengers?
3 Q. Yes.
4 A. No.
5 Q. So, is the assignment of the
6 instructor to the passenger something that is
7 made by you and it's not something that can be
8 changed by the instructors?
9 A. The assignment is made through
10 manifest. So as people come in and sign up,
11 that's how it's supposed to go, 1 through 10,
12 and then you get a list of instructors. And
13 unless there's a circumstance of somebody
14 being -- that has special needs, it should go
15 down the list and it's just a random of who
16 goes with who.
17 Q. And, so, the randomness is never
18 varied?
19 A. If there's a special need there
20 might be.
21 Q. But for no other reason?
22 A. There should not be.
23 Q. There should not be, but does it
24 ever happen?
25 A. Not that I know of.

1 MAYNARD
2 Q. Why would Don complain about having
3 to take women?
4 A. You'd have to ask him.
5 Q. What did he say exactly about
6 complaining about taking women?
7 MR. ZABELL: Objection to the form.
8 You may answer, if you can.
9 A. He would outwardly say to the other
10 people that the guys are always getting all the
11 guys and I'm getting the women.
12 Q. Did anyone else tell you this?
13 A. No.
14 Q. Do you remember anyone else who
15 might have heard this?
16 A. Not offhand.
17 Q. Are there any people working at
18 Skydive Long Island now that are currently
19 working -- that -- now that were working in
20 2001?
21 A. Yes, I believe there are.
22 Q. Who?
23 A. I believe Brian Petretti was with
24 us in 2001, Duncan Shaw. I'm not sure if
25 Winstock was there or not. He worked for me

1 MAYNARD
2 for a while and then he left and came back.
3 I'd have to look back.
4 + MR. ANTOLLINO: Okay. I call for
5 a production of the list of names of
6 employees -- I'm putting this on the
7 record.
8 MR. ZABELL: It's denied.
9 MR. ANTOLLINO: -- who were working
10 in 2001.
11 MR. ZABELL: Your request is
12 denied.
13 MR. ANTOLLINO: Well, we'll deal
14 with it. I'll send you the letter and
15 you'll put in your objection and we'll go
16 to the judge.
17 MR. ZABELL: But, just so you know,
18 your request is denied.
19 Q. Isn't it true that the only
20 customer complaint in 2001 was a male who
21 complained because Don did not do something
22 that he considered unsafe and that the
23 manufacturer of the rig considered unsafe?
24 A. No.
25 Q. If a passenger asks a customer to

1 MAYNARD
2 do something that the manufacturer considers
3 unsafe, is the instructor obligated to follow
4 the customer's request or obligated to follow
5 the manufacturer's request?
6 MR. ZABELL: Objection to the form
7 of the multiple questions.
8 You may pick one and respond.
9 A. No tandem instructor should do what
10 a customer asked him to do if it's unsafe.
11 Q. And so if a customer complains --
12 what is a head down student tandem?
13 A. A head down tandem is when you're
14 in free fall and your head is falling first.
15 Q. Would you agree with the statement
16 that a head down student tandem is unnecessary
17 and not in the best interest of giving the
18 student an educational experience?
19 A. Yes.
20 Q. Okay. So if a passenger asked Don
21 to do a head down student tandem and Don would
22 not do it, and then later complained, that
23 would not be a legitimate customer complaint,
24 would it?
25 MR. ZABELL: Objection to the form

1 MAYNARD
2 of the question. You may answer.
3 A. It would not be a legitimate
4 complaint because he should not do that.
5 Q. What about a flip out of a plane?
6 A. Back flip, front flip?
7 Q. Start with front. Is that allowed?
8 A. Yes.
9 Q. How about a front flip?
10 MR. ZABELL: Objection, asked and
11 answered. You said "front" twice.
12 MR. ANTOLLINO: I'm sorry.
13 MR. ZABELL: I accept your apology.
14 Q. How about a back flip?
15 A. Yes.
16 Q. Do you know of any manuals or
17 safety regulations that suggest that back flips
18 and front flips are unsafe?
19 A. No, I do not.
20 Q. If Don was asking to do something
21 that would result in his license suspension by
22 a passenger, he was permitted to deny that
23 request; correct?
24 A. Correct.
25 Q. So these two girls allegedly

1 MAYNARD
2 complained in tears and they happened shortly
3 one after another?
4 MR. ZABELL: Objection to the form
5 of the question and to the
6 characterization of the testimony.
7 You may answer.
8 Q. You can answer.
9 A. It was within a few weeks of each
10 other, yes.
11 Q. And so you fired Don after the
12 second one?
13 A. Yes.
14 Q. What did you say to Don when you
15 fired him?
16 A. I don't remember exactly what I
17 said to him.
18 Q. Did you think that Don was doing
19 anything unsafe as an instructor?
20 A. No.
21 Q. Can you think of any reason that
22 Don would prefer the male passengers rather
23 than the female passengers?
24 A. No.
25 Q. What is the USPA?

1 MAYNARD
2 A. It's the United States Parachute
3 Association.
4 Q. Do they have a manual?
5 A. Yes, they do.
6 Q. Is it the standard manual followed
7 by the most reputable drop zones in the
8 country?
9 A. Yes.
10 Q. In between 2001 and 2009, did you
11 have any dealings with Don whatsoever?
12 A. Don had made several phone calls
13 during that time. He asked about coming back
14 and initially I told him no. He did visit the
15 drop zone, I think more than one time.
16 Q. And when was that?
17 A. I believe he was there in 2008 and
18 he might have been there one time before that.
19 I don't remember the date.
20 Q. And when were these several phone
21 calls?
22 A. I don't remember exactly when they
23 were.
24 Q. Were they before 2005?
25 A. I don't remember.

1 MAYNARD
2 Q. So you would not be able to tell me
3 anywhere in between 2001 and 2009 when these
4 phone calls took place?
5 A. I don't remember the dates we had
6 the phone calls.
7 Q. You don't remember how many of them
8 there were?
9 A. There weren't many.
10 Q. What?
11 A. There were not many.
12 Q. Was it more than three?
13 A. I do not think so.
14 Q. Okay. And when -- it was 2008 that
15 Don visited the drop zone?
16 A. I believe that's when it was.
17 Q. All right. And when he visited the
18 drop zone, what did you say to him?
19 A. We talked. He made some jumps.
20 Q. So he was a paying customer --
21 A. Yes.
22 Q. -- at the time? And what did you
23 talk about?
24 A. We talked about him coming back to
25 work.

1 MAYNARD
2 Q. And that was in 2008?
3 A. I believe so.
4 Q. Who brought it up?
5 A. Don did.
6 Q. And what did you say?
7 A. What did I say?
8 Q. Yeah.
9 A. I said that I believed that he was
10 a good instructor, he was a safe instructor.
11 He was a good guy and I would give him a
12 chance.
13 Q. Earlier you testified that you
14 initially said no. When was it that you said
15 no?
16 A. In one of the earlier phone calls.
17 Q. Why did you say no?
18 A. Because I just said no.
19 Q. But there must have been a reason
20 for it.
21 A. No reason.
22 Q. Did you need people at the time?
23 A. Excuse me?
24 Q. Did you need people at the time?
25 MR. ZABELL: Objection. During

1 MAYNARD
2 what time?
3 Q. During the time you said no.
4 A. I don't even remember what time of
5 the year it was that we talked.
6 Q. So you don't remember why you said
7 no?
8 A. No.
9 Q. It might have been because you
10 didn't have any openings?
11 A. Very possible.
12 Q. So you rehired Don in 2009 and
13 there came a time that he had an injury and
14 could not work for the rest of the season; is
15 that correct?
16 A. That's correct.
17 Q. Did you see the video of the jump
18 in which he suffered an injury?
19 A. I probably did, but I don't
20 remember it.
21 Q. Do you remember if he did anything
22 improper in that jump that caused his injury?
23 A. No.
24 Q. Did it, in fact, just look like a
25 regular old jump?

1 MAYNARD
2 MR. ZABELL: Objection to the form
3 "regular old jump."
4 Q. All right, that would not have
5 resulted in an injury?
6 MR. ZABELL: Are you withdrawing
7 the previous question or are you adding
8 on to the previous question? In either
9 event, I object to both.
10 Q. You can answer.
11 MR. ZABELL: If you know what he's
12 asking you.
13 A. Yeah, I'm not sure.
14 MR. ANTOLLINO: Could the court
15 reporter read it back without the
16 objection. If you want to stay here
17 forever and play this game, we will.
18 MR. ZABELL: No, we won't.
19 MR. ANTOLLINO: I've got seven
20 hours and your colloquy doesn't count
21 towards that.
22 MR. ZABELL: What about your
23 colloquy, Counsel?
24 (Record read.)
25 MR. ZABELL: Objection to the form.

1 MAYNARD
2 You may answer.
3 A. It looked like a normal skydive.
4 Q. It did not look like Don did
5 anything negligent; correct?
6 A. No.
7 Q. He was carrying an overweight
8 passenger on that flight; is that correct?
9 MR. ZABELL: Objection to the form.
10 A. I don't know that.
11 Q. Do you pay your instructors extra
12 when they agree to exceed stated weight limits?
13 A. The posted weight, yes.
14 Q. What is the posted weight?
15 A. 225.
16 Q. And that includes what, that
17 includes just the passenger; right?
18 A. Right.
19 Q. So if the passenger weighs more
20 than 225, is the skydiver allowed to decline to
21 take the passenger?
22 A. Yes, absolutely.
23 Q. Was there an older instructor that
24 you used to have by the name of Willie?
25 A. Yes.

MAYNARD

1
2 Q. What's Willie's last name?
3 A. Tomares.
4 Q. And you fired Willie?
5 A. No.
6 Q. He's still working for you?
7 A. No. At the end of one season he
8 didn't come back.
9 Q. Do you know where Willie lives?
10 A. I believe Montana.
11 Q. Would you want him to come back?
12 A. I wouldn't say absolutely no. We'd
13 have to have a conversation about it.
14 Q. What problems did you have with
15 Willie Tomares?
16 A. Willie was just very unhappy a lot
17 of times.
18 Q. About what?
19 A. I never found that out.
20 Q. Did you pressure him to take the
21 overweight passengers?
22 A. No.
23 Q. If an instructor agrees to take an
24 overweight passenger, you pay the instructor
25 more; correct?

MAYNARD

1
2 A. Yes.
3 Q. Why is that?
4 A. To tell you the truth, I don't know
5 how that policy started, but the policy is in
6 place.
7 Q. Well, isn't it true that taking an
8 overweight passenger increases the risk for the
9 instructor?
10 A. No.
11 Q. Isn't it a harder job?
12 A. No.
13 Q. When Don was injured at work, he
14 did not -- the passenger was not injured in the
15 same tandem; correct?
16 A. Correct.
17 Q. Do you remember when that jump when
18 Don got injured was?
19 A. No.
20 Q. It was -- would it be fair to say
21 it was in either late June or early July in
22 2009?
23 A. Probably.
24 Q. Okay. Don didn't know how badly he
25 was injured when he hurt himself on that jump;

MAYNARD

1
2 is that correct?
3 A. I don't remember.
4 Q. He wasn't certain if he would be
5 returning that summer or not, correct, when he
6 went out on injury; correct?
7 A. Correct.
8 Q. In fact, you received an e-mail
9 from Don --
10 (Exhibit R-19, e-mail, marked for
11 Identification.)
12 Q. -- I hand you what I premarked as
13 Exhibit 19 -- shortly after the injury;
14 correct?
15 A. You want me to read it?
16 Q. That appears to be an e-mail that
17 Don sent to you after the injury?
18 A. Yes.
19 Q. And it indicates that he wants to
20 continue could have his job, he wants to get
21 better and get back to work; correct?
22 A. Yes.
23 Q. And there was no reason why he
24 could not return to work if his doctors cleared
25 him to work that summer; correct?

MAYNARD

1
2 A. Correct.
3 Q. And if his doctors had cleared him
4 to work that summer, you would have allowed him
5 to continue to do jumps; correct?
6 A. Correct.
7 Q. All right. Now, you have mandatory
8 staff meetings at the drop zone; is that
9 correct?
10 A. Not really.
11 Q. I'll hand you what I've marked
12 collectively as Exhibit 25 -- I'm sorry,
13 Exhibit 20 and ask you if you recognize these.
14 (Exhibit R-20, three e-mails,
15 marked for Identification.)
16 Q. There's three e-mails here.
17 A. Okay.
18 Q. These are all e-mails about staff
19 meetings; correct?
20 A. Okay. Yes, they are.
21 Q. Okay. And it's sent from Skydive
22 Long Island with the e-mail address
23 funjumps@skydivelongisland.com; correct?
24 A. Correct.
25 Q. And that is your e-mail address;

1 MAYNARD
2 correct?
3 A. Correct.
4 Q. All right. And it's sent to a
5 group, SDLI. It says "To SDLI"; correct?
6 A. Correct.
7 Q. And that is a shorthand name for a
8 bunch of e-mail addresses; correct?
9 A. Correct.
10 MR. ZABELL: Objection to form.
11 Q. And if Don was working in 2009 he,
12 was included among this SDLI group; correct?
13 A. Correct.
14 Q. And all of these e-mails refer to
15 staff meetings; correct?
16 A. Yes.
17 Q. And did you expect the instructors
18 to attend the staff meetings?
19 A. Yes.
20 Q. What types of things are discussed
21 at staff meetings?
22 A. The business of the upcoming day --
23 THE VIDEOGRAPHER: We are now off
24 the record. At 1:38 p.m.
25 (Recess taken.)

1 MAYNARD
2 THE VIDEOGRAPHER: We are now on
3 the record at 1:39 p.m.
4 MR. ANTOLLINO: Could you read it
5 back?
6 (Record read.)
7 A. The business of the upcoming day,
8 the amount of tandems we have. The amount of
9 videos we have. Just in general everything and
10 just try to lay the day out. If we hadn't been
11 busy for a while, we wanted to get people in
12 there early to make sure we can get everything
13 taken care of.
14 Q. Do the instructors or other people
15 that go to these staff meetings get paid to
16 attend the staff meeting?
17 A. No.
18 (Exhibit R-21, e-mail, marked for
19 Identification.)
20 Q. I'm going to show you what I've
21 marked as Exhibit 21 and there's a copy for you
22 and this appears to be an e-mail from you to
23 SDLI; correct?
24 A. Yes.
25 Q. And could you read that for the

1 MAYNARD
2 record?
3 A. "Just want to let you know we have
4 a busy weekend lined up with 120 on the books
5 for Saturday and almost 100 so far for Sunday.
6 Let's hope the weather cooperates. Also, we're
7 going to have a mandatory staff meeting this
8 Saturday at 7:30 a.m. See you then."
9 Q. And "mandatory staff meeting" is in
10 bold; correct?
11 A. Yes.
12 Q. So you wanted to make it clear that
13 it was mandatory; correct?
14 A. Yes.
15 Q. Don went to that meeting, did not?
16 A. I imagine so. I don't remember.
17 Q. Okay. Was that the first time you
18 saw Don after his injury?
19 A. I don't remember.
20 Q. Did Don show up -- well, when is --
21 do you remember the first time you saw Don
22 after his injury?
23 A. No, I don't.
24 Q. When you saw Don for the first time
25 after his injury he was wearing a pink cast;

1 MAYNARD
2 correct?
3 A. If you say so.
4 Q. Well, I'm asking you.
5 A. Well, I don't remember.
6 Q. Did -- is it not true that Don
7 showed up to this staff meeting with a pink
8 cast and you looked at the cast and derisively
9 said, "That's gay"?
10 A. I don't remember that.
11 Q. So are you denying that it happened
12 or you just don't remember whether it happened
13 or not?
14 A. I don't remember that.
15 Q. So you don't -- okay. Do you
16 remember Don appearing at the jump zone, the
17 drop zone, I should say, with his cast --
18 A. Yes, sir.
19 Q. -- after that meeting?
20 A. Yes, I do.
21 Q. You say anything to him about that?
22 A. Yes, yes, I did.
23 Q. What did you say?
24 A. That I didn't appreciate anybody
25 being at the drop zone in a cast and on

1 MAYNARD
 2 crutches. The students are nervous enough and
 3 if they see someone on crutches with a cast on,
 4 it's not going to be very good for the
 5 customers.
 6 Q. Did you comment about the color of
 7 his cast at that -- in that discussion?
 8 A. I don't believe I did. It had
 9 nothing to do with the color of the cast.
 10 Q. Did you tell him to cover up his
 11 foot so his pink toenails would not show?
 12 A. No.
 13 Q. Isn't it true that seeing skydivers
 14 on crutches is very common at a drop zone?
 15 A. No.
 16 Q. Have you been to any drop zone
 17 where -- other than yours where you've seen
 18 someone on crutches?
 19 A. Yes.
 20 Q. Where?
 21 A. I don't remember.
 22 Q. You have employees who don't do
 23 jumps who might break their legs; correct?
 24 MR. ZABELL: Objection.
 25 A. If I have employees that don't do

1 MAYNARD
 2 jumps that might break legs?
 3 Q. Yeah.
 4 A. Yes.
 5 Q. Okay.
 6 A. Like, anybody could break their
 7 leg.
 8 Q. So Lauren Doesn't do any jumps,
 9 does she?
 10 A. She jumps.
 11 Q. Okay. Well, what about the ladies
 12 in the office, Lauren, Megan and Jesse?
 13 A. Lauren is the only current jumper.
 14 Q. All right. So the other two, if
 15 they broke their legs, you wouldn't tell them
 16 not to come in to work, with you?
 17 A. I wouldn't want anybody, if
 18 possible, to be there on crutches in a cast.
 19 Q. So if those people -- if one of
 20 Megan or Jesse broke her leg and was on
 21 crutches, you would ask them to leave work?
 22 A. Yes.
 23 Q. Would you pay them?
 24 MR. ZABELL: Objection.
 25 A. She'd probably be on Workmen's

1 MAYNARD
 2 Comp.
 3 Q. Well, Workmen's Comp.
 4 A. That's not true --
 5 Q. They would only be on Workman's
 6 Comp. --
 7 A. If it happened on the job.
 8 Q. If it happened to the job. Do you
 9 know something with the Workers' Comp. System?
 10 A. Do I know something about it?
 11 Q. Yeah.
 12 MR. ZABELL: Objection to the form.
 13 A. Yes.
 14 Q. All right. Don did not return to
 15 work that summer; correct?
 16 A. Correct.
 17 Q. Eventually he applied for Workers'
 18 Compensation; correct?
 19 A. Yes.
 20 Q. He received his Workers'
 21 Compensation; correct?
 22 A. Correct.
 23 Q. Would you agree that Workers'
 24 Compensation is the right of a worker who has
 25 been injured on the job?

1 MAYNARD
 2 A. Yes.
 3 Q. What is Workers' Compensation?
 4 A. What is Workmans' compensation?
 5 Q. Yeah, what is it is?
 6 A. It's a benefit if someone gets
 7 injured on a job that they get paid while
 8 they're out of work.
 9 Q. You also know that workers are
 10 protected against discrimination for filing
 11 Workers' Compensation claims; correct?
 12 A. Correct.
 13 Q. And were you aware that if someone
 14 who is fired is discriminated against for
 15 filing a Workers' Compensation claim, they can
 16 get reinstated back pay and attorneys' fees and
 17 all sorts of things?
 18 A. I guess so.
 19 Q. All right. So you didn't
 20 discriminate against Don in any way because he
 21 filed a Workers' Compensation claim, did you?
 22 A. No.
 23 Q. People get injured on the drop zone
 24 pretty regularly, would that be fair to say?
 25 MR. ZABELL: Objection to the form.

1 MAYNARD
2 A. No.
3 Q. Well, it happens at your drop zone
4 at least once a year; correct?
5 A. Yes.
6 Q. It's part of the hazard of
7 skydiving; correct?
8 A. Correct.
9 Q. It is an inherently dangerous
10 activity; correct?
11 A. Correct.
12 Q. And it's not grounds for discipline
13 if you get injured; correct?
14 A. Correct.
15 Q. Now, you rehired Don for the 2007
16 season, right? I'm sorry, 2010 season;
17 correct?
18 A. Correct.
19 Q. Did you have any discussions with
20 him in between the end of the 2009 season and
21 the beginning of the 2010 season?
22 MR. ZABELL: Objection, you may
23 answer.
24 A. Yes.
25 Q. What was that?

1 MAYNARD
2 A. One conversation I remember having
3 with him is that he was working other places,
4 he had his own business. He was making money
5 while he collected Workman's Comp. and
6 disability when he shouldn't have been.
7 Q. Do you know how much he was making?
8 A. Nope.
9 Q. How did you find this out?
10 A. He told me.
11 Q. Is it your belief that a person
12 who's getting Workers' Compensation is not
13 allowed to do any clerical job or something
14 that he's able to do to supplement the Workers'
15 Compensation funds?
16 A. My belief is that if you're out on
17 Workmen's Comp. you're not allowed to work
18 anywhere else and collect benefits. I may be
19 wrong, but that's my belief.
20 MR. ZABELL: You're not.
21 Q. So, when you called Don, Don told
22 you he was working?
23 A. Yes, he did, and he owns a
24 business.
25 Q. What did you say about -- how did

1 MAYNARD
2 you verify this?
3 A. Don verified it to me.
4 Q. What did he say exactly? Well,
5 let's back up.
6 Who initiated this phone call in
7 which you learned that Don was doing work?
8 A. I imagine I did.
9 Q. Okay. And why did you make the
10 call?
11 A. I felt that if you're -- you got
12 injured in my place, you're collecting
13 Workmen's Comp. from the company that I am
14 paying into and you are now fraudulently
15 working somewhere else and making money, that
16 it's not right.
17 Q. All right. My question is,
18 however, who initiated the phone call in which
19 Don told you that he was working and making
20 money?
21 A. I don't remember who called who on
22 that one.
23 Q. So you said that Don told you that
24 he was making money at his own business?
25 A. Correct.

1 MAYNARD
2 Q. And you don't know who initiated
3 that conversation?
4 A. I imagine I initiated that part of
5 the conversation.
6 Q. Okay. Well, I'm talking about the
7 phone call. This was over the phone; correct?
8 A. Correct.
9 Q. You don't know --
10 MR. ANTOLLINO: Counsel, could you
11 not send e-mails or turn off the sound of
12 your computer. It's distracting.
13 Q. What was the purpose of the call?
14 Was the purpose of the call the Workers'
15 Compensation issue or something else?
16 A. I believe the purpose of the call
17 was talking about him coming back to work.
18 Q. And in this conversation he told
19 you that he was working?
20 A. It came up in conversation.
21 MR. ANTOLLINO: Counsel, I'm going
22 to ask you again to turn off the sound.
23 Q. And what did you say to Don about
24 that?
25 A. I told him I think it's wrong that

1 MAYNARD
 2 you're collecting Workmen's Comp. from my
 3 company or from my insurance company while
 4 you're making money and he asked me not to do
 5 anything about it because he said it was just a
 6 little bit to make sure his rent was paid and
 7 this and that, and I still expressed to him
 8 that I thought it was wrong.
 9 Q. Did you make any notation about
 10 this allegedly illegal activity?
 11 A. Notation to who? No.
 12 Q. Did you make any writings?
 13 A. No.
 14 Q. Did you mention it to anyone?
 15 A. No, I don't think I did.
 16 Q. Did you file a complaint with the
 17 Workers' Compensation Board?
 18 A. I'm not sure if I complained there
 19 or not.
 20 Q. Did you initiate a complaint?
 21 A. I don't remember.
 22 Q. Did you accuse Don of fraud?
 23 A. I probably said that.
 24 Q. Were you aware that the final
 25 administrative judge law decision was in Don's

1 MAYNARD
 2 favor against the assertion about him working
 3 while collecting benefits?
 4 MR. ZABELL: Objection to the form
 5 of the question.
 6 A. No.
 7 MR. ZABELL: You may answer.
 8 Q. Did you read the final decision of
 9 the Workers' Compensation judge?
 10 A. I don't think so.
 11 Q. All right. You would have to
 12 respect the final word from the Workers'
 13 Compensation judge as to whether or not Don was
 14 committing fraud; correct?
 15 MR. ZABELL: Objection to the form
 16 of the question to the misrepresentations
 17 made by counsel and to the attitude in
 18 which he's asking the questions.
 19 To the extent that you can answer
 20 the questions, you may.
 21 A. I'm not sure what the question was.
 22 MR. ANTOLLINO: Could you read it
 23 back?
 24 (Record read.)
 25 A. Yes.

1 MAYNARD
 2 Q. And, in fact, the final decision of
 3 the Workers' Compensation board was in January
 4 2011?
 5 MR. ZABELL: Objection.
 6 Q. Correct? I'm sorry, January 2010;
 7 correct?
 8 MR. ZABELL: Same objection.
 9 A. I don't remember.
 10 MR. ANTOLLINO: Counsel, I'm asking
 11 you now for the fourth time to turn off
 12 the sound. It is distracting. It's bad
 13 enough that you're clicking away, but the
 14 sound of sending and the dings is
 15 distracting.
 16 Do we need to call the court on
 17 this?
 18 MR. ZABELL: Counsel, remain silent
 19 on the issue.
 20 MR. ANTOLLINO: Are you going to
 21 stop that or do we need to call the court
 22 on this?
 23 MR. ZABELL: You may do whatever it
 24 is you feel the need to do. If you are
 25 distracted by your own inability to

1 MAYNARD
 2 perform this deposition, then you and
 3 your client will have to suffer with your
 4 distractions.
 5 MR. ANTOLLINO: If it happens one
 6 more time, I'm going to call the judge.
 7 Okay. All right, let's call the judge.
 8 Unless you're going to agree right now to
 9 turn off the sound.
 10 MR. ZABELL: I thought I did,
 11 actually.
 12 MR. ANTOLLINO: All right. Would
 13 you try again? Why don't we take a
 14 five-minute break. You decide -- you
 15 figure out how to turn off the sound.
 16 MR. ZABELL: If you would like to
 17 take a five-minute break, then we can
 18 take a five-minute break.
 19 MR. ANTOLLINO: I would like you to
 20 turn off the sound of your computer. It
 21 is distracting and I have a right to have
 22 you turn it off. There's a way for you
 23 to do what you're doing without me having
 24 to hear the dings and whistles of your
 25 computer.

1 MAYNARD

2 Do you want to turn it off or
3 should we call the court to get a ruling
4 on this?

5 MR. ZABELL: Counsel, I thought I
6 shut it off. You can do whatever it is
7 you like and if you want to have a
8 tantrum and misrepresent facts, you are
9 free to do so.

10 In fact, if you want to take that
11 five minutes that you just suggested for
12 the sole purpose of having a tantrum and
13 showboating for your client, you may do
14 so, but do not expect my consent when you
15 do so.

16 MR. ANTOLLINO: I'm asking you to
17 turn off the sound on your computer. Are
18 you willing to do so or not?

19 MR. ZABELL: Counsel, as I've said
20 to you three times now, I believe I have.

21 MR. ANTOLLINO: All right. I have
22 heard several e-mails since -- or several
23 dings and whistles since you said you
24 thought you had. Would you do me the
25 courtesy of trying again because

1 MAYNARD

2 obviously, you have not.

3 MR. ZABELL: You have heard no
4 whistles. You may have heard a ding and,
5 again, I believe I have turned it off. I
6 will endeavor again to turn off any sound
7 from the computer, but if you want to
8 showboat, grandstand and be petulant, you
9 may do so.

10 I strongly suggest you do it off
11 the record because all I'm doing now is
12 responding to your comments.

13 MR. ANTOLLINO: I don't want to
14 continue until you --

15 MR. ZABELL: So would you like to
16 go off the record for a moment?

17 MR. ANTOLLINO: Okay, let's go off
18 the record.

19 MR. ZABELL: There you go. Was
20 that so hard? Was that really so hard?

21 THE VIDEOGRAPHER: We're off the
22 record at 1:56 p.m.

23 (Recess taken.)

24 THE VIDEOGRAPHER: This is tape
25 four of the deposition of Raymond

1 MAYNARD

2 Maynard. We are now on the record at
3 2:02 p.m.

4 MR. ANTOLLINO: I'm sorry, I don't
5 have copies.

6 Q. But I'm going to show you what I've
7 marked as R-25.

8 (Exhibit R-25, page from the Sigma
9 tandem system owner's manual, marked for
10 Identification.)

11 MR. ANTOLLINO: Would you like to
12 take a look at it first, Counsel.

13 MR. ZABELL: I would. Do you want
14 to see if we can get copies made here?

15 MR. ANTOLLINO: I'm sure we can,
16 but we're just back on the record and
17 this is pretty simple so let's just
18 continue, if you don't mind.

19 MR. ZABELL: I do.

20 MR. ANTOLLINO: I'll get you copies
21 after we're off the record.

22 MR. ZABELL: When?

23 MR. ANTOLLINO: Because, I'd just
24 like to get --

25 MR. ZABELL: Not why. When?

1 MAYNARD

2 MR. ANTOLLINO: After. Remind me
3 before you go.

4 MR. ZABELL: Why can't you -- I can
5 have this one? So your client said I can
6 have this one. Thank you.

7 MR. ANTOLLINO: I want a copy
8 before we go.

9 MR. ZABELL: Okay. Give me an
10 opportunity to read it. I have had an
11 opportunity to read it.

12 MR. ANTOLLINO: Thank you.

13 Q. The exhibit is now being handed to
14 the witness and I'm asking you, do you
15 recognize this?

16 A. Yes.

17 Q. It appears to be the page from the
18 Sigma tandem system owner's manual. Could you
19 read how many points of adjustment is on the
20 Sigma tandem rig?

21 A. Points of adjustment?

22 Q. Yeah.

23 A. You've go the shoulder-top
24 adjustment, the chest strap, the belt strap,
25 the main lift webs, diagonals, leg straps.

MAYNARD

1
2 Q. Does it say how many there are in
3 total in this document? Maybe I can just show
4 you, point to you. If you look at the
5 paragraph that says, "The student harness was
6 designed," does it say how many points of
7 adjustment?
8 A. Twelve.
9 Q. Okay. So does this change your
10 testimony about how many points of adjustment
11 are on the Sigma tandem?
12 A. When you asked me that, I thought
13 you asked me points of attachment.
14 Q. Okay. I'm glad you made that
15 clarification. So, there are twelve points of
16 attachment --
17 A. No, there's four points of
18 attachment.
19 Q. Four points of attachment.
20 A. Right.
21 Q. Twelve points of adjustment.
22 A. Yes, correct.
23 Q. What is the difference between an
24 attachment and an adjustment?
25 A. An attachment is where the hardware

MAYNARD

1
2 attaches to the rings on the tandem master and
3 on the -- on the side hooks and that's all
4 hardware, 5,000 pound test each.
5 Adjustments, obviously, are all the
6 different belts and harness points that can be
7 adjusted to the person's size.
8 Q. Okay. Would you agree with the
9 statement that there is no single right way to
10 fit every size or shape of the human body when
11 putting a passenger in that rig?
12 A. That there's no single way to do
13 it?
14 Q. Yeah, there's no single right way
15 to fit every size or shape of the human body
16 with that particular rig?
17 A. That's probably a fair statement.
18 Q. All right. The points of
19 adjustment have to totally surround and contain
20 the student's body comfortably; correct?
21 A. Correct.
22 Q. And safely?
23 A. Correct.
24 Q. So how did this discussion you had
25 with Don on the telephone end?

MAYNARD

1
2 A. He was coming back to work for the
3 2010 season.
4 Q. Okay. And he worked between when
5 and when?
6 A. I don't remember the exact dates;
7 the beginning of the season until he got
8 hurt -- I mean, until he got fired.
9 Q. So before June 18, 2010, were there
10 any complaints about Don or his work?
11 A. What's June 18th?
12 Q. What?
13 A. What is June 18th?
14 Q. Well, did there come a time that
15 David Kengle -- when David Tenge (phonetic)
16 called you to make a complaint?
17 MR. ZABELL: Tenge or Kengle?
18 Q. Tenge --
19 A. Yes.
20 Q. -- called you to make a complaint
21 about Don? Yes?
22 A. Yes.
23 Q. Okay. And that was when, do you
24 remember?
25 A. I don't remember the exact time.

MAYNARD

1
2 Q. All right. Was it on or about June
3 21st or something like that, 2010?
4 A. I know it was on a Monday.
5 Q. Okay. Did it concern a jump that
6 happened on or about June 18, 2010?
7 A. Yes.
8 Q. All right. It was -- when you got
9 the call, it concerned a jump a few days
10 earlier; correct?
11 A. Correct.
12 Q. Okay. Who received the first call
13 from David Kengle?
14 A. The office.
15 Q. When you say "the office," what do
16 you mean?
17 A. He called in to Skydive Long
18 Island. One of the girls in the office
19 answered the phone.
20 Q. Who answered the phone?
21 A. It would be a guess. It could have
22 been Lauren, it could have been Megan. I was
23 not available right then at that point.
24 Q. What did Lauren or Megan tell you
25 that the call was about?

1 MAYNARD

2 A. That there was a customer complaint
3 and they gave me a name and a phone number.

4 Q. Did they say anything else, either
5 Lauren or Megan, about this customer complaint?

6 A. Not that I remember.

7 Q. Okay. And, so, how soon after you
8 got this customer complaint did you call the
9 number on the message pad?

10 A. When I was given the message pad, I
11 went into the office and called him.

12 Q. All right. And did he answer?

13 A. Yes, he did.

14 Q. Okay. And what was said in that
15 conversation?

16 A. He told me who he was, when him and
17 his girlfriend or fiancée was out on the Friday
18 before and his disappointment in the company
19 with the tandem master, who was representing
20 Skydive Long Island, did.

21 He said that his - it was either
22 his girlfriend or his fiancée, I'm not sure
23 which, it was her birthday. It was a present
24 to her for her birthday and that her birthday
25 was completely ruined and he would never

1 MAYNARD

2 recommend our company to anybody in the future.
3 And then he went on to tell me that -- what
4 transpired with Don and her.

5 Q. Well, what did he say?

6 A. He said that he had his hands on
7 her hips and made her feel very uncomfortable.
8 He put his head on her shoulder and was
9 whispering to her. And he kept reinforcing
10 that, "Don't worry that I'm so close because
11 I'm gay," and that made her feel very
12 uncomfortable.

13 And there was more -- according to
14 the gentleman, there was more of that
15 conversation when they were under canopy that
16 don't worry we're so close. You have nothing
17 to worry about, I'm gay.

18 Q. Anything else?

19 A. No.

20 Q. Okay. And what did you do in
21 response to that call?

22 A. At first I offered to give them a
23 free jump. They said they wanted nothing to do
24 with doing another skydive. I then offered to
25 give them their money back. He told me -- he

1 MAYNARD

2 said, "This call is not about me getting my
3 money back. I don't care about getting my
4 money back. I don't want my money back. I
5 just want to let you know how disappointed we
6 are in your company and what happened with my
7 girlfriend and how upset she was that she had
8 to be listening to these things from Don."

9 Q. And these things were --

10 A. Talking about -- about him being
11 gay and that subject matter.

12 Q. Well, was there -- the subject
13 matter of being gay?

14 A. Correct.

15 Q. And I believe that as -- in
16 response to this complaint, you met with Don
17 shortly thereafter; correct?

18 A. Yes, I did.

19 Q. Okay. And you asked him about the
20 jump; correct?

21 A. Yes.

22 Q. And it was three days after the
23 jump; correct?

24 A. Yes.

25 Q. All right. And he didn't remember

1 MAYNARD

2 the jump; correct?

3 A. I don't remember if he said he
4 didn't remember the jump.

5 Q. He also asked to see the video;
6 correct?

7 A. Yes, he might have.

8 Q. And you didn't allow him to see the
9 video, did you?

10 A. No, I did not.

11 Q. Wouldn't it have been easier for
12 Don to respond to the complaint if you had
13 shown him the video and refreshed his memory
14 about what happened?

15 MR. ZABELL: Objection.

16 You may answer.

17 A. No.

18 Q. Why not?

19 A. Because most of the skydive was
20 under canopy and the talk under canopy was no
21 one else is around to hear. It wouldn't be
22 there.

23 Q. Well, Don didn't remember who the
24 customer was; correct?

25 A. Well, but that's what he said.

1 MAYNARD

2 Q. Well, would it be a fair assumption
3 to make that if someone complained to you 30
4 jumps ago that he might not remember who was
5 complaining?

6 A. He might not.

7 Q. Okay. So wouldn't showing Don the
8 video have allowed him to remember who was
9 making this complaint?

10 A. It might have.

11 Q. Okay. Now, you didn't even speak
12 to Rosana Orelana, did you?

13 A. No, I did not.

14 Q. So, for all you know, David Kengle
15 could have been lying about the whole thing?

16 A. There was no reason to lie. This
17 man didn't want anything but to express his
18 disappointment of what happened to his fiancée
19 or girlfriend from things that were said that
20 made her very uncomfortable and it made my
21 customer very unhappy.

22 Q. You gave him his money back though?

23 A. Yes, I did.

24 Q. You sent him a check and he cashed
25 it?

1 MAYNARD

2 A. Yes, he did.

3 Q. He didn't have to do that, did he?

4 A. No, he didn't have to.

5 Q. Did you know that he was an
6 unemployed waiter at the time?

7 MR. ZABELL: Objection.

8 A. No.

9 Q. So you're telling me that in this
10 conversation he didn't want his money back and
11 he insisted he didn't want his money back, but
12 yet he took his money back?

13 A. When I hung up the phone with him,
14 he said he did not want his money and I decided
15 to send it to him anyway.

16 Q. Did you include a cover letter?

17 A. I don't remember.

18 + MR. ANTOLLINO: I'm going to call
19 for production of the cover letter. I'll
20 follow it up.

21 Q. And did you say before the end of
22 this conversation that you would be sending him
23 a refund?

24 A. Yes, I did.

25 Q. And what did he say?

1 MAYNARD

2 A. He said he didn't want his money.
3 He said, "This is not about the money."

4 Q. But, yet, he cashed the check
5 anyway?

6 A. Well, that's -- that has -- you
7 know, that has nothing to do with me.

8 Q. All right. Now, you met with Don
9 shortly after speaking to Mr. Kengle; correct?

10 A. Correct.

11 Q. And how soon after?

12 A. I don't remember exactly, probably
13 fairly soon.

14 Q. Within an hour?

15 A. Probably, if Don was there.

16 Q. Okay. And what did you say to Don
17 at that time?

18 A. I told him about the customer's
19 complaint. I was very upset. I reminded him
20 that when he was hired back that if there was
21 any incidents whatsoever he would have to leave
22 and I suspended him for a week.

23 Q. What do you mean by this; that you
24 reminded him when you hired him back that if
25 there were any incidents whatsoever he would

1 MAYNARD

2 have to leave, what does that mean?

3 MR. ZABELL: Objection.

4 A. If there was any complaints from
5 the customers of him talking about what he does
6 after work.

7 Q. You told Don this when?

8 A. Before he was hired back.

9 Q. When?

10 A. In 2009.

11 Q. But yet -- and so you suspended
12 him; correct?

13 A. Correct.

14 Q. And you also docked his pay;
15 correct?

16 A. Yes, I did.

17 Q. Did you feel you had the right to
18 do that?

19 A. It was an emotional moment. I
20 returned his pay to him in full.

21 Q. Were the customers complaining
22 about what Don -- what Don did after work? Don
23 was gay during work, wasn't he?

24 A. Excuse me?

25 MR. ZABELL: Objection.

1 MAYNARD
2 Q. Withdrawn. Don is gay during work;
3 correct?
4 A. It has nothing to do with him being
5 gay.
6 Q. But Don is gay during work;
7 correct?
8 A. I believe so. You can ask him.
9 Q. Do you believe that Don is gay?
10 A. He told me he was gay.
11 Q. Okay. Do you believe that he's
12 gay?
13 A. It doesn't matter what I believe.
14 Q. You're here and you have to answer
15 that question. Do you believe that Don is gay?
16 A. Yes.
17 Q. So Don is gay at work and after
18 work; correct?
19 A. I guess.
20 Q. All right. So you suspended Don
21 for a week and you took away his pay and it was
22 an emotional reaction that you took away his
23 pay?
24 A. Correct.
25 Q. So you didn't felt -- after

1 MAYNARD
2 reflection that you didn't have the right to do
3 that?
4 A. Correct.
5 Q. If you steal something from someone
6 and give it back later, does it take away the
7 fact that you've stolen something from them?
8 MR. ZABELL: Objection.
9 A. I didn't steal anything.
10 Q. Well, is that your Blackberry
11 there?
12 A. Yeah.
13 Q. Okay. If I take your Blackberry
14 and take it home and return it to you in a
15 week, is that legal?
16 MR. ZABELL: I could tell you,
17 Counselor, that I wouldn't let that
18 happen.
19 Q. If I do that, is it legal?
20 A. No.
21 Q. Okay. Had you ever docked
22 someone's pay before?
23 A. No, I do not think I did.
24 Q. The issue as to suspension, how
25 many times have you suspended other skydivers?

1 MAYNARD
2 A. There's been one other occasion.
3 Q. The one you testified to?
4 A. Excuse me?
5 Q. What was the occasion when you
6 suspended someone?
7 A. This past summer I suspended
8 somebody.
9 Q. Who did you suspend?
10 A. Duncan Shaw.
11 Q. And that was the fighting incident?
12 A. No.
13 Q. What did you suspend him for?
14 A. He was sent home halfway through
15 the day for flying into a wind blade, which
16 everyone was told not to do, in front of TV
17 cameras that were rolling for something that
18 was going on at the airport.
19 Q. So, you basically did not allow him
20 to work for half a day?
21 A. Correct.
22 Q. And he -- you gave him a specific
23 direction not to do something and he defied
24 your instruction; correct?
25 A. Correct.

1 MAYNARD
2 Q. And all he got was half a day?
3 A. He just hit a wind blade.
4 Q. He just -- did he do this
5 deliberately or was it a mistake?
6 A. I believe he did it deliberately.
7 Q. Why do you think he did it
8 deliberately?
9 A. Because I saw it.
10 Q. And why did you tell him not to do
11 it?
12 A. Because they're expensive and they
13 break and it's not his property.
14 Q. And so how much did this cost?
15 MR. ZABELL: Objection to the form.
16 A. It cost between 350 and \$500.
17 Q. How much does the -- does Altitude
18 Express make in a year?
19 A. How much does Altitude Express
20 make?
21 Q. Yeah, gross and net.
22 MR. ZABELL: Objection to the
23 compound nature of the question.
24 Q. All right. We'll start with gross.
25 MR. ZABELL: Objection. It's not a

1 MAYNARD
2 question. Are you withdrawing your
3 previous questions and attempting to ask
4 a new question?
5 MR. ANTOLLINO: Yes, I am. I'll do
6 it again. We all know what we're talking
7 about here, but if you want me to be --
8 MR. ZABELL: Appropriate.
9 MR. ANTOLLINO: Perfectly correct,
10 I will.
11 MR. ZABELL: Perfect, no, just
12 appropriate.
13 Q. What is the gross that you take in
14 at Altitude Express on an annual basis?
15 A. Last year?
16 Q. Yes.
17 A. Last year was 2.4 or 2.5 million.
18 Q. And how much of that was profit?
19 A. I don't recall exactly.
20 Q. Approximately?
21 A. The profit was less than 200,000.
22 Q. Are you the sole owner of Altitude
23 Express?
24 A. Yes.
25 Q. So those were all of your profits,

1 MAYNARD
2 yes?
3 A. Correct.
4 Q. And is that average for a year?
5 A. No.
6 THE VIDEOGRAPHER: We are now off
7 the record at 2:21 p.m.
8 (Recess taken.)
9 THE VIDEOGRAPHER: We are now on
10 the record at 2:27 p.m.
11 Q. All right, your profit was less
12 than \$200,000 last year and you said that that
13 was not typical?
14 MR. ZABELL: Objection.
15 Q. Is that correct?
16 MR. ZABELL: Objection.
17 You can answer.
18 A. Last year was a banner year
19 weather-wise. Skydiving, what the business
20 does is really based on how much we can jump
21 and last year was the best year we've ever had.
22 Q. And what is it usually, what is
23 your profit usually?
24 MR. ZABELL: Objection to the form.
25 A. I don't know exactly. It was less

1 MAYNARD
2 than what that was. Like I said, last year was
3 a banner year.
4 Q. So is it usually in the range of
5 100,000, 150,000?
6 A. 140, 150.
7 Q. And what is the net worth of the
8 company?
9 MR. ZABELL: Objection.
10 A. It depends on who you talk to. I
11 really don't know.
12 Q. If you gave it a guesstimate.
13 A. Probably a million and change.
14 Q. And what is your personal net
15 worth?
16 MR. ZABELL: Objection.
17 A. I guess that would be the same.
18 Q. All right. Now, after you met with
19 Don, was there anything else that you discussed
20 with him in the first suspension meeting that
21 we haven't covered already?
22 MR. ZABELL: Objection to the form.
23 You may answer.
24 A. I don't remember.
25 Q. How long did it take?

1 MAYNARD
2 MR. ZABELL: Objection to the form.
3 How long did what take?
4 MR. ANTOLLINO: The suspension
5 meeting.
6 A. Twenty minutes, a half an hour.
7 I'm not sure.
8 Q. And what did you discuss in this 20
9 minutes or 30 minutes?
10 A. We discussed the complaint from the
11 gentleman about his girlfriend and that he made
12 his girlfriend feel very uncomfortable with the
13 way he was touching her on her legs, the way he
14 was putting his head on her shoulder and just
15 the girl was very, very uncomfortable for the
16 entire jump and she even thought that maybe he
17 was hitting on her and he was covering up this
18 stuff by telling her that he was gay.
19 Q. Did you think that Don was hitting
20 on her?
21 A. It doesn't matter what I think.
22 Q. I'm asking you if you think that
23 Don was hitting on her?
24 A. I couldn't say if I thought he was
25 or not.

1 MAYNARD
2 Q. You knew Don was gay at the time;
3 correct?
4 A. He told me he was gay.
5 Q. Do you think it logical that he was
6 hitting on her?
7 A. I don't know anything about that
8 of -- of when someone is whatever, because I
9 don't know what someone does. I don't know
10 what anybody else does, whether they're
11 heterosexual, if they're gay or they're
12 bisexual other whatever. I don't know what
13 they're going to do a day-to-day basis, whether
14 they're going to change their mind about
15 something. So I can't say what I -- my thought
16 means nothing. I don't know what anybody else
17 is going to do.
18 Q. Well, didn't you have an obligation
19 to inquire as to whether or not he was hitting
20 on her?
21 MR. ZABELL: Objection, obligation
22 to what?
23 Q. You can answer.
24 MR. ZABELL: Obligation to what?
25 A. I was told.

1 MAYNARD
2 Q. Did you have an obligation to
3 inquire as to whether or not Don was hitting on
4 her?
5 MR. ZABELL: Objection, obligation
6 to what?
7 A. I have an obligation to my customer
8 to make sure that they are treated correctly
9 and they are not put in a position that they
10 were put in.
11 Q. But you didn't speak to
12 Ms. Orelana?
13 A. No, I did not.
14 Q. And you had no reason to believe
15 that she thought she was being hit on; correct?
16 A. Her boyfriend was a little nervous
17 and he thought that himself.
18 MR. ANTOLLINO: Could you read back
19 the prior question?
20 (Record read.)
21 THE WITNESS: What was that?
22 MR. ZABELL: You've answered the
23 question. If he wants to ask you a new
24 question, he can do that.
25 MR. ANTOLLINO: I will.

1 MAYNARD
2 Q. Other than Mr. Kengle's report, you
3 had no reason to believe that Ms. Orelana was
4 being hit on; correct?
5 A. Correct.
6 MR. ZABELL: Objection.
7 Q. You didn't speak to anyone who was
8 in the plane --
9 MR. ZABELL: Objection.
10 Q. -- correct?
11 MR. ZABELL: Objection. He already
12 told you he spoke to Don.
13 Q. Other than Don.
14 MR. ANTOLLINO: Thank you.
15 Q. Is that correct?
16 A. Correct.
17 Q. You didn't look at the video, did
18 you?
19 A. Yes, I did.
20 Q. You looked at the video
21 immediately?
22 A. I looked at the video that day.
23 Q. That day. Why didn't you show it
24 to Don?
25 A. I don't remember.

1 MAYNARD
2 Q. And what did you see on the video
3 that you thought was -- well, we'll look at the
4 video later, but as you sit here today, what do
5 you remember about seeing on that video that
6 was improper?
7 MR. ZABELL: Objection to the form
8 of the question.
9 You may answer.
10 A. I remember him sitting behind her
11 and looking at her and looking at the camera
12 and making kind of a weird look and there was
13 something with his hand like this (indicating)
14 and as he's doing this, he's looking back at
15 her, which I don't know what that meant at all.
16 MR. ZABELL: Let the record reflect
17 that the deponent was taking his right
18 hand and doing circles around the right
19 side of his face with his pointer finger.
20 Q. Isn't there usually a goofy
21 atmosphere that goes on in the rig --
22 MR. ZABELL: Objection.
23 Q. -- before a jump?
24 MR. ZABELL: Objection to the form
25 of the question.

1 MAYNARD

2 Q. You can answer.

3 MR. ZABELL: You may answer.

4 A. There are times -- yes, there are
5 goofy times.

6 Q. All right. Let's take a look at
7 what we have marked as Exhibit 3 to the
8 Winstock deposition, which is a 29-page
9 document of screen shots.

10 And I want you to look through
11 these and tell me if you think that there's
12 anything going on in any of these pages which
13 are numbered that is inappropriate, unsafe, or
14 improper.

15 A. (Reviewing.)

16 I'm not sure if when someone giving
17 someone else the finger on the plane is so
18 traumatic, but other than that, I don't see it.

19 Q. All right. So someone giving
20 someone the finger on the plane is not
21 something that is worthy of termination;
22 correct? You wouldn't want to terminate an
23 instructor who gave someone the finger on the
24 plane; correct?

25 A. No.

1 MAYNARD

2 Q. But if you saw it, you'd say don't
3 do that; right?

4 A. Yes.

5 Q. And you wouldn't suspend him for
6 that, would you?

7 A. No.

8 Q. All right. Giving someone the
9 finger is pretty extremely disrespectful, don't
10 you think?

11 MR. ZABELL: Objection.

12 A. I'm just looking at a photo and
13 these two guys are probably friends. No one
14 came in and complained and this guy wasn't
15 feeling bad and said that he was -- that he
16 was, you know, upset.

17 Q. Okay. Do you know this person?

18 MR. ZABELL: Ray, calm down.

19 THE WITNESS: Okay.

20 Q. Do you know that person?

21 A. I don't know who that person is.

22 Q. Do you know anyone in this plane?

23 A. Actually, I do know. Yeah, that's
24 Joe Fresh. That's one of our regular jumpers
25 and these two guys hang out all the time and

1 MAYNARD

2 that's Super John in the background.

3 Q. All right. So among -- other than
4 this, which you thought was mild, you didn't
5 think that there was anything else in here that
6 was inappropriate, improper or unsafe; correct?

7 A. Correct.

8 Q. And that would include, for
9 example, this goofy expression at page four
10 that Rich Winstock is giving the camera;
11 correct?

12 A. Yeah.

13 Q. And that would include this goofy
14 expression that Rich Winstock is giving the
15 camera in Number 6; correct?

16 MR. ZABELL: Object to the form of
17 the question.

18 A. That's correct.

19 Q. And that would include someone
20 putting someone's hand on one's posterior in
21 picture seven; correct?

22 A. Correct.

23 Q. And that would include someone
24 sticking their tongue out, one of your
25 instructors sticking his tongue out in number

1 MAYNARD

2 nine; correct?

3 A. Correct.

4 Q. And that would include someone
5 exiting the airplane where his mouth is very
6 close to her ear; correct?

7 A. Correct.

8 Q. And that would include -- that's
9 number eleven and that would include Number 12
10 where someone is wearing a mask?

11 A. Correct.

12 Q. Could that pose any safety hazard
13 at all?

14 A. No.

15 Q. And that would include hang fives
16 signals. You know what a hang five signal is,
17 right? Well, have you ever seen this signal
18 before that that girl on page 13 is showing?

19 A. Isn't that a -- a love symbol or
20 something?

21 Q. It's called a hang five signal, I
22 think, or maybe it's something else. You tell
23 me?

24 A. I don't know.

25 Q. Have you seen it before?

1 MAYNARD
2 A. I've seen it, but I don't know what
3 it means.
4 Q. All right. It's pretty common;
5 right?
6 A. I guess.
7 Q. And that would include someone
8 trying to give someone water in number 14;
9 correct?
10 A. Correct.
11 Q. And that would include in page 16
12 someone sticking his tongue out to the camera;
13 correct?
14 A. Correct.
15 Q. And that would include on page 20
16 Rich Winstock crossing his fingers to the
17 camera?
18 A. Correct.
19 Q. He's crossing his fingers because
20 he's saying let's wish us all good luck that we
21 don't get injured or die; correct?
22 MR. ZABELL: Objection.
23 A. You'll have to ask Rich Winstock
24 why he crossed his fingers.
25 Q. Well, have you ever seen anyone

1 MAYNARD
2 cross their fingers in a plane like that on a
3 video?
4 A. I've seen it.
5 Q. Why do people do that?
6 A. Wishing them luck, wishing luck.
7 Q. You want to good jump.
8 A. Yup.
9 Q. You don't want there to be any
10 injuries; correct?
11 A. I want it to be a good jump.
12 Q. What is this that's happening in
13 number 21 with all of these people attached to
14 each other? What is that? Is that a boogie?
15 A. No, that's freestyle -- not
16 freestyle. I've got a brain fart. It's a
17 hybrid jump.
18 Q. And there's nothing unsafe about
19 that, it's allowed?
20 A. There's nothing unsafe about that.
21 Q. It's pretty extreme though; right?
22 A. It's skydiving.
23 MR. ZABELL: Objection to the form
24 of the question.
25 Q. There's nothing improper -- in page

1 MAYNARD
2 22, do you recognize the person in this
3 picture?
4 A. Yeah.
5 Q. Who is that?
6 A. That's Kurt.
7 Q. Kurt who?
8 A. Kurt Gellinger (phonetic).
9 Q. He works for you?
10 A. Not anymore.
11 Q. Why not?
12 A. Because he moved.
13 Q. You didn't fire him, did you?
14 A. No.
15 Q. All right. And he was a good
16 instructor?
17 A. Yes, he was.
18 Q. And he's making in this picture a
19 face as if he's scared; correct?
20 A. He's got his mouth open.
21 Q. It looks like he's making a
22 feigned -- a pretend scared expression. Would
23 that be a fair characterization?
24 MR. ZABELL: Objection.
25 Q. How would you read his expression?

1 MAYNARD
2 MR. ZABELL: Objection to the
3 multiple questions. Are you intending on
4 asking three questions at once, Counsel?
5 Q. You can answer.
6 MR. ZABELL: You can pick any of
7 one of those three questions and provide
8 an answer to any one of them.
9 A. My answer is that I don't think he
10 looks scared at all.
11 Q. What does that expression mean to
12 you?
13 A. He's just having fun. He's got his
14 mouth open. He might be screaming, but he's
15 happy.
16 Q. He's goofy?
17 MR. ZABELL: Objection.
18 Q. Would you characterize it as being
19 goofy?
20 A. No.
21 Q. No?
22 A. He's having fun.
23 Q. Would you characterize it as being
24 goofy or not?
25 MR. ZABELL: He just said -- asked

1 MAYNARD
2 and answered.
3 A. No.
4 Q. Here is page 28. We have Rich
5 Winstock sticking his tongue out at the camera.
6 There's nothing inappropriate about that?
7 A. No.
8 Q. Would you characterize it as goofy?
9 A. No.
10 Q. No.
11 A. He's having fun.
12 Q. And here is Rich Winstock pictured
13 in page 29 with a first time tandem jump -- let
14 me put it this way, the album that it purports
15 to be from says, "First time tandem jumps";
16 correct?
17 A. Uh-huh.
18 Q. Do you recognize the passenger?
19 A. No.
20 Q. And Rich appears to have his hand
21 on her shoulder and their heads to be close to
22 each other; correct?
23 A. Correct.
24 Q. And there's nothing inappropriate
25 about that; correct?

1 MAYNARD
2 A. Correct.
3 Q. Did you happen to watch the video
4 made for Mr. Kengle?
5 A. No, I did not.
6 Q. At any time?
7 A. No.
8 Q. Were you aware that Ms. Orelana was
9 flirting with the camera in that video?
10 MR. ZABELL: Excuse me? Could I
11 have his question read back, please?
12 (Record read.)
13 MR. ZABELL: Objection.
14 A. No.
15 Q. Did Mr. Kengle tell you that there
16 had been a joke made before the passengers
17 exited the airplane?
18 A. I don't recall.
19 Q. Did he not, in fact, tell you that
20 one of the instructors other than Don made a
21 joke to the effect that, hey, I bet you didn't
22 think that your girlfriend was going to get
23 strapped to another guy?
24 MR. ZABELL: Objection, asked and
25 answered.

1 MAYNARD
2 A. I don't know.
3 Q. You don't know if he told you that?
4 A. No.
5 Q. If that joke was made, was it an
6 inappropriate joke?
7 A. I don't believe so.
8 Q. Why not?
9 A. Because I don't.
10 Q. Do you think it is standard
11 practice to make a joke like that?
12 A. That you're going to be strapped to
13 a guy?
14 Q. Yeah, that your girlfriend is going
15 to be strapped to another guy?
16 MR. ZABELL: Objection, asked and
17 answered. No matter how you place the
18 emphasis on the syllables, Counselor, you
19 still have asked the question at least on
20 three separate occasions.
21 Q. You can answer.
22 A. No, I don't think -- I don't think
23 that's a joke. It's a statement. They're all
24 male instructors.
25 Q. Well, what if someone complained

1 MAYNARD
2 about that joke being made, is that legitimate
3 complaint?
4 A. The statement of you didn't think
5 your girlfriend was going to be strapped to a
6 man today?
7 Q. Yeah. What if somebody complained
8 about that?
9 A. Well, they wouldn't be there to
10 skydive to begin with.
11 Q. Why?
12 A. Because, except for this year,
13 every instructor was a male. It's an
14 observation.
15 Q. But it's an observation that calls
16 attention to the fact that someone's girlfriend
17 is in close contact with another man; correct?
18 A. Correct.
19 Q. What if someone complained about
20 that joke?
21 A. No one has.
22 Q. Well, what if someone did, would
23 you instruct your instructors not to engage in
24 that type of banter?
25 A. Yes.

1 MAYNARD
2 Q. All right, now, you indicated that
3 you talked for 20 minutes to Ray in the
4 suspension meeting and what else did you talk
5 to Ray about -- I'm sorry, to Don about during
6 that suspension meeting other than what you
7 testified about to now?
8 MR. ZABELL: Object to the form of
9 the question.
10 You may answer.
11 A. The meeting was about him being
12 suspended. I said 20 minutes. I'm not sure if
13 it was 20 minutes. I don't remember the exact
14 amount of time. We were in there and we were
15 talking and I told him that I had to let him
16 go.
17 Q. No, this is the suspension meeting.
18 A. The suspension, I'm sorry.
19 Q. So it could have been five minutes
20 from what you can recall?
21 A. It might have been. I don't
22 remember.
23 Q. All right. Did there come a time
24 later that you saw Rich Winstock and Don
25 speaking about this suspension?

1 MAYNARD
2 A. Before Don left that day, you mean?
3 Q. Yes.
4 A. I think I did see them talking.
5 Q. And did you not say, oh, you're
6 talking about this and then run out of the door
7 and slam the door?
8 A. I don't remember that.
9 Q. Did you slam the door that day at
10 any time?
11 A. I don't recall.
12 Q. I understand that during the week
13 between the suspension and the termination, you
14 spoke to a lawyer; is that correct?
15 A. That's correct.
16 Q. Who was that lawyer?
17 THE WITNESS: Is that lawyer
18 confidentiality?
19 MR. ZABELL: You can identify him.
20 A. Harvey Arnoff.
21 Q. What?
22 A. Harvey Arnoff.
23 Q. Okay. Well I'm going to show you
24 what I've marked as Exhibit 23.
25 (Exhibit R-23, transcription of

1 MAYNARD
2 tape, marked for Identification.)
3 Q. And I'll just let you know that
4 this is a transcript that I've had written
5 up -- I've attempted to write up, have written
6 up, someone else wrote it up and I made some
7 changes. You don't have to believe anything
8 I'm telling you, but we're going to read the
9 transcript and listen to the tape and I'm going
10 to ask you whether it fairly and accurately
11 represents what is on the tape or if there are
12 some changes you'd like to make, we'll make
13 those changes. But before I go there --
14 MR. ZABELL: Do you have a copy for
15 me, Counselor?
16 MR. ANTOGLINO: Yes, I do.
17 Q. But before I go there you said you
18 met with Harvey Arnoff. How long has Harvey
19 Arnoff been your lawyer?
20 A. Since the early '90s.
21 Q. And what type of law does he
22 practice?
23 A. I think he practices everything.
24 He's not --
25 Q. He's a general practitioner?

1 MAYNARD
2 A. Yes.
3 Q. Did you call him or did you go in
4 and meet with him?
5 A. I drove in and met with him.
6 Q. How long was the meeting?
7 MR. ZABELL: Objection.
8 A. I don't know the exact amount of
9 time.
10 Q. Where does he work?
11 A. Excuse me?
12 Q. Where does Harvey Arnoff work?
13 A. In Riverhead.
14 Q. Do you know the exact address?
15 A. 206 Roanoke Avenue.
16 Q. Okay. Did you have a conversation
17 with Rich Winstock during this week before you
18 terminated Don? Did you have a conversation
19 with Rich Winstock about Don?
20 MR. ZABELL: Objection.
21 A. Yes.
22 Q. All right. And when did that
23 conversation take place?
24 A. I don't remember the day.
25 Q. All right. And how long did the

1 MAYNARD
 2 conversation take?
 3 A. I don't remember that either.
 4 Q. What was said in the conversation?
 5 A. We just talked in general what
 6 happened.
 7 Q. Okay.
 8 A. And what I was told.
 9 Q. Are you aware that Rich Winstock
 10 testified that you didn't tell him anything
 11 about the complaint that was made?
 12 A. No.
 13 Q. He did say that. Do you think he's
 14 mistaken or -- do you recall telling him what
 15 had happened?
 16 MR. ZABELL: Objection to the
 17 form --
 18 A. No, I did not.
 19 MR. ZABELL: -- for the multiple
 20 questions. You have may now, and only
 21 now, answer the question.
 22 A. No, I really don't remember what we
 23 talked about.
 24 Q. All right. And what did Rich
 25 recommend that you do?

1 MAYNARD
 2 A. I don't remember.
 3 Q. Is it not true that Rich
 4 recommended that you write up a reprimand and
 5 put it in Don's file and say that this has
 6 nothing to do with your sexual orientation to
 7 give him clear direction as to how he is to
 8 behave in the future; is that not true?
 9 MR. ZABELL: Objection to the form
 10 of the multiple questions. You may pick
 11 a question and answer it.
 12 A. I don't remember that.
 13 Q. Did he tell you that he thought
 14 that Don was a good instructor and he didn't
 15 want you to fire done Don?
 16 A. No, I don't remember that at all.
 17 Q. Are you aware that he testified to
 18 that?
 19 MR. ZABELL: Objection.
 20 A. No.
 21 Q. If he testified to that, would that
 22 be a lie or would that be just a
 23 misunderstanding?
 24 MR. ZABELL: Objection. There are
 25 other options as well and feel free in

1 MAYNARD
 2 answering that question to utilize them.
 3 A. I don't know.
 4 Q. Did he tell you to fire Don?
 5 A. No.
 6 Q. Did he and Don have a good
 7 relationship?
 8 A. I guess.
 9 Q. Do you respect Rich Winstock's
 10 opinion in general?
 11 A. In general.
 12 Q. Do you think that he is -- well,
 13 what is his role at Skydive Long Island?
 14 MR. ZABELL: Objection to the form.
 15 You may answer.
 16 A. He's the chief instructor.
 17 Q. And you've hired him for many
 18 years; correct?
 19 A. Correct.
 20 Q. Were you aware that on occasion
 21 he's told certain skydivers -- he's offered the
 22 information that he's married and has kids?
 23 A. I guess.
 24 Q. Are you aware of that?
 25 A. It's common knowledge that he's

1 MAYNARD
 2 married and has kids.
 3 Q. Well, if someone comes in to the
 4 drop zone for the first time, has never met
 5 Rich Winstock, it's not common knowledge to
 6 that person that he's married and has kids;
 7 correct?
 8 A. Correct.
 9 Q. Are you aware that Rich Winstock
 10 has offered, without being asked, tandem
 11 passengers that he is married and has kids?
 12 MR. ZABELL: Objection to the form
 13 of the question and the manner in which
 14 it has been asked. You may, if you can,
 15 answer the question now.
 16 A. I don't know that for a fact.
 17 Q. All right. If he did, was there
 18 anything improper about that?
 19 A. I wouldn't think so.
 20 Q. It's personal information; correct?
 21 A. Personal information.
 22 Q. The answer is yes?
 23 A. Yes.
 24 Q. All right. So here is the proposed
 25 transcript and I'm going to ask you to take a

1 MAYNARD
 2 look at this and before we start reading it, I
 3 want to ask you, were you aware at the time
 4 that you fired Don that you were being
 5 recorded?
 6 A. No, I was not aware.
 7 Q. Okay. Do you think there was
 8 anything improper in Don recording that
 9 meeting?
 10 A. I don't know. I don't know.
 11 Q. So you have no opinion one way or
 12 the other?
 13 A. I think I should have been told if
 14 I was going to be recorded like everyone is
 15 supposed to do, I guess.
 16 Q. Why?
 17 A. Because that's what people do.
 18 You're told ahead of time I'm going to record
 19 this conversation for whatever purposes. So if
 20 there was nothing to hide, he should have said
 21 I'm recording it.
 22 Q. Well, if he had told you he was
 23 recording it, would you have spoken as much, do
 24 you think?
 25 MR. ZABELL: Objection.

1 MAYNARD
 2 A. We'll never know.
 3 Q. You've heard the tape by now,
 4 right?
 5 A. Yes, I have.
 6 Q. We're going to get it out and
 7 listen to it and we can stop at any time.
 8 MR. ZABELL: Uh, what?
 9 MR. ANTOLLINO: Don't make fun of
 10 me when I say "uh" or something like
 11 that. You really are extremely rude when
 12 you make fun of me for misspeaking. Your
 13 attempt is to be a bully and I'm not
 14 going to take it anymore. I'm
 15 documenting every single time that you do
 16 it, and at the end of the litigation the
 17 judge is going to have a whole list
 18 including when you said something that
 19 you're -- that I heard at a deposition
 20 about me.
 21 MR. ZABELL: Counselor, your
 22 threats are unavailing. I am simply
 23 trying to get you to clear up this
 24 record, which you are butchering. If you
 25 are incapable of asking a question

1 MAYNARD
 2 appropriately, I have a right to object
 3 to it.
 4 And if you are going to make a
 5 false start for a question, I have a
 6 right to ask you to clear the transcript
 7 of your false starts.
 8 Your failures to do so are not my
 9 issue and do not be ashamed that I am
 10 calling them to your attention.
 11 MR. ANTOLLINO: I'm not ashamed.
 12 MR. ZABELL: Well you're clearly
 13 acting that way.
 14 MR. ANTOLLINO: You're a bully.
 15 Q. All right, we're going to listen to
 16 the tape now.
 17 (Whereupon video is played.)
 18 Q. All right, hold on. Let's start
 19 over.
 20 MR. ZABELL: Start what over,
 21 Counselor.
 22 MR. ANTOLLINO: We're going to
 23 start over because the court reporter
 24 needs to pick up the tape?
 25 MR. ZABELL: I think you should

1 MAYNARD
 2 because we're not obligated to accept
 3 this homemade transcript of the audio.
 4 So I'm going to request that you take
 5 down everything that's said on the video.
 6 MR. ANTOLLINO: Try your best.
 7 TRANSCRIPTION OF AUDIO:
 8 "Mr. Maynard: All right, after a
 9 week of me thinking about the entire
 10 situation, from day one that you came
 11 here years ago and everything, uh, first
 12 off, I'm going to give you the refund
 13 back of the people because I thought
 14 about it and I shouldn't take that money
 15 from you.
 16 Mr. Zarda: All right.
 17 Mr. Maynard: But also, I'm going
 18 to let you go because this just isn't
 19 working.
 20 Mr. Zarda: What's not working,
 21 Ray?
 22 Mr. Maynard: It's not working.
 23 Mr. Zarda: Well what is 'it'?
 24 Mr. Maynard: That's all I have to
 25 say. I went -- I went -- I went and

1 MAYNARD
2 spoke to my attorney. I explained
3 everything to him exactly the history of
4 everything and that and he said that, you
5 know, I have to let you go.
6 Mr. Zarda: Well, Ray --
7 Mr. Maynard: He's -- I'm letting
8 you go.
9 Mr. Zarda: All right. Okay, well
10 let me --
11 Mr. Maynard: I'm not going to --
12 that's all, I'm going to say.
13 Mr. Zarda: Well, Ray, you haven't
14 told me what I've been accused of.
15 What did they --
16 Mr. Maynard: It's not -- let me
17 just put it this way, it's not working
18 and that's all I'm going to say. It's
19 not working for me for you to be here
20 anymore and that's -- there's no more
21 explanation. There's nothing else I'm
22 going to say. That's all on my
23 attorney's advice.
24 Mr. Zarda: Well, you just told me
25 that a gay issue came up with these

1 MAYNARD
2 people.
3 Mr. Maynard: It wasn't a gay
4 issue. It was a personal issue. When I
5 told you the other day -- that's -- I'm
6 not going to get into it. Because if it
7 was a heterosexual thing -- if Richie
8 Winstock was telling some chick of his
9 escapades, he would be in the same
10 situation. It's not about gay. It's
11 about your personal life, talking to
12 people about it. Not -- I don't care --
13 I don't care what you do and I don't care
14 what those guys do, but what I do care
15 about is that it's not shared with my
16 customers.
17 Mr. Zarda: Okay, well --
18 Mr. Maynard: Okay? So don't take
19 this as a gay thing. It's not a gay
20 thing. It's about your personal
21 escapades and what you're telling people,
22 what you're saying. So --
23 Mr. Zarda: Okay, well, can I
24 before -- can I say something?
25 Mr. Maynard: Sure.

1 MAYNARD
2 Mr. Zarda: Okay. You said in
3 here, I know you were upset, that that
4 came up and that they were offended and
5 then you said something about this girl,
6 I took the girl, being inappropriately
7 touched. You said that.
8 Mr. Maynard: Well, she felt
9 that -- that you were holding her hips in
10 a way that she was very uncomfortable.
11 Mr. Zarda: Ray, does that make any
12 sense to you?
13 Mr. Maynard: Don --
14 Mr. Zarda: I mean, really.
15 Mr. Maynard: Don, listen, I'm not
16 going to explain anything else to you.
17 That's -- this is what is happening, this
18 is what's going to happen and I'm sorry,
19 but that's -- that's what I'm saying.
20 Mr. Zarda: Okay. What about -- I
21 mean, when you say 'personal escapades,'
22 these guys -- I mean -- I mean, Marco
23 runs around saying everything is gay.
24 Petretti still is in the 2001 mode --
25 Mr. Maynard: But this is not --

1 MAYNARD
2 Mr. Zarda: -- he jokes about it.
3 Mr. Maynard: They're not talking
4 to the customers. They're not saying
5 things to the customers that you're
6 saying to the customers.
7 Mr. Zarda: What was I -- what did
8 I say to the customer?
9 Mr. Maynard: Listen, I'm done.
10 You know, this is what -- I mean, I
11 thought about this for a very long time.
12 I went to my lawyer. I got legal advice
13 of what I should do here and I'm doing
14 what I feel I have to do. This is not
15 working anymore for me or for my company
16 to have you work here.
17 Mr. Zarda: But based on -- okay,
18 what are you letting me go for?
19 Mr. Maynard: I'm -- because it's
20 not working.
21 Mr. Zarda: Okay, you suspended me
22 for a week, okay. So, I mean, did you
23 decide a week ago that something wasn't
24 working? You made a decision a week ago.
25 So what did I get suspended for? I mean,

1 MAYNARD
2 I've been sitting in the dark at home.
3 Mr. Maynard: You were suspended
4 for completely ruining somebody's
5 birthday because of you talking about
6 your personal life to them. That is it
7 in a nutshell.
8 Mr. Zarda: I ruined somebody's
9 birthday because I got -- okay, that's
10 fine. That's not --
11 Mr. Maynard: They were very
12 sincere on the phone. There was nothing
13 about -- they weren't demanding their
14 money back or nothing like that. They
15 were just saying there's no way can I
16 ever give my fiancée her birthday back
17 because it was taken away because of you
18 putting your head on her shoulder,
19 whispering in her ear and talking about,
20 'Don't worry about me, I'm gay,' under
21 canopy and everything else.
22 Mr. Zarda: Ray, did you think at
23 all to -- that maybe these people just
24 were looking for a free jump and that
25 they --

1 MAYNARD
2 Mr. Maynard: No, because I offered
3 them a free jump. I offered them
4 everything and they didn't want it.
5 Mr. Zarda: No, no, no, I mean --
6 Mr. Maynard: They didn't want it.
7 They didn't want it.
8 Mr. Zarda: I mean, that that's
9 what they thought about that they could
10 just use this --
11 Mr. Maynard: Absolutely not.
12 Absolutely not. It doesn't even matter.
13 It doesn't matter. The decision is that
14 this is not working anymore for me for
15 you to be working here.
16 Mr. Zarda: Ray, did you
17 investigate at all? When did they call?
18 When did they call, on Friday or Monday?
19 Because you let me work all through the
20 weekend.
21 Mr. Maynard: They called on
22 Monday.
23 Mr. Zarda: Okay, on Monday.
24 Mr. Maynard: And if they had
25 called on Friday, that would have been

1 MAYNARD
2 done then.
3 Mr. Zarda: So you made this
4 decision really fast on Monday. Did you
5 investigate -- did you ask any of the
6 other people on the plane? There was a
7 bunch of people on the plane. Did
8 Don say to them --
9 Mr. Maynard: Things happened under
10 canopy, Don. Things were said under
11 canopy. There was nobody there. There's
12 nobody there to see you do what you're
13 doing.
14 Mr. Zarda: Okay.
15 Mr. Maynard: It doesn't even
16 matter. It's over.
17 Mr. Zarda: What did she say
18 happened under canopy?
19 Mr. Maynard: It's over. I -- just
20 about -- about -- about, you know, don't
21 be worried, I'm gay. Don't worry about
22 me being so close. I have to go. I have
23 to go do work. You can take care of what
24 you have to care of, get your stuff out.
25 Mr. Zarda: Ray, I came up here

1 MAYNARD
2 from a long way.
3 Mr. Maynard: It's not working
4 anymore. It's over."
5 MR. ZABELL: Counselor, I'm
6 advising you that this transcript of the
7 audio termination is inaccurate. There
8 were many things that I've noticed that
9 are missing or analysis transcribed so we
10 will not be accepting this as an accurate
11 transaction although I believe now madam
12 reporter that is taken down what has been
13 said.
14 Q. All right. Do you believe that
15 this is -- there are any mistakes in that
16 transcript, Mr. --
17 MR. ANTOLLINO: And I appreciate
18 your speaking objection, but I'm going to
19 ask the witness --
20 Q. But do you believe that there are
21 any mistakes in that transcript?
22 A. I don't know if every word is
23 tracked. I wasn't watching it that closely.
24 Q. Do you think that it's
25 substantially accurate?

1 MAYNARD
2 A. Yes.
3 MR. ZABELL: Objection. Okay.
4 Q. Do you want to listen to it again
5 and read it a little bit more closely? And I
6 see your counsel is making a speaking -- is
7 coaching you to say yes. Would you like to
8 read it again and look at it more closely?
9 MR. ZABELL: I have said nothing at
10 all on the record.
11 MR. ANTOLLINO: You've nodded your
12 head.
13 MR. ZABELL: It's not different
14 than what you're doing right now,
15 Counselor.
16 Q. Would you like to?
17 A. Sure, why not.
18 (Whereupon video is played.)
19 MR. ZABELL: The videographer
20 should be taking it down.
21 MR. ANTOLLINO: Okay, that's fine.
22 And we'll say tape being played in the
23 record and get.
24 (Whereupon, tape is played.)
25 Q. Okay. You've had an opportunity to

1 MAYNARD
2 listen again. It's not a perfect transcript
3 but would you agree that it's substantially
4 accurate?
5 A. Yes, there are a few things that I
6 couldn't understand. I marked in between where
7 I couldn't understand things.
8 Q. All right. Why don't you tell me
9 where you couldn't understand. You've marked a
10 few things.
11 A. It was in between --
12 Q. Two people speaking at once.
13 A. I guess. I don't know.
14 Q. So you put a question mark on line
15 five, and then --
16 A. Because things were being said and
17 you couldn't understand them on the tape and
18 that's what every one of these were the same
19 thing.
20 Q. Okay. So that's where two people
21 were talking?
22 A. I would guess.
23 Q. All right. And so you put a little
24 mark on 15, on line 15 and line 19 and -- so
25 you put a lot of -- we'll make another copy of

1 MAYNARD
2 this and we'll call this Exhibit 22 -- 23-A
3 because these are your corrections, all right.
4 Do you want to do that?
5 MR. ZABELL: As long as you give me
6 copies.
7 MR. ANTOLLINO: We'll make copies.
8 MR. ZABELL: Make a copy.
9 THE VIDEOGRAPHER: We are now off
10 the record at 3:13 p.m.
11 (Recess taken.)
12 THE VIDEOGRAPHER: This is tape
13 five of the deposition of Raymond
14 Maynard. We are now on the record at
15 3:20 p.m.
16 (Exhibit R-23-A, marked-up
17 transcription, marked for
18 identification.)
19 Q. Mr. Maynard, I've marked as 23-A
20 your marked-up exhibit of my attempt at
21 transcripts and you've noted that on various
22 points that there were two people speaking at
23 once and so you weren't exactly sure there
24 were -- it was a completely accurate
25 transcript. Is that a fair statement?

1 MAYNARD
2 MR. ZABELL: Objection.
3 A. Yeah.
4 Q. But would you agree that it's
5 substantially accurate?
6 MR. ZABELL: Objection, asked and
7 answered.
8 A. Yes.
9 Q. Did you feel like I left anything
10 out, other than the discussions with Lauren
11 that I didn't transcribe, did you feel like
12 anything was left out that was important?
13 A. I don't think so.
14 Q. All right. All right, so -- at the
15 end. We didn't play the part about Lauren, but
16 you heard the tape before when Don is talking
17 to Lauren; correct?
18 MR. ZABELL: Objection to the form
19 of the question. You may answer.
20 A. Yes, I did hear the tape.
21 Q. All right. And I believe at the
22 end of the tape he asked Lauren if these people
23 got video; correct?
24 A. I don't remember if that was a
25 question to her.

1 MAYNARD
2 Q. All right. Let me just play that
3 part of the tape. That's not on the
4 transcript. That's just a yes or no. So just
5 a second:
6 TRANSCRIPTION OF AUDIO:
7 "Mr. Zarda: Okay, could you --
8 Lauren, could you print me just the rest
9 of my jumps.
10 Lauren: Sure, not a problem.
11 Mr. Zarda: And, you know what,
12 the -- the one that always gets -- it's
13 got --
14 Lauren: I'll bring it. You
15 know --
16 Mr. Zarda: -- jumper one.
17 Lauren: That's okay. I'll bring
18 it right out to you. Not a problem. If
19 you want to grab your stuff, I'll bring
20 it right out to you.
21 Mr. Zarda: It's going to take a
22 little bit for that.
23 Lauren: That's okay.
24 Mr. Zarda: And --
25 Lauren: I'll bring it right out to

1 MAYNARD
2 you, Don.
3 Mr. Zarda: Did these people get
4 video?
5 Lauren: Don, I don't know what
6 information --
7 Mr. Zarda: Would you just please
8 look and see if they got video?
9 Lauren: Don, Ray's made a
10 decision. I have to go with what Ray
11 says.
12 Q. Now after having listened to the
13 portion where Don, in talking to Lauren, it
14 appears he asked her repeatedly whether these
15 people got video; is that right?
16 A. It sounds like.
17 Q. So that would lead you to the
18 conclusion that he didn't know one way or the
19 other; correct?
20 MR. ZABELL: Objection. Didn't
21 know one way or the other with what?
22 Q. Whether or not they got video;
23 correct?
24 A. Possibly.
25 Q. Okay. And it would also lead you

1 MAYNARD
2 to the conclusion that he had never seen the
3 video; correct?
4 A. It could.
5 Q. And he wanted to see the video;
6 correct?
7 A. I think so.
8 Q. Did you know that we didn't get the
9 video until we subpoenaed it or demanded it in
10 this case?
11 MR. ZABELL: Objection to the
12 form --
13 A. I didn't know it.
14 MR. ZABELL: -- and to the
15 representations contained therein you may
16 answer.
17 Q. I was just asking if you knew that.
18 A. Excuse me?
19 Q. I was just asking if you knew that.
20 A. No, I didn't know that.
21 Q. When you say you looked at the
22 video, did you also look at the out takes?
23 A. I'm trying to think which one I
24 saw. I'm not sure if I saw the raw footage or
25 the edited version.

1 MAYNARD
2 MR. ANTOLLINO: All right. So I'm
3 going to call for production of the raw
4 footage. I think that's responsive and
5 I'll put it in a letter to you.
6 MR. ZABELL: You've already been
7 given the raw footage.
8 MR. ANTOLLINO: I have?
9 MR. ZABELL: Even your client is
10 shaking his head yeah. Off the record.
11 (Discussion off the record.)
12 Q. Let's take a look at line eight
13 from 23-A where you say, "That's all I have to
14 say. I spoke to my attorney. I explained
15 everything to him exactly the history and
16 that" -- I'm sorry, withdrawn.
17 You said, "That's all I have to
18 say. I spoke to my attorney, I explained
19 everything to him exactly the history of
20 everything and that and he said that, 'You
21 know, I have to let you go.'" Do you see that?
22 A. Yes.
23 Q. And is that what your attorney, in
24 fact, told you?
25 MR. ZABELL: Objection. You do not

1 MAYNARD
2 have to disclose communications that were
3 given to you by your attorney.
4 Q. All right. So --
5 MR. ZABELL: To the extent you can
6 answer that without revealing what your
7 attorney told you, you may, but he's
8 asking you specifically what your
9 attorney told you.
10 A. I'm not sure how to answer that.
11 + MR. ANTOLLINO: I think let's
12 mark that for a ruling because I think
13 the attorney/client privilege has been
14 waived. We don't have to call the judge
15 on this, but it will come up eventually.
16 Q. And on page two, line -- or
17 paragraph 16, do you see there where it says at
18 the last sentence, "that's all on my attorney's
19 advice." Do you see that?
20 A. Yes.
21 Q. And is that a true sentence,
22 "That's all on my attorney's advice"?
23 A. That's correct.
24 Q. And what did your attorney advise
25 you?

1 MAYNARD
2 MR. ZABELL: Objection. Same
3 objection based upon privilege.
4 MR. ANTOLLINO: So you're going
5 to -- let's just make the record clear.
6 You're not going to allow me to inquire
7 into the substance of the discussion
8 between Harry Arnoff and Ray Maynard in
9 any respect whatsoever; so no matter how
10 many times he's referred to legal advice
11 and attorneys advice in this transcript,
12 that's going to be the same direction to
13 the witness. Is that a fair statement?
14 MR. ZABELL: Correct. That is a
15 fair statement.
16 MR. ANTOLLINO: All right. We'll
17 take this up -- we'll mark those all for
18 a ruling at a later time.
19 MR. ZABELL: You can certainly
20 attempt to do it at a later time, but
21 you're allowed one shot at a deposition
22 and nothing else.
23 MR. ANTOLLINO: All right. So then
24 I think that we have to call the court
25 then. If you're saying that you're not

1 MAYNARD
2 going to reproduce your client or you're
3 going to fight reproducing your client
4 for not answering questions, I mean then
5 that -- listen -- off the record -- on
6 the record. All right.
7 Do you believe that you have --
8 you've mentioned at your deposition that
9 you had the right to recall my client if
10 the judge overrules my objections to
11 certain privileges; is that right?
12 MR. ZABELL: That's correct.
13 MR. ANTOLLINO: All right. So are
14 you saying that you believe that you can
15 recall my client if the judge overrules
16 the objections, but you can't -- I can't
17 recall Mr. Maynard if the judge overrules
18 your objections?
19 MR. ZABELL: The difference is my
20 objections were sub juris.
21 MR. ANTOLLINO: All right. Well,
22 let's call the court and I'm going to ask
23 the judge if we can brief this and you
24 can object. Let's call the court.
25 I don't think we have to reach this

1 MAYNARD
2 now, but I want to avoid a future fight
3 with Saul Zabell. So I'm going to look
4 up the court's number and call and see if
5 we can deal this because I think this
6 needs a letter brief at least.
7 THE VIDEOGRAPHER: We are now off
8 the record at 3:29 p.m.
9 (Recess taken.)
10 THE VIDEOGRAPHER: We are now on
11 the record at 3:43 p.m.
12 MR. ANTOLLINO: I'd just like to
13 state for the record that we called the
14 court. The judge was not available to
15 rule and the clerk is going to call us
16 back to let us know if the judge wants to
17 rule now or have argument, or have
18 briefing on this.
19 Q. Okay. So what was the last
20 question and answer?
21 (Record read.)
22 Q. Let's look at paragraph 18. In the
23 third -- one, two, third, fourth sentence, you
24 stated, "Because if it was a heterosexual, if
25 Rich Winstock was telling some chick about his

1 MAYNARD
2 escapades, he would be in the same situation."
3 Do you see that?
4 A. Yes.
5 Q. And what is a chick?
6 A. Excuse me?
7 Q. What is a chick? What do you mean
8 by chick?
9 A. A woman.
10 Q. Is it a -- do women like to be
11 called chicks?
12 A. Some do, some don't.
13 Q. Okay. What -- if Rich Winstock was
14 telling some chick about his escapades, what
15 did you mean by that?
16 A. If he's out with somebody.
17 Q. What do you mean by that?
18 A. If he's out and he's talking about,
19 I guess, intense matters.
20 Q. What intense matters?
21 A. Whatever could be going on, if he
22 was bragging about things.
23 Q. If he was what?
24 A. If he was bragging about things.
25 Q. Bragging about what?

1 MAYNARD
2 A. Whatever.
3 Q. Can you give me an example of what
4 escapade Rich Winstock would tell to a woman
5 that would be grounds for termination?
6 MR. ZABELL: Objection to the form.
7 You can answer.
8 A. If any of my instructors, including
9 Richie Winstock, was telling the customers of
10 any kind of sexual activities, that would fall
11 under that.
12 Q. Well, Don wasn't talking about
13 sexual activity. He was talking about his
14 sexual identity, wasn't he?
15 A. No. I was told that he was talking
16 specifically about things he did after work.
17 Q. What things that he did after work?
18 A. The men he was with.
19 Q. The men he was with. What men was
20 he with?
21 A. I have no idea.
22 Q. What did David Kengle say that
23 Rosana told him about the men he was with?
24 MR. ZABELL: Objection to the form
25 of the question, mischaracterizes

1 MAYNARD
2 testimony.
3 A. That he was talking about him being
4 gay and going out and doing this and doing
5 that.
6 Q. Being gay and going out and doing
7 this and doing that, what was he going out --
8 what does that mean? Going out and doing what?
9 MR. ZABELL: Objection to the form
10 of the question. Objection to the
11 multiple questions. You may pick a
12 question and provide an answer, if you
13 can.
14 A. He told me that besides in the
15 airplane the way he was touching her thighs and
16 having his head on her shoulder it made her
17 feel very uncomfortable. She was very upset
18 about that and he made remarks under canopy
19 that, "Don't worry, I'm gay," and went on about
20 that.
21 Q. So he didn't say anything about
22 going out and doing this and going out and
23 doing that; correct?
24 MR. ZABELL: Objection.
25 Q. It's just what you just testified

1 MAYNARD
2 to right now; correct?
3 A. Right.
4 MR. ZABELL: Objection.
5 Q. And it wasn't her thighs that she
6 felt were uncomfortable, it was hips; correct?
7 MR. ZABELL: Objection.
8 A. Hips, thighs, you know, the same
9 thing.
10 Q. Okay. The hips, there are two
11 attachments at the hips; correct?
12 A. Uh-huh.
13 Q. If Don had to choose between safety
14 in adjusting the hips and comfort, which -- in
15 adjusting the straps of the hips, which would
16 you prefer that he choose?
17 MR. ZABELL: Objection to the form.
18 A. He would choose to do the right
19 thing for safety, but not make the customer
20 feel uncomfortable.
21 Q. Do you feel that Don ever made any
22 other employees -- I'm sorry, withdrawn.
23 Do you feel that Don made any other
24 passengers physically uncomfortable in your
25 aircrafts?

1 MAYNARD
2 A. I think it's possible, but people
3 didn't come and make a complaint.
4 Q. So you're not aware of anything;
5 correct?
6 A. Correct.
7 Q. Your opinion of Don was that he was
8 a good instructor; correct?
9 A. Correct.
10 Q. And he's had more jumps than you;
11 correct?
12 A. Correct.
13 Q. And you knew Don was gay; correct?
14 A. Correct.
15 Q. And you trusted his judgment in
16 adjusting the straps to give as much safety and
17 balance that with comfort?
18 MR. ZABELL: Objection to the form.
19 You may answer.
20 A. Correct.
21 Q. And you didn't call Ms. Orelana and
22 say what was it about the hips that made you
23 feel uncomfortable; correct?
24 A. Correct.
25 Q. And it could have been something

1 MAYNARD
2 like he was adjusting the straps down there;
3 correct?
4 MR. ZABELL: Objection to the form.
5 You may answer.
6 A. It could.
7 Q. And if it was he was adjusting the
8 straps down there, that would not be a
9 legitimate complaint; correct?
10 MR. ZABELL: Objection to the form.
11 You may answer.
12 A. Correct.
13 Q. And a tandem instructor, in fact,
14 has to not only adjust the straps, but check
15 them and make sure that they're in place
16 throughout the tandem experience; correct?
17 A. Most of it should be done before
18 they get on the airplane. The final
19 adjustments are normally taking the side straps
20 and making them tighter. The harness -- the
21 tandem passenger harness, there is -- there is
22 very little time or there's very little things
23 that I even know about anybody doing
24 adjustments in the plan about the passenger
25 harness after you get on the airplane.

1 MAYNARD
2 Q. But you want to check the
3 attachments to make sure they're in place;
4 correct?
5 A. Correct.
6 Q. And that would require him to touch
7 the attachments and see that they were in
8 place; correct?
9 A. Correct.
10 Q. What if Don -- well, do you have a
11 uniform at work?
12 MR. ZABELL: Objection to the form
13 of the --
14 MR. ANTOLLINO: Okay, withdrawn.
15 Q. Is there a uniform that skydivers
16 wear at work?
17 A. No.
18 Q. Okay. So you can show up wearing a
19 T-shirt and shorts; correct?
20 A. Correct.
21 Q. And that's a typical attire for
22 someone doing a skydive; correct?
23 MR. ZABELL: Objection to the form.
24 You may answer.
25 A. In the summer.

1 MAYNARD
2 Q. What about -- what if Don came to
3 work with a T-shirt that says "I'm gay," would
4 you allow him to wear that?
5 A. It never happened.
6 Q. Well, I'm just asking if that would
7 be allowable.
8 A. I think that would make some people
9 uncomfortable.
10 Q. And so you would ask him to change
11 the shirt?
12 A. If I had somebody come to work that
13 said "I'm heterosexual" it would be the same
14 thing.
15 Q. So the answer to the question is
16 that if he came to work way a shirt that says
17 "I'm gay," you would tell him to change the
18 shirt; correct?
19 A. Most likely.
20 Q. All right. There's a shirt that
21 I've seen, it's kind of a joke on the street
22 that says, "I'm not gay, but my boyfriend is,"
23 and it's worn by many gay men. If Don showed
24 up at work with that T-shirt that said, "I'm
25 not gay but my boyfriend is," would you ask him

1 MAYNARD
 2 change the shirt?
 3 MR. ZABELL: Objection to the form
 4 of the question, speculation and
 5 everything else.
 6 You can answer.
 7 A. Probably.
 8 Q. Okay. There's a T-shirt out there
 9 that I've seen that says "Legalize Gay." It
 10 just says "Legalize Gay." If he showed up with
 11 that T-shirt, would you allow him to wear it?
 12 A. My company is not a forum for any
 13 kind of statements. My workplace is not a
 14 forum for these things that you're asking me.
 15 Q. My question is, to you, --
 16 MR. ZABELL: Counselor, if you want
 17 a different answer, ask a different
 18 question. Asked and answered, move on,
 19 because now you're harassing the
 20 deponent.
 21 MR. ANTOLLINO: No I'm not
 22 harassing him.
 23 Q. Would you ask him to change a shirt
 24 that says "Legalize Gay"?
 25 MR. ZABELL: Objection, asked and

1 MAYNARD
 2 answered. Move on, Counselor.
 3 Q. Can you answer the question?
 4 MR. ZABELL: You've already
 5 answered it. You don't need to answer it
 6 again.
 7 Q. All right. What about a T-shirt
 8 that says "I'm proud to be an Iraq vet"?
 9 A. To be a what?
 10 Q. An Iraq vet.
 11 MR. ZABELL: Iraq? What's the word
 12 you're saying because I think you're
 13 mispronouncing it. I don't understand
 14 it.
 15 MR. ANTOLLINO: All right. Well,
 16 maybe out in Long Island they pronounce
 17 it Iraq. In the city we pronounce it
 18 Iraq.
 19 Q. What if somebody wore a T-shirt
 20 that says "I'm an Iraq vet," would you ask
 21 somebody to change that T-shirt?
 22 A. No.
 23 Q. What about someone wearing a
 24 T-shirt that says "I love my grandchildren,"
 25 would you ask them to change that T-shirt?

1 MAYNARD
 2 A. No.
 3 Q. What if Don wore a T-shirt that
 4 said "I love my husband," would you ask him to
 5 change that T-shirt?
 6 A. No.
 7 Q. But that's personal information.
 8 MR. ZABELL: That's not a question.
 9 Q. Isn't it personal information? If
 10 Don has a T-shirt that says "I love my
 11 husband," that's personal information; correct?
 12 A. Correct.
 13 Q. Would that make some people
 14 uncomfortable?
 15 A. It would depend on the other
 16 person.
 17 Q. Right. And do you think that would
 18 make some people uncomfortable?
 19 A. Just a T-shirt?
 20 Q. Yeah, a man wearing a T-shirt that
 21 says "I love my husband."
 22 A. Some maybe.
 23 Q. Okay. But you wouldn't ask Don to
 24 change that T-shirt?
 25 A. No.

1 MAYNARD
 2 Q. What about a T-shirt that says,
 3 "I'm proud to be Cuban," would you ask someone
 4 to change that T-shirt?
 5 A. No.
 6 Q. All right, but it's personal
 7 information, correct, that he's Cuban?
 8 A. Yes.
 9 Q. All right. What if someone was
 10 talking to a passenger and said something like,
 11 "I'm Irish and the Irish are fighters," is that
 12 something that's inappropriate to tell a
 13 customer?
 14 MR. ZABELL: Objection to the form
 15 of the question.
 16 You can answer it. As absurd as it
 17 is, you can answer it.
 18 A. No.
 19 Q. That's personal information though;
 20 correct?
 21 A. Yes.
 22 Q. All right. Were you aware that --
 23 sir, do you have a jumper from New Zealand?
 24 MR. ZABELL: Objection to the form
 25 of the multiple questions.

1 MAYNARD
2 MR. ANTOLLINO: Not a jumper,
3 withdrawn.
4 Q. Do you have an instructor -- I need
5 some more coffee. We'll take a break after
6 this question.
7 Do you have an instructor from New
8 Zealand?
9 A. Well, yes.
10 Q. Is he still working for you?
11 A. Yes.
12 Q. Were you aware that he told
13 Mr. Kengle that he was from New Zealand?
14 A. No.
15 Q. Is there anything inappropriate
16 about that?
17 A. No.
18 Q. That's personal information, isn't
19 it, that he's from New Zealand?
20 A. Yeah.
21 MR. ANTOLLINO: Let me just get a
22 coffee. We are now off the record at
23 3:58 p.m.
24 (Recess taken.)
25 THE VIDEOGRAPHER: We are now back

1 MAYNARD
2 on the record at 4:11 p.m.
3 Q. All right. Under canopy you have
4 to loosen the straps as you land; is that
5 correct?
6 A. Correct.
7 Q. Okay. And you have to loosen the
8 straps at the hips as you land; correct?
9 A. Before you land.
10 Q. Before you land?
11 A. Correct.
12 Q. Otherwise an injury could occur?
13 A. It makes it better to have them
14 loosened up, yeah.
15 Q. Now, earlier we -- you mention also
16 in the audio tape that Don was alleged to have
17 whispered in the passenger's ear; correct?
18 A. Correct.
19 Q. Would you have preferred that he
20 shouted?
21 MR. ZABELL: Objection.
22 A. I don't know what was said.
23 Q. Well, I'm just talking about the
24 tone of voice in terms of the decibel level of
25 the voice, would you have preferred that he

1 MAYNARD
2 shouted in speaking to a customer?
3 MR. ZABELL: Objection.
4 You can answer, if you can.
5 A. Maybe.
6 Q. Isn't it true that when an
7 instructor is strapped to a passenger, the
8 instructor has to position his chin on either
9 the right or the left side of the passenger to
10 avoid hitting the passenger's head with his
11 mouth?
12 A. Sitting in the airplane?
13 Q. Either sitting in the airplane or
14 up in the air.
15 A. Yes.
16 Q. And so, therefore, would it be a
17 fair statement that the mouth is very close to
18 the ear on a tandem jump with a passenger and
19 an instructor?
20 A. Not for the entire jump.
21 Q. Okay. But --
22 A. At times.
23 Q. At times, okay. Do you think that
24 it might have been reasonable that the
25 girlfriend and the boyfriend, Mr. Kengle and

1 MAYNARD
2 Mr. and Ms. -- withdrawn.
3 Do you think it might have been
4 reasonable for Mr. Kengle or Ms. Orelana to
5 have felt uncomfortable by a comment that
6 Mr. Kengle's girlfriend was getting strapped to
7 another guy?
8 MR. ZABELL: Objection, asked and
9 answered no less than three times.
10 Q. You can answer.
11 A. No.
12 Q. Do you think that it was reasonable
13 that Don might have felt uncomfortable about
14 that?
15 A. No.
16 Q. Do you believe that Don, as a gay
17 man, has to accept such a statement and play
18 along with the suggestion that he's a
19 heterosexual?
20 MR. ZABELL: Objection to the form
21 of the question, the innuendo contained
22 in that question and the
23 mischaracterization of the intent --
24 Q. You can answer.
25 MR. ZABELL: -- of that question.

1 MAYNARD
2 If you can.
3 A. I don't know.
4 Q. Do you believe it was unreasonable
5 for Don to take him out -- take himself out of
6 the suggestion that someone else made that he's
7 being strapped to someone else's girlfriend?
8 A. Take himself out?
9 Q. Take himself out of the equation.
10 Do you think that's reasonable?
11 MR. ZABELL: Objection to the form.
12 I don't think it's a question that can be
13 answered in the manner in which it's
14 phrased, but to the extent that you
15 understand it, you may answer.
16 A. I don't know.
17 Q. But you think it was unreasonable
18 for him to mention that he was gay in order to
19 take himself out of the equation; correct?
20 MR. ZABELL: No -- objection to the
21 form.
22 Q. You can answer.
23 A. No, no.
24 Q. So it was reasonable for him to
25 tell the customer that he was gay to take

1 MAYNARD
2 himself out of the equation that he was being
3 put in as someone who was being strapped to
4 someone else's girlfriend; correct?
5 MR. ZABELL: Objection to the form.
6 A. Maybe.
7 Q. Why do you say maybe?
8 MR. ZABELL: Objection to the form.
9 You may answer.
10 Q. Why would you say "maybe"; why not
11 yes or no?
12 A. Because taking yourself out of the
13 equation, you know, that's a choice.
14 Q. Someone in the airplane, the
15 witnesses testified, made the suggestion that
16 Don was being strapped to a someone else's
17 girlfriend --
18 MR. ZABELL: Correct.
19 Q. -- in a way that was sexual --
20 MR. ZABELL: That's incorrect.
21 Q. -- correct?
22 MR. ZABELL: Objection to the form
23 of the question. Objection to the
24 mischaracterization of the prior
25 testimony.

1 MAYNARD
2 You can answer it this last time.
3 I will not allow him to harass you any
4 more after this.
5 A. I don't believe that this was being
6 in a sexual position or whatever you just said.
7 Q. You don't believe that there was
8 any sexual innuendo being made when an
9 instructor other than Don said to Mr. Kengle
10 and Ms. Orelana, I bet you didn't know that
11 your girlfriend was going to get strapped to
12 another guy?
13 A. No.
14 MR. ZABELL: Don't answer it any
15 more. You've been asked the question
16 multiple times. I told him before I
17 would not allow him to continue to harass
18 you on this issue in the manner in which
19 he has. Therefore, I will not permit any
20 additional questions repeating that same
21 question.
22 Q. If a customer came on to Don -- if
23 a woman came on to Don at the drop zone, would
24 it be appropriate for him to say, yeah, thanks
25 but I'm not interested because I'm gay?

1 MAYNARD
2 MR. ZABELL: Objection to the form
3 and the hypothetical.
4 You can answer.
5 A. I don't know.
6 Q. Why don't you know?
7 MR. ZABELL: Objection to the form.
8 A. I don't know.
9 Q. If someone tried to come on to
10 Don -- well, let me ask you this; did you ever
11 see any women express any interest in Don?
12 A. No.
13 Q. Do you believe any women ever have?
14 A. I don't know.
15 Q. All right. We've looked at
16 pictures and now we're going to watch some
17 videos. We will start with what I have
18 previously marked as the Rich folder which you
19 already have. We're starting with a folder
20 called "Rich" that I have on my computer which
21 I also have given to counsel and was also
22 viewed at the deposition of Rich Winstock and
23 there are five little movies here and I'm going
24 to play movie 1334 now and I'm going to ask you
25 to watch it and I'm going to ask if you see

1 MAYNARD
2 anything in this video that is improper,
3 inappropriate or unsafe.
4 Would you agree to answer those
5 questions after you watch the video?
6 A. Yes.
7 Q. All right.
8 MR. ZABELL: Before the play the
9 videotape -- are you all right?
10 MR. ANTOLLINO: I'm fine.
11 MR. ZABELL: Why don't you discuss
12 with me on the record how you'd like the
13 court reporter to handle --
14 MR. ANTOLLINO: There's no way
15 she's going to be able to -- there's no
16 way. It's just shouting and music.
17 MR. ZABELL: That's fine. So we
18 should discuss it so we both have a clear
19 understanding and she has clear direction
20 as to what is going to proceed and how
21 we're going to proceed.
22 MR. ANTOLLINO: Fair enough.
23 There's no way to transcribe it, but
24 we're now playing 1334.
25 (Whereupon video is played.)

1 MAYNARD
2 Q. Okay, so the question is, did you
3 see anything in that video that was
4 inappropriate, improper or unsafe?
5 A. Well, the exit -- the jump itself
6 they're experienced jumpers. It's called
7 rolling a tube out the door. People are
8 saying -- I believe they were saying, "Make
9 shit happen." They're adults in the plane. I
10 don't know what's so bad about that.
11 Q. Well, let me ask you this, do you
12 know that they were experienced jumpers?
13 A. Yes.
14 Q. Do you know all of those people?
15 A. I don't know -- do I know all of
16 those people? I didn't see all of them.
17 You're talking about everybody that's in the
18 airplane.
19 Q. The woman in the green, were you
20 aware that that was her first tandem or not?
21 MR. ZABELL: Objection to the form.
22 A. That's not a tandem that went out
23 the door.
24 Q. The woman in the green was in a
25 tandem; correct?

1 MAYNARD
2 A. Okay.
3 MR. ZABELL: Are you agreeing or
4 are you just accepting what he said as
5 accurate, Mr. Maynard?
6 THE WITNESS: To what?
7 MR. ZABELL: Are you agreeing to
8 his statement --
9 THE WITNESS: That she was a
10 first-time jumper?
11 MR. ZABELL: No, that the lady in
12 green was a tandem.
13 A. Yes, the woman in green was a
14 tandem.
15 Q. And she's not the one that did the
16 role?
17 A. Correct.
18 Q. What did you call it?
19 A. It's called a tube.
20 Q. A tube, okay. And it was just a
21 single jumper that did that?
22 A. No, there's two people.
23 Q. There's two people. So you don't
24 know the level of experience of those two
25 people, do you?

1 MAYNARD
2 A. I knew who the people were, but I
3 also know that they are very experienced
4 jumpers because only experienced jumpers would
5 do that maneuver.
6 Q. But they were tandem passengers?
7 A. They were not.
8 Q. Oh, okay. That's all I wanted to
9 know. There's a little bit of comradery with
10 the expression in the plane "Make shit happen";
11 correct?
12 MR. ZABELL: Objection to the form.
13 You may answer.
14 A. Yes.
15 Q. And the entire staff responds in
16 kind, including Rich Winstock, "Make shit
17 happen"; correct?
18 A. Correct.
19 Q. And that's basically the atmosphere
20 when you're up in the air; correct?
21 MR. ZABELL: Objection to the form.
22 A. Sometimes.
23 Q. Okay. You want to have it be
24 relaxed and loose so that people aren't
25 uncomfortable when they're about to be falling

1 MAYNARD
 2 out of an airplane; correct?
 3 A. Correct.
 4 Q. All right. I'm finished with this
 5 movie and we're going to go on to the next
 6 movie, 1335, and the same question applies
 7 inappropriate, improper or unsafe?
 8 MR. ZABELL: Objection to the form.
 9 (Whereupon video is played.)
 10 Q. Okay, you've watched the entire
 11 video?
 12 A. Yeah.
 13 Q. And that's the video of the time
 14 when someone gave someone else the finger;
 15 correct?
 16 A. Correct.
 17 Q. And there was a -- and one part of
 18 that video someone feigned vomiting, would you
 19 agree with that characterization?
 20 A. They what?
 21 Q. They faked a vomit.
 22 MR. ZABELL: Objection to the form
 23 of the question.
 24 Q. Do you remember at one point --
 25 MR. ZABELL: Are you withdrawing

1 MAYNARD
 2 the question before allowing the --
 3 MR. ANTOLLINO: The witness does
 4 not seem to understand what I'm getting
 5 at.
 6 Q. But I'm going to describe that
 7 there was someone who went "Blah" and stuck his
 8 tongue out in the camera; correct?
 9 MR. ZABELL: Let the record
 10 reflect --
 11 MR. ANTOLLINO: Let the record
 12 reflect --
 13 MR. ZABELL: Does the videotape
 14 picture Mr. Zarda -- Mr. Antollino?
 15 MR. ANTOLLINO: No.
 16 MR. ZABELL: Well, let the record
 17 reflect that Mr. Antollino stuck his
 18 tongue out of his mouth and made a
 19 gagging sound.
 20 MR. ANTOLLINO: Yes.
 21 Q. All right. Did you see that on the
 22 video?
 23 A. Yes.
 24 Q. And did you think that was
 25 inappropriate in any way?

1 MAYNARD
 2 A. What you're asking me about this is
 3 with experienced jumpers having fun with each
 4 other and not a customer making a complaint
 5 about something that was not right.
 6 Q. I'm just asking you if you think
 7 that that was improper in any way?
 8 A. No.
 9 Q. Did you see anything that was
 10 inappropriate or unsafe in that video?
 11 A. I don't think so.
 12 Q. Wasn't there, in fact, a tandem in
 13 that plane?
 14 A. I'd have to see it again.
 15 Q. All right. Let's watch it again.
 16 (Whereupon video is played.)
 17 A. It was a tandem?
 18 Q. Were you able to see a tandem in
 19 there?
 20 A. No.
 21 Q. What about that young lady in the
 22 back?
 23 A. Like I said, I didn't see it.
 24 Q. You didn't see a tandem in there?
 25 Well, let me ask you this, if there had been a

1 MAYNARD
 2 tandem in there, would any of that comradery of
 3 experienced divers in front of the tandem
 4 passengers have been inappropriate?
 5 MR. ZABELL: Objection to the form
 6 of the question.
 7 You may answer.
 8 A. I didn't see that tandem person
 9 near these other guys. They were pretty far a
 10 about in the airplane and these were
 11 experienced jumpers again just goofing with
 12 each other.
 13 Q. It was pretty goofy, wasn't it?
 14 A. Yeah.
 15 Q. And if there were a tandem
 16 passenger in there, is anything improper about
 17 that goofiness?
 18 A. No.
 19 Q. Okay. So let's move on to 1337.
 20 (Whereupon video is played.)
 21 Q. All right, did you see anything
 22 that was inappropriate, unsafe or improper?
 23 A. No.
 24 Q. There were portions in there where
 25 people were touching each other on the

1 MAYNARD
2 posterior; is that correct?
3 A. Yes.
4 Q. What is the reason for that?
5 A. They were getting their balance
6 because they're standing outside the aircraft
7 that has no step.
8 Q. It was necessary for them to do
9 that?
10 A. Yes.
11 Q. It was necessary for them to touch
12 each other's posterior; correct?
13 A. Yes.
14 Q. Okay. Now we're looking at 1339.
15 (Whereupon video is played.)
16 Q. Did you see anything in there that
17 was inappropriate or unsafe?
18 A. No.
19 Q. Now we're going to look at 1340.
20 (Whereupon video is played.)
21 Q. Did you see anything in there that
22 was inappropriate or unsafe?
23 A. No.
24 Q. There was some point -- did you
25 recognize the instructor in that video?

1 MAYNARD
2 A. I think it was Super John.
3 Q. Super John. What's Super John's
4 last name? Well, I'll tell you what, since you
5 have asked to review a copy of the record, I'll
6 leave a blank space in there. Would you look
7 it up and write it into the space?
8 + TO BE FURNISHED: _____
9 A. Yeah.
10 Q. There was a point in there where
11 the instructor was sticking his finger into the
12 tandem passenger's ears and making what I
13 believe was moose ears?
14 MR. ZABELL: Objection to the form
15 of the question --
16 A. I didn't see it.
17 MR. ZABELL: -- and the
18 representations made therein.
19 MR. ANTOLLINO: Counsel, you were
20 the one last week who said that that was
21 moose ears. All right, let's look at it
22 again.
23 (Whereupon video is played.)
24 Q. Did you just see that?
25 A. He was tapping her on the head.

1 MAYNARD
2 Q. He was tapping her on the head?
3 Didn't it really look like he was sticking his
4 fingers in her ears and going like this
5 (indicating)?
6 A. No.
7 Q. Okay. Was there anything
8 inappropriate about his tapping her head?
9 A. I don't think so.
10 Q. Was it just a joke, a harmless
11 trope for a skydiver?
12 MR. ZABELL: Objection to the form
13 of the question.
14 Q. You can answer.
15 MR. ZABELL: And the words you
16 used.
17 If you can. If you know what he's
18 saying.
19 THE WITNESS: I don't know what
20 he's saying. They were doing something
21 for the video.
22 Q. They were being goofy for the
23 video; correct?
24 A. They were having fun.
25 Q. And by -- and in having fun, they

1 MAYNARD
2 were being goofy; correct?
3 A. Yes.
4 Q. Okay. And if someone -- if an
5 instructor did put his fingers in a passenger's
6 ear and make a little moose ear for the video,
7 would that have been improper?
8 A. I don't know, but that's not what I
9 saw.
10 Q. Okay. But, you know, you're an
11 experienced skydiver and I just want to know
12 what your opinion is if that happened and
13 someone did make moose ears, would that have
14 been inappropriate or is that just typical?
15 A. If I saw a video of somebody
16 sticking their fingers in someone's ear that
17 would be inappropriate. That is not what I
18 saw.
19 Q. Okay. We're looking at 1341 now.
20 (Whereupon video is played.)
21 Q. Did you see anything in there that
22 was inappropriate, unsafe or improper?
23 A. No. Could I watch it one more
24 time?
25 Q. Sure.

1 MAYNARD
2 (Whereupon video is played.)
3 A. No, I believe that they did either
4 a front flip or a back flip and then they came
5 out of it.
6 Q. The instructor has his arms around
7 the passenger until the drove went up; is that
8 true?
9 A. No.
10 Q. You see the instructor having his
11 arms around the passenger at any time?
12 A. Yeah.
13 Q. Why?
14 A. Because they would have to do the
15 flip one way or the other, that's the position
16 you have to get into.
17 Q. That something if they wanted to do
18 the flip he had to put his arms around her;
19 correct?
20 A. Yes.
21 Q. And he was basically hugging her;
22 correct?
23 A. He had his arms around her. I
24 wouldn't characterize it as hugging her.
25 Q. All right. So if she complained

1 MAYNARD
2 afterwards that he put his arms around me,
3 would you fire that instructor?
4 A. No.
5 Q. How many seconds was it before he
6 drops the drogue in that, were you able to
7 catch it?
8 A. No.
9 Q. Was it an inappropriate amount of
10 time?
11 A. No. When they go out of the
12 airplane, they do a flip with the people, a
13 front flip or back flip. They go out a little
14 bit longer than the normal with the drogue.
15 Q. What are some other reasons why he
16 might -- what is the recommended amount of time
17 to pull the drogue when you leave the airplane?
18 A. It's probably between five and
19 seven seconds.
20 Q. Okay. And is it better to have a
21 light passenger to wait a little closer to
22 seven so you don't collide with the
23 photographer if there is photography?
24 A. No.
25 Q. Is it possible if you have a light

1 MAYNARD
2 passenger and you're jumping out of the plane
3 if -- are there any dangers to pulling the
4 drogue too quickly?
5 A. No.
6 Q. We're going to look now at the main
7 event, the video of Mr. Zarda and Ms. Kengle
8 and this is the video that you've provided to
9 me which has the screen name skydiveavi.avi;
10 correct?
11 (Whereupon video is played.)
12 Q. For some reason the video is
13 stopping so we're going to have to go back to a
14 point where before it stopped and play more.
15 (Whereupon video is played.)
16 MR. ANTOLLINO: Something is wrong
17 with this video.
18 MR. ZABELL: Counselor, I have a
19 copy a my computer.
20 MR. ANTOLLINO: Would you mind?
21 Thanks a lot.
22 (Whereupon video is played.)
23 Q. Okay. You've now watched the
24 entire video. You can take that counselor.
25 Okay. So you've watched that video

1 MAYNARD
2 and you've seen it before; correct?
3 A. Correct.
4 Q. About how many times have you
5 watched it?
6 A. Not much.
7 Q. More than five?
8 A. No.
9 Q. If you were to grade Don's
10 performance in that zero, what would you give
11 it?
12 A. The skydive part of it?
13 Q. Yeah.
14 A. An eight or nine except I didn't
15 see any handle checks where you touch the
16 handle which is supposed to be done at every
17 jump. I didn't see that. It wasn't apparent
18 on that jump.
19 Q. In other words it just might not
20 have been filmed when he did it; correct?
21 A. No. He was filmed -- the handle
22 checks are done under drogue.
23 Q. Right.
24 A. So he was filmed the entire time
25 under the drogue. The handle checks are before

1 MAYNARD
2 you come in and put the parachute up.
3 Q. But you'd give it an eight or nine
4 out of ten?
5 A. Yes, I would.
6 Q. Okay. And how would you rate the
7 landing?
8 A. The landing was good.
9 Q. Would you characterize it as good
10 or great?
11 A. Yes.
12 Q. Okay. Did you see at the end that
13 the passenger seemed happy?
14 A. No.
15 Q. You didn't see that she seemed
16 happy?
17 A. No.
18 Q. What did you see?
19 A. And in the beginning the looks that
20 Don had on his face looking at her and the
21 expressions were kind of creepy too.
22 Q. So you think that Don made some
23 creepy expressions on there?
24 A. Yeah.
25 Q. Do you think that those expressions

1 MAYNARD
2 are why you fired Don?
3 A. No, not at all. I got a complaint.
4 Q. Okay. So you had to fire an
5 employee because of any complaint?
6 A. Do I have to fire them?
7 Q. Yeah.
8 A. No, I do not have to fire every
9 employee because of a complaint. If it's a
10 serious complaint, yes, I do.
11 Q. You're saying that she didn't look
12 happy in that video?
13 A. I what?
14 Q. You don't believe she looked happy
15 in that video?
16 A. I don't think she did.
17 Q. At the end she said it was awesome?
18 A. I'm just looking at her facial
19 expression when she first landed.
20 Q. Well, when people land they can
21 have any number of expressions, they're just
22 coming from their teen thousand feet; correct?
23 A. You asked me -- go ahead.
24 Q. Is that right?
25 A. Yes.

1 MAYNARD
2 Q. Some people throw up; correct.
3 A. Correct.
4 Q. But they still might have had a
5 good time; correct?
6 A. Correct.
7 Q. She said "That was awesome"; is
8 that correct?
9 A. I don't know.
10 Q. All right. Let's watch the video
11 again then.
12 (Whereupon video is played.)
13 Q. Now that you've seen it again she
14 said "Yeah, that was awesome"; isn't that
15 right?
16 A. Yeah, she said it.
17 Q. And she smiled; correct?
18 A. She smiled when she kissed her
19 boyfriend.
20 Q. She smiled next to Don. She posed
21 with Don after she kissed her boyfriend;
22 correct?
23 MR. ZABELL: Objection to the
24 multiple questions.
25 Q. You may answer.

1 MAYNARD
2 MR. ZABELL: You may pick one and
3 answer.
4 A. What's your question?
5 Q. She posed with Don after she kissed
6 her boyfriend; correct?
7 A. Correct.
8 Q. She voluntarily put her face next
9 to Don's face and smiled for the camera;
10 correct?
11 A. It might have been that way.
12 Q. Okay. Do you have any reason to
13 believe that she did not think the jump was
14 awesome if it was not awesome?
15 MR. ZABELL: Objection to the form
16 of the question.
17 You may answer.
18 A. Yes, I do.
19 Q. And what's that, what Mr. Jkengle
20 told you?
21 A. Correct.
22 Q. Anything else?
23 A. No.
24 Q. As is evident from that video there
25 is nothing in there that indicates that she did

1 MAYNARD
2 not have an awesome time on that jump; correct?
3 MR. ZABELL: Objection to the form
4 of the question and he's already told you
5 what he believes is on the video that
6 does not indicate that she had an awesome
7 jump.
8 Q. You can answer the question.
9 A. I don't believe that videotape
10 backs up that she had a great jump, no, I do
11 not.
12 Q. Why? Let's list all the reasons.
13 A. When she landed?
14 Q. Uh-huh.
15 A. She didn't look happy. She might
16 have said "Awesome," but that wasn't like "Oh,
17 that was awesome." It was like, "It was
18 awesome."
19 Q. Anything else? So she wasn't
20 evocative enough?
21 MR. ZABELL: Objection to the form
22 of the question. If you understand the
23 words that he's using, you may answer.
24 If you don't understand them, you can
25 tell him you don't understand them.

1 MAYNARD
2 A. I don't understand them.
3 Q. She wasn't expressive enough?
4 MR. ZABELL: The same objection.
5 A. No.
6 Q. And any other evidences that she
7 didn't have an awesome time?
8 A. No.
9 Q. So it's simply when she landed that
10 she wasn't smiling immediately and her -- and
11 when her statement of awesomeness was not
12 expressive enough; correct?
13 MR. ZABELL: Objection.
14 Q. Just those two things are the
15 evidences that she didn't have an awesome time;
16 correct?
17 MR. ZABELL: Objection to the
18 multiple questions posed before you. You
19 may choose any one of them and provide an
20 answer to it.
21 A. No.
22 Q. Now, what were the creepy looks
23 that Don gave?
24 A. You can see it on the tape.
25 Q. So it's -- when he's being filmed

1 MAYNARD
2 on the tape. When he was being filmed when the
3 camera is directly on him?
4 A. Correct.
5 Q. You thought that those expressions
6 were creepy?
7 A. The way that he was looking at her,
8 looking at her and then looking back and doing
9 whatever else he was, at some point like that,
10 I thought that was a little creepy and that's
11 my opinion.
12 Q. You didn't fire him for that, did
13 you?
14 A. No.
15 Q. Do you instruct your instructors
16 how to act when they're on camera?
17 A. Excuse me?
18 Q. Do you instruct your instructors
19 how to act when they're on camera when someone
20 is buying video?
21 A. Professionally.
22 Q. Isn't it true that you don't want
23 hem to sit there with a poker face?
24 A. No.
25 Q. Okay. You want them to contribute

1 MAYNARD
2 to the fun of the jump; correct?
3 A. Correct.
4 Q. And, so, when this particular
5 vision of Mr. Zarda was shown, only his face
6 and his hands were available; correct?
7 A. Correct.
8 Q. So he was making expressive
9 gestures with his face and his hands; correct?
10 A. Correct.
11 Q. And those gestures were very
12 similar to many of the gestures we've seen in
13 the other videos and in the screen shots I
14 showed you; correct?
15 MR. ZABELL: Objection to the form
16 of the question.
17 You may answer.
18 A. No.
19 Q. Okay. Were his extra creepy?
20 MR. ZABELL: Objection to the form
21 of the question.
22 You may answer.
23 A. They were different.
24 Q. They were different. And what made
25 them different?

1 MAYNARD

2 A. The way he was looking at her and
3 the motions that he made were different than
4 any other thing you showed me today.

5 Q. When Mr. Kengle called, he didn't
6 mention anything about looking at her or making
7 any -- looking at her in an improper way, did
8 he?

9 MR. ZABELL: Objection to the form
10 of the question. You may answer.

11 A. He called to make a complaint about
12 how his girlfriend was unhappy the way she felt
13 on the jump; that she felt totally
14 uncomfortable. That is what the phone call was
15 about. It was a complaint.

16 Q. And she felt uncomfortable in part
17 because Don told her that he is gay?

18 A. Correct.

19 Q. All right. We're going to -- now
20 Mr. Kengle was on the same plane. You saw him
21 in the video we just saw; correct?

22 A. I don't know if I saw him.

23 Q. Well, he had his own video; is that
24 correct?

25 A. That's correct.

1 MAYNARD

2 The guy's last name is Sherman.
3 John Sherman. It just came to me.

4 Q. All right. I'm going to show you
5 my computer and ask you if you recognize
6 this -- well, you never met with Mr. Kengle
7 with -- in respect to this complaint did you?

8 MR. ZABELL: Wait, wait. Objection
9 to the form of the multiple questions.

10 MR. ANTOLLINO: Okay, withdrawn,
11 and I'll ask it again.

12 Q. You never met with Mr. Kengle after
13 his complaint, did you?

14 A. No, I did not.

15 Q. So you wouldn't necessarily be able
16 to pick him out of a lineup, would you?

17 A. No.

18 Q. All right. Well, let's just play
19 the video.

20 (Whereupon video is played.)

21 Q. Did you see anything in there that
22 was inappropriate or unsafe?

23 A. No.

24 Q. All right. And I believe that
25 Mr. Kengle said twice after he landed that it

1 MAYNARD

2 was fucking awesome; is that right?

3 A. I didn't hear it. Maybe he did.

4 Q. You didn't hear him say it once or
5 at all?

6 A. No.

7 Q. He looked happy at the end of the
8 jump; correct? Did you see -- withdrawn.

9 Have you ever seen that video
10 before?

11 A. No, I don't think so.

12 Q. There was one point in there where,
13 you know, Ms. Orelana gave a little kiss to the
14 camera. Did you see that?

15 A. Yes.

16 Q. Did you think that was
17 inappropriate?

18 A. No.

19 Q. She was flirting with the camera;
20 correct?

21 MR. ZABELL: Objection to the form.

22 A. I don't know.

23 Q. How did they exit the -- how did
24 they exit the airplane? Was that the
25 appropriate way to exit the airplane in that

1 MAYNARD

2 video?

3 A. Yes.

4 Q. Hold on a second.

5 Do you believe that homosexuality
6 is wrong?

7 A. I don't have an opinion on it. If
8 people want to do it, people can do as long as
9 it doesn't affect me or affect my customers
10 it's a free world.

11 Q. So, therefore, you would say it's
12 not wrong?

13 A. No.

14 Q. It's not wrong?

15 A. No.

16 MR. ZABELL: No, it's not wrong or,
17 no, it is wrong.

18 A. No, it's not wrong.

19 Q. It took you a while to get there,
20 though, you didn't --

21 MR. ZABELL: Objection.

22 Q. You paused. I mean, we've got it
23 on tape. You paused a while before you gave an
24 answer on that. Why did you have to think
25 about that?

1 MAYNARD
2 MR. ZABELL: Objection to the form.
3 You can answer.
4 A. Because I did, that's all.
5 Q. Do you think it's a disorder being
6 gay?
7 MR. ZABELL: Objection.
8 A. No.
9 Q. Do you think that gay people can
10 become heterosexual if they want to?
11 A. I'm not a doctor or a psychologist
12 or anybody to make any kind of opinion on that.
13 Q. Do you think gay marriage is wrong?
14 A. No.
15 MR. ANTOLLINO: All right. Do you
16 want to change the tape?
17 THE VIDEOGRAPHER: We are now off
18 the record at 5 p.m.
19 (Recess taken.)
20 THE VIDEOGRAPHER: This is tape six
21 of the deposition of Raymond Maynard.
22 We're now on the record at 5:06 p.m.
23 Q. Do you know anyone by the name of
24 Doug Smith?
25 A. Doug Smith?

1 MAYNARD
2 Q. Yes.
3 A. It doesn't ring a bell.
4 Q. Did anyone ever contact you about
5 Don after you fired him in relation to Don's
6 applying for another job?
7 A. No.
8 Q. Now, after the lawsuit was filed,
9 there was a little bit of press attention in
10 October of 2010. Do you recall that?
11 A. Yes, I do.
12 Q. Are you under the impression that
13 either Don or I sent out a press release
14 announcing the lawsuit?
15 A. I don't know who contacted the
16 press, but somebody had to.
17 Q. Well, are you aware that the court
18 docket is a public docket?
19 A. No.
20 Q. Are you aware that reporters often
21 look in the docket for juicy and interesting
22 cases?
23 A. No.
24 Q. Were you aware that a reporter from
25 the New York Post called me the day after I

1 MAYNARD
2 filed this case? Are you aware of that?
3 A. No.
4 Q. So it could be true?
5 A. It could be.
6 Q. You don't have any press release
7 that was sent out to the press; correct?
8 A. No.
9 Q. Was there anything wrong -- do you
10 think there was anything wrong with Don
11 cooperating and speaking to the reporter who
12 was interested in the case?
13 A. No.
14 Q. Now after Don was fired he applied
15 for unemployment insurance; correct?
16 A. I believe he did.
17 Q. How did you find out about it?
18 A. Because I get a notice from
19 Unemployment.
20 Q. All right. And one of the
21 grounds -- well, you contested his claim for
22 unemployment; correct?
23 A. Yes, we did.
24 Q. And one of the grounds you can
25 contest unemployment is that the employee was

1 MAYNARD
2 fired for misconduct; correct?
3 A. I believe -- I don't remember
4 exactly, I thought that it was about that he
5 was working, had another job somewhere.
6 Q. Well, I'll show you what I've
7 premarked as 26.
8 (Exhibit R-26, letter, marked for
9 Identification.)
10 Q. And I'll ask you if you recognize
11 this.
12 A. (Reviewing.)
13 Yes.
14 Q. You recognize it?
15 A. Yeah.
16 Q. That's a letter that Lauren
17 Callanan wrote on your behalf to the
18 unemployment insurance division; correct?
19 A. Correct.
20 Q. And, so, one of the points that she
21 makes is that "Mr. Zarda resumed working for
22 Altitude Express on May 15, 2010 through June
23 21, 2010 and was terminated for believed
24 misconduct as we received complaints from
25 customers stating Mr. Zarda shared

1 MAYNARD
2 inappropriate information with them regarding
3 his personal life"; correct?
4 A. Correct.
5 Q. It doesn't mention anything there
6 about improper touching; correct?
7 A. With what?
8 Q. It doesn't mention anything there
9 about improper touching; correct?
10 A. No.
11 Q. And the complaints from customers,
12 that was just from one customer; correct?
13 A. Correct.
14 Q. And Mr. Kengle; correct?
15 A. Correct.
16 Q. And Lauren said, "This is not the
17 first time we had received complaints from
18 paying customers regarding Mr. Zarda," and when
19 you say that, you're referring to the
20 complaints from 2001; correct?
21 A. Correct.
22 Q. All right. And those complaints
23 were also about Don sharing personal
24 information at the workplace; correct?
25 A. Yes.

1 MAYNARD
2 Q. You also speculated that Don was
3 working at Advance in Fitness; correct?
4 MR. ZABELL: Objection. This
5 document does not indicate that Mr.
6 Maynard speculated about anything.
7 MR. ANTOLLINO: All right.
8 Q. The document does say, and you can
9 refer to it since I have taken it from you, "It
10 is speculated that during this time through
11 present day, Mr. Zarda has also owned, co-owned
12 and maintained his own business."
13 MR. ZABELL: Correct, but
14 Mr. Maynard didn't write this letter,
15 Counsel.
16 Q. It says that "It is speculated,"
17 correct? Do you want to look at the letter?
18 A. (Reviewing.)
19 Okay.
20 Q. Do you know who -- you know, Lauren
21 uses what we call in the law the passive voice.
22 It is speculated, but it doesn't say who did
23 the speculation. Do you know who did the
24 speculation?
25 A. That he owned a company?

1 MAYNARD
2 Q. Yeah.
3 A. He told us he owned a company. He
4 gave us that information, Don gave us that
5 information.
6 Q. But why did she used the word
7 "speculated"?
8 A. I don't know.
9 Q. You don't know how much money that
10 company makes?
11 A. No.
12 Q. Do you know why -- withdrawn. Do
13 you know why you would want to see any e-mails
14 between Don and Bill Moore?
15 A. Why would I want to see e-mails?
16 Q. Yeah, why would you -- could you
17 think of any reason you would want to see
18 e-mails between Don and Bill Moore?
19 A. I don't know who Bill Moore is.
20 Q. Did Don have a cat that died?
21 A. Did he have a cat that died?
22 Q. Yes.
23 A. I believe he did.
24 Q. Did you see him crying at the drop
25 zone at any time?

1 MAYNARD
2 A. Did I personally see him crying?
3 Q. Yeah.
4 A. I don't believe so.
5 Q. Did anyone tell you that he cried?
6 A. I don't remember anybody telling me
7 that he cried. I know he was upset that his
8 cat died.
9 Q. Was he unable to do jumps for any
10 period of time because of the death of the cat?
11 A. I don't remember that.
12 Q. All right. This request for a
13 finding of misconduct was denied by
14 Unemployment; correct?
15 MR. ZABELL: Objection to the
16 mischaracterization of the document.
17 Q. I'm just asking if you know.
18 A. I don't know.
19 Q. Okay. Well, did Don get
20 unemployment?
21 A. I don't remember. I think he did.
22 Q. You're looking for people; is that
23 right?
24 MR. ZABELL: Objection to the form.
25 Q. You're looking for workers, aren't

1 MAYNARD
2 you?
3 A. We're always looking for workers.
4 Q. You're always looking for workers.
5 In fact, you put out two ads for workers, one
6 on Facebook and one on dropzone.com; is that
7 correct?
8 A. Correct.
9 Q. I'll show you what I've marked as
10 24?
11 MR. ZABELL: Thank you, Counselor.
12 (Exhibit R-24, posted ads, marked
13 for identification.)
14 Q. How many -- are those ads that your
15 company has posted?
16 A. Yes.
17 Q. Seeking experienced skydivers?
18 A. Yes.
19 Q. Okay. How many do you need?
20 A. I like to get probably four to six
21 more tandem masters and a few more video guys,
22 a few ground guys.
23 Q. Okay. So Don -- how many video
24 guys?
25 A. I haven't crunched all the numbers,

1 MAYNARD
2 probably two or three more.
3 Q. All right. So you're looking for
4 between five and nine people who are
5 experienced jumpers; correct?
6 A. About that.
7 Q. Because the video guys also have to
8 go out in the parachute; correct?
9 A. Correct.
10 Q. Don is qualified for all of those
11 jobs; correct?
12 A. Correct.
13 Q. All right. Is Don eligible for
14 rehire this summer?
15 MR. ZABELL: Objection to the form
16 of the question.
17 Q. You can answer.
18 MR. ZABELL: Just yes or no.
19 THE WITNESS: Excuse me?
20 MR. ZABELL: Just answer yes or no.
21 A. No.
22 Q. Why not?
23 MR. ZABELL: Let's take a break.
24 MR. ANTOLLINO: No, no, no, hold
25 on. We are going to --

1 MAYNARD
2 MR. ZABELL: Step outside.
3 MR. ANTOLLINO: You have
4 interrupted the questioning. You're
5 coaching the witness and that's unfair.
6 THE VIDEOGRAPHER: Do you want me
7 to go off the record now?
8 MR. ANTOLLINO: Well, I have no
9 choice.
10 THE VIDEOGRAPHER: We are now off
11 the record at 5:16 p.m.
12 (Recess taken.)
13 THE VIDEOGRAPHER: We are now on
14 the record at 5:17 p.m.
15 MR. ANTOLLINO: Counsel, that was
16 completely inappropriate and I'm going to
17 ask for evidentiary sanctions because of
18 that.
19 MR. ZABELL: Counselor, look at me
20 when you speak to me, please. I am
21 telling you you are absolutely incorrect.
22 I started to get up to take a quick break
23 before you started asking your question.
24 MR. ANTOLLINO: Nonsense.
25 MR. ZABELL: You saw that I stood

1 MAYNARD
2 up and then you jammed out a question
3 while I had already was attempting to
4 take a break.
5 MR. ANTOLLINO: Nonsense. You went
6 out and coached your witness.
7 Q. Why is Don not eligible for rehire?
8 MR. ZABELL: Objection to the form.
9 You may answer.
10 A. He was let go for a customer
11 complaint and this was the second time it
12 happened. I believe in giving people a second
13 chance and he's had a second chance.
14 Q. Are there any other reasons?
15 A. No.
16 Q. All right. And would it be fair to
17 say you will never hire Don again?
18 MR. ZABELL: Objection to the form.
19 You can answer.
20 A. I never say never. Right now, two
21 strikes and -- I never say never though.
22 Q. Did you have a conversation with
23 your attorney outside?
24 MR. ZABELL: Objection.
25 Don't answer that question.

1 MAYNARD

2 Q. Just whether there was a
3 conversation?

4 MR. ZABELL: Don't answer that
5 question.

6 + MR. ANTOLLINO: Okay. We'll just
7 mark it for the ruling.

8 Q. How do you pay your workers?

9 A. Some people are W-2 and some people
10 are 1099 contract workers.

11 Q. Who is W-2 and who's a 1099?

12 A. Most -- well, half the -- half of
13 the video guys and half of the tandem guys have
14 chosen between the two. All the other
15 employees, the ground crew workers, the office
16 help and all of that, they're all W-2. There
17 are advantages, I guess, to being a 1099 that
18 the jumper guys like to take advantage of as
19 seasonal workers.

20 Q. Was Don a 1099 or a W-2?

21 A. I'm not sure.

22 Q. Are there any days where an
23 employee might be around the drop zone all day
24 long and not do any jumps?

25 A. What do you mean?

1 MAYNARD

2 Q. Well, how long is the work day at
3 the drop zone?

4 MR. ZABELL: Objection to the form.
5 You may answer.

6 A. On the weekends we expect everybody
7 to be there at 7:30 because we try to get
8 wheels up by 8 o'clock. On the weekdays we
9 expect the employees to be there at 9:30 to
10 have the wheels up by 10 o'clock.

11 Q. And would the end of the day be a
12 half hour before sundown or something like
13 that?

14 A. It would depend on the day and how
15 much business we have.

16 Q. All right. So are there any days
17 where jumpers arrive at the drop zone and stay
18 for the entire day until sundown and don't do
19 any jumps?

20 A. Do you mean employees?

21 Q. Yeah.

22 A. If we have a bad weather day, or we
23 might be on hold, but they -- they don't have
24 to be at the drop zone. They can go home.
25 They can do what they have to do, but they need

1 MAYNARD

2 to be available if there is -- if work is in.

3 Q. So they're on-call?

4 A. Correct.

5 MR. ZABELL: Objection to the form.

6 Q. All right. Is the cell reception
7 very good out there? Is the cell reception
8 good out there in Calverton?

9 MR. ZABELL: Objection.

10 A. Oh, cell, yes.

11 Q. Okay. There's not really much
12 around Drop Zone Long Island -- I'm sorry,
13 Skydive Long Island, is there in terms of, you
14 know, amenities, stores things like that?

15 MR. ZABELL: Objection to the form.
16 You may answer.

17 A. Yes, there are.

18 Q. All right. Well, what's within a
19 mile?

20 A. What's within a mile?

21 Q. Yeah.

22 A. There's a bagel place right north
23 of the airport on 25. There's a few stores
24 there.

25 Q. Well, isn't the runway itself two

1 MAYNARD

2 miles?

3 A. Yup.

4 Q. So, the drop zone is at least two
5 miles away from the bagel store; right?

6 A. When I said that place was a mile,
7 I meant from there to the airport. From the
8 entrance to the airport.

9 Q. Okay. So do you ever keep track of
10 the days when jumpers are not allowed to --
11 withdrawn.

12 Do you ever keep track of the days
13 when instructors spend the entire day at the
14 drop zone and don't get any jumps?

15 MR. ZABELL: Objection to the form.
16 You may answer.

17 A. We have records of days that we
18 don't jump, but no one is required. We don't
19 say you have to be here. You need to be
20 on-call, as you would say, and they have a
21 choice to go home or the Tanger Mall is not
22 that far away.

23 Q. So, how far can someone leave the
24 drop zone during the day and still be within
25 the company guidelines?

1 MAYNARD
2 MR. ZABELL: Objection to the form.
3 You may answer.
4 A. We like you to be within 20 to 30
5 minutes max.
6 MR. ZABELL: Counsel, you should
7 know that you are five minutes away from
8 your seven hours.
9 MR. ANTOLLINO: No, I'm not.
10 MR. ZABELL: No, you are. We're
11 leaving at 5:30.
12 MR. ANTOLLINO: Counsel, I'm not
13 done and I'm entitled to seven hours
14 without colloquy, okay, and without
15 breaks. So if you're going to leave then
16 we're going to have to make a motion to
17 continue the deposition and he's going to
18 have to come back.
19 MR. ZABELL: It seems like you're
20 wasting your time anyway, Counselor. Go
21 ahead, you have five minutes.
22 Q. Do you have a staff manual?
23 MR. ZABELL: Objection to the form.
24 You may answer.
25 A. You mean an employee handbook?

1 MAYNARD
2 Q. Yes.
3 A. Yes, we do.
4 Q. And how old is it?
5 A. A year and a half, a year. Fairly
6 new.
7 Q. Why did you write it?
8 A. My girlfriend, who is very business
9 minded, said I should have one.
10 + MR. ANTOLLINO: All right. I
11 call for the production of that. I'll
12 send you a follow-up letter.
13 MR. ZABELL: No.
14 Q. But you didn't have one when Don
15 was working at the drop zone; correct?
16 A. No, we did not.
17 Q. Does the employee manual instruct
18 employees not to provide any personal
19 information to the passengers?
20 A. I'm not sure.
21 Q. Does the employee manual say don't
22 mention to any employees if you're gay?
23 A. I'm not sure.
24 Q. Do you remember an occasion where
25 Don and some other staff members from Skydive

1 MAYNARD
2 Long Island went to Neptune's Bar and you were
3 there?
4 A. We have jumped in there, yes.
5 Q. Do you recall a time when Don
6 jumped in there with you?
7 A. Yes.
8 Q. Okay. And that was in 2010?
9 A. I'm not sure of the date, when it
10 was.
11 Q. Okay. Do you recall there being a
12 transgender person present?
13 A. A what?
14 Q. At Neptune's. Do you know what
15 transgender means?
16 A. I'm not too sure.
17 Q. Okay. A transgender person is a
18 person that has -- that either is biologically
19 a man and who either dresses, acts or performs
20 as another gender?
21 MR. ZABELL: I'm going to A, advise
22 you that that's incorrect, and, B, tell
23 you that you're under no obligation to
24 believe any representations he makes
25 because he is not under oath.

1 MAYNARD
2 Q. Okay. That's one way to describe
3 it a transgender person. Have you ever seen
4 anyone like at Neptune's?
5 A. I don't recall if I have.
6 Q. Okay.
7 MR. ZABELL: Counsel, it is now
8 5:30. If you represent that you can
9 finish within the next ten minutes, I
10 will gladly allow my client to sit for
11 another ten minutes. If you cannot, then
12 we are done for the day.
13 MR. ANTOLLINO: All right. If
14 you're leaving, and I'm not going to
15 represent that I'm done. I get seven
16 hours. If you insist on leaving then
17 we'll just have to continue the
18 deposition another time.
19 MR. ZABELL: Okay. I believe
20 you've used your seven hours. I say good
21 day, sir.
22 MR. ANTOLLINO: I haven't, but
23 that's okay. What time do you have for
24 the video?
25 THE VIDEOGRAPHER: We've gone on

ERRATA

ELLEN GRAUER COURT REPORTING CO. LLC
126 East 56th Street, Fifth Floor
New York, New York 10022
212-750-6434

NAME OF CASE: Zarda vs. Altitude Express
DATE OF DEPOSITION: December 14, 2011
NAME OF WITNESS: RAYMOND MAYNARD

PAGE	LINE	FROM	TO	REASON
201	125	No	MAYBE	No ONE COMPLAINED
202	7	No	MAYBE	No ONE COMPLAINED
220	19	I wouldn't think so.		No ONE COMPLAINED
253	7	PROBABLY	MAYBE	IF ANOTHER CUSTOMER COMPLAINED!
256	8	YES	?	No ONE COMPLAINED
256	21	YES	?	No ONE COMPLAINED!
257	20	YEAH	?	No CUSTOMER COMPLAINED
271	7	No.	STILL NO	THESE ARE FRIENDS - No COMPLAINTS-
272	18	No	?	IT WAS AMONG EXP. THINGS - NOT S "NO COMPLAINTS"
273	3	YES	IT APPEARS THAT	- ONLY ONE POINT OF VIEW!
273	10	YES	MAYBE	-
273	13	YES	MAYBE	No COMPLAINT -
276	3	YES	MAYBE	- No ONE COMPLAINED

Raymond F. Maynard

Subscribed and sworn before me

this 10 day of May 2012

Renee A. Godsell

(Notary Public)

My Commission Expires:

Renee A. Godsell
Notary Public, State of New York
No. 01606103602
Qualified in Suffolk County
Commission Expires Dec. 29 2015

1 UNITED STATES DISTRICT COURT 317
2 EASTERN DISTRICT OF NEW YORK
3 -----X
4 DONALD ZARDA,
5 Plaintiff,
6 -against-
7 ALTITUDE EXPRESS, ET ANO.,
8 Defendant,
9 Civil Action No.: 10-9334
10 -----X
11 One Corporate Drive
12 Bohemia, New York
13 November 16, 2012
14 1:21 p.m.
15
16 Continued Videotaped Deposition
17 of RAYMOND MAYNARD, pursuant to Notice, before
18 Jennifer Fuchs, a Notary Public of the State
19 of New York.
20
21
22
23 ELLEN GRAUER COURT REPORTING CO. LLC
24 126 East 56th Street, Fifth Floor
25 New York, New York 10022
26 212-750-6434
27 REF: 102023

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3 RAYMOND MAYNARD MR. ANTOLLINO 320
4
5
6 ----- E X H I B I T S -----
7 EXHIBIT DESCRIPTION FOR I.D.
8 Exhibit 30 Photograph 324
9 Exhibit 31 Errata Sheet 331
10 Exhibit 32 Document entitled Ripoff
11 Report 336
12 Exhibit 33 Skydive Long Island Get
13 Laid Luau document 340
14 Exhibit 34 E-mail 349
15 Exhibit 35 Affidavit of Ray Maynard 350
16 Exhibit 36 E-mail 353
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19 (Exhibits retained by counsel)
20
21
22
23
24
25

1 A P P E A R A N C E S: 318
2
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21
22 ALSO PRESENT:
23 DONALD ZARDA
24 JOSE RIVERA, Legal Videographer
25

1 THE VIDEOGRAPHER: The time is 1:21 320
2 p.m., November 16, 2012, and this is tape
3 number one, volume two in the continued
4 videotaped deposition of Raymond Maynard.
5 MR. ANTOLLINO: Swear in the
6 witness.
7 MR. ZABELL: It is 1:21. Please
8 proceed.
9 R A Y M O N D M A Y N A R D, resumed as a
10 witness, having been duly resworn by a
11 Notary Public, was examined and testified
12 further as follows:
13
14 EXAMINATION BY
15 MR. ANTOLLINO (Cont'd):
16 Q. Mr. Maynard, we've met before.
17 Still photos can be made in a tandem
18 jump; is that correct?
19 A. That's correct.
20 Q. And Mr. Kengle and Ms. Orelana had
21 still photos in addition to video, correct?
22 A. I guess. I'm not sure.
23 Q. Well, let me just --
24 A. That's normal.
25 Q. It's normal, so it comes

1 MAYNARD 321
2 automatically or...
3 Well, anyway, let me just show you
4 what I got from Mr. Kengle. There's a package of
5 a hundred or so photos.
6 These photos are taken automatically
7 from the photographer's camera; is that correct
8 (handing)? How are they taken?
9 MR. ZABELL: I will object to the
10 multiple questions you've asked of him.
11 MR. ANTOLLINO: Withdrawn.
12 Q. How are the pictures taken?
13 A. A separate camera from the video
14 camera is attached to the helmet, and it's a
15 digital camera, and the videographer has a device
16 that's either triggered by his hand, or there's
17 other ones now that they actually have in their
18 mouth, they're called bite switches, and there's
19 also tongue switches, so they're able to control
20 their free fall and everything with their hands.
21 And when the time is right for a photo, they can
22 then chomp down on the bite switch and make the
23 camera take a picture.
24 Q. Is there any capacity for the camera
25 to keep going on automatically as time goes on

1 MAYNARD 323
2 A. I don't know if I could pick her out
3 of a lineup, but.
4 Q. You don't know if you could pick her
5 out of a lineup?
6 A. No.
7 Q. You met her on the day of the jump,
8 but you can't recognize her.
9 A. Yeah.
10 Q. I am just going to ask you to
11 scroll -- withdrawn.
12 Could you scroll down these pictures
13 and pick out any pictures that you believe that
14 Mrs. Orelana is not having a good time on this
15 jump?
16 MR. ZABELL: I am going to object to
17 the form of the question.
18 You may answer, if you can.
19 (Witness perusing photographs.)
20 Q. I think Mr. Kengle's pictures start
21 with this one, 7927 (indicating).
22 Did you see any pictures where you
23 saw evidence Ms. Orelana was not having a good
24 time?
25 A. No.

1 MAYNARD 322
2 without the switch?
3 MR. ZABELL: Objection to the form.
4 You may answer.
5 A. I've never jumped with one of those
6 cameras, so I'm not sure if that could just
7 automatically go on.
8 Q. Do these pictures appear to be
9 pictures from the -- if you look through them,
10 you can go through them by pressing the down
11 button, do these pictures appear to be the
12 pictures of Mr. Kengle and Ms. Orelana?
13 A. Looking from here, I don't know who
14 is jumping here.
15 MR. ZABELL: I would suggest you
16 look through all of them before answering.
17 THE WITNESS: Okay.
18 Q. Well, let me ask you this.
19 Do you recognize Ms. Orelana; have
20 you ever met her?
21 A. Yes.
22 Q. When did you meet her?
23 A. On the day of the jump.
24 Q. So you recognize her in these
25 photos?

1 MAYNARD 324
2 Q. Do you want to go through the rest
3 of Mr. Kengle's pictures to see any evidence of
4 him not having a good time or Ms. Orelana, where
5 she's pictured in there too?
6 MR. ZABELL: Objection to the form.
7 You may answer.
8 (Witness perusing photographs.)
9 A. I don't know normal facial
10 expressions and that.
11 Q. Wait. So you think that's evidence
12 he's not having a good time?
13 A. No. I don't know.
14 MR. ZABELL: Objection to the form.
15 You may answer.
16 A. I don't know.
17 MR. ZABELL: Counsel, I will advise
18 you to allow the deponent to finish
19 answering the question before asking your
20 next question.
21 MR. ANTOLLINO: I did, okay.
22 Q. Continue.
23 (Witness perusing photographs.)
24 Q. When you can't go down any further,
25 let me know.

325
MAYNARD
That's the last one. Didn't it look like he was having a good time?
MR. ZABELL: Objection to the form.
A. I don't understand what you mean. Does it look like he was having a good time?
Q. Doesn't it seem like he was having a fantastic time?
MR. ZABELL: Objection to the form.
A. I saw a normal skydive. Normally people have a good time when they skydive.
Q. And it looked like he was having a good time when he was skydiving, correct?
MR. ZABELL: Objection; asked and answered.
A. You could say that.
MR. ANTOLLINO: We have been marking these exhibits as R and a number. We left off at R-20 something, so I will mark this as R-30, and I will give you a copy to share with your counsel.
(Exhibit R-30, Photograph, marked for identification.)
Q. Do you recognize that picture?
A. Well, it's a tandem that's being

327
MAYNARD
multiple tandem instructors do that on film.
Q. For a laugh, correct?
MR. ZABELL: Objection to the form. You may answer.
A. I didn't ask them why they did it.
Q. Do you encourage your tandem instructors to take naps on your customers?
A. I didn't say that.
Q. Well, do you discourage it?
A. They're doing something for a photo op.
Q. Okay. Why are they doing that for a photo op; why is he taking a nap on her for a photo op?
A. He's --
MR. ANTOLLINO: Wait for me to finish asking the question.
MR. ZABELL: You asked two.
MR. ANTOLLINO: I asked one.
MR. ZABELL: I object to the form of the question.
MR. ANTOLLINO: Withdrawn. I'll ask it again.
Q. Why is he taking a nap on her for

326
MAYNARD
done over eastern Long Island.
Q. Do you recognize any of the people in the picture?
A. I don't recognize the customer.
Q. Who is the tandem instructor?
A. Well, I couldn't say for certain, but I believe it might be Bobby Swain.
Q. What is he doing?
A. He's acting like he's asleep.
Q. Why?
A. For the photo shoot.
Q. Why would he do that for the photo shoot?
A. Almost every single tandem instructor does that exact photo.
Q. That exact one?
A. Um-hum.
Q. It's a goofy type of atmosphere where you try and have fun.
MR. ZABELL: I am going to object to the form.
MR. ANTOLLINO: Question mark.
MR. ZABELL: You may answer.
A. No. I'm saying that I've seen

328
MAYNARD
the photo op?
A. He's not taking a nap.
Q. He's awake?
A. Of course he's awake.
Q. Is he pretending to take a nap?
A. It looks like that way.
Q. Okay. Why is he pretending to take a nap for the photo op?
A. That's something that has started to be done, and other people liked it.
Q. Who liked it?
A. There are other customers that see the videotapes after the jump.
Q. And they like it when their instructor pretends to take a nap on top of them?
A. Yeah.
Q. Have they told you that?
A. It's obvious when they're watching the videotape that they think it's pretty funny.
Q. Okay. Do you know that that's on your Facebook page.
A. I'm not aware.
Q. All right. Thank you. I'm done with that.

1 MAYNARD 329
2 All right. Did you read the first
3 portion of your deposition?
4 A. Not recently.
5 Q. Well, did you read it?
6 A. Yes.
7 Q. And were you aware that you had 30
8 days to review and make corrections in your
9 deposition transcript?
10 A. Yes.
11 Q. Were you aware that after 30 days
12 there were many changes that were made?
13 A. I guess.
14 Q. Why did you make those changes?
15 A. I thought that's what it was given
16 to me for.
17 Q. How did you decide to make these
18 changes?
19 A. Because I read what the deposition
20 said, and then I thought that I had clear mind
21 after the time to make my changes.
22 Q. You had a clear mind, so are you
23 saying you weren't having a clear mind at the day
24 of your first deposition?
25 A. Sometimes probably not.

1 MAYNARD 331
2 this as R-31.
3 (Exhibit R-31, Errata Sheet, marked
4 for identification.)
5 Q. Are those the changes you made about
6 80 days after the deposition was tendered to your
7 attorney?
8 MR. ZABELL: Take the opportunity to
9 review the document.
10 A. I need my glasses.
11 MR. ANTOLLINO: Mr. Zabell, all
12 right. The judge did warn you not to make
13 this prolonged, and already you've done
14 that on a couple of occasions.
15 You didn't tell me the videographer
16 was here. You brought your client in late,
17 all right, and you're making sure that your
18 client takes as much time as possible to
19 review the documents. I only have an hour,
20 as you know.
21 MR. ZABELL: Are you finished,
22 Counselor?
23 MR. ANTOLLINO: Yes.
24 MR. ZABELL: Review the document,
25 Ray.

1 MAYNARD 330
2 Q. Why not; were you on any
3 medications?
4 A. No.
5 Q. Are you on any medications today
6 that prevent you from having a clear mind?
7 A. No.
8 Q. Do you have a clear mind today?
9 A. Yes.
10 Q. At what point in the deposition on
11 the first date did you have a clear mind?
12 A. I don't know. I don't remember.
13 Q. What was it about your testimony;
14 can you recall what changes you made and why?
15 MR. ZABELL: Objection to the form.
16 You may answer.
17 A. No.
18 Q. Did someone -- go ahead. Are you
19 finished? You said "No," and then I thought you
20 were done, but you said something else. All
21 right.
22 Did anyone tell you to make any
23 changes?
24 A. No.
25 MR. ANTOLLINO: I am going to mark

1 MAYNARD 332
2 THE WITNESS: So I can't have my
3 glasses?
4 Q. All right. We are going to put that
5 aside if you can't read without your glasses. Do
6 you have them with you?
7 A. Yeah.
8 Q. Okay. How long will it take you to
9 get them?
10 A. A minute.
11 MR. ANTOLLINO: Okay.
12 THE VIDEOGRAPHER: Off the record?
13 MR. ZABELL: No.
14 (Whereupon, the witness leaves the
15 deposition room.)
16 MR. ANTOLLINO: We're not stopping
17 the clock?
18 MR. ZABELL: No.
19 MR. ANTOLLINO: All right. We're
20 going to call the judge then. We'll
21 eventually call the judge. The judge
22 warned you.
23 (Whereupon, the witness enters the
24 deposition room.)
25 THE WITNESS: Okay.

333
MAYNARD
1
2 Q. Okay. Are these the changes you
3 made about 80 days after your deposition was
4 tendered?
5 A. Yes.
6 Q. Okay. It seems to be a lot of --
7 you put -- you changed nos to maybes and
8 probablys to maybes, yeses to question marks, and
9 the reason for your changes is that no one
10 complained, complain and complain is mentioned on
11 this document; would you say that to be true?
12 MR. ZABELL: I will object to the
13 form of the question.
14 MR. ANTOLLINO: You can answer.
15 MR. ZABELL: You may answer.
16 A. After reading the deposition, this
17 is what I wrote in.
18 Q. Yeah, I know. I'm just asking you
19 if it appears that the word "complain" appears
20 about 10 times?
21 A. Yes.
22 Q. What is it about a complaint that
23 made you want to change portions of the
24 deposition?
25 MR. ZABELL: Objection to the form.

335
MAYNARD
1
2 MR. ANTOLLINO: Withdrawn,
3 withdrawn.
4 Q. Is any complaint by a customer
5 grounds for termination?
6 A. What kind of complaint?
7 Q. Any.
8 A. Any. Broad scope of any kind of
9 complaint about anything for the day?
10 Q. Yes, exactly.
11 A. No.
12 MR. ZABELL: Counselor, could I have
13 that copy of the exhibit, please?
14 MR. ANTOLLINO: Yes. We have
15 copies. Don't worry.
16 Q. We talked at your first deposition
17 about a complaint that was on the internet and
18 that was responded to, and that you believed that
19 it was written by an owner of a competing drop
20 zone. Do you remember that?
21 A. There was something out on the
22 internet years ago I remember.
23 Q. Yes. And you responded to that; is
24 that correct?
25 A. I believe I did.

334
MAYNARD
1
2 You may answer.
3 A. I don't understand your question.
4 Q. Well, I'm trying to understand why
5 "complain" is such a major part of this errata
6 sheet, this exhibit.
7 MR. ZABELL: That's not a question.
8 A. Without seeing that statement from
9 me, I don't know how I could answer that.
10 Q. Okay, fair enough.
11 If someone complained -- is any
12 complaint grounds for termination?
13 MR. ZABELL: Objection to the form.
14 You may answer.
15 MR. ANTOLLINO: You can put that
16 away. We're done with that now.
17 THE WITNESS: Okay.
18 A. Is any complaint grounds?
19 Q. Yes.
20 A. Could you specify something?
21 Q. The question is is any complaint a
22 ground for termination, any complaint by a
23 customer ground for termination?
24 MR. ZABELL: Objection to the form
25 of the multiple question.

336
MAYNARD
1
2 MR. ANTOLLINO: Okay. I want to
3 show you what we will mark as R-32.
4 (Exhibit R-32, Document entitled
5 Ripoff Report, marked for identification.)
6 Q. I want you to look through that.
7 I'm not asking you to read the whole thing, but
8 to look at it and see if that appears to be the
9 complaint that you talked about at your
10 deposition.
11 MR. ZABELL: Counselor, do you have
12 a copy for me?
13 MR. ANTOLLINO: I have a copy to
14 give you later, but while I question him,
15 I'd like to have it in front of me.
16 A. Even this may seem like it's a
17 complaint. To me this was somebody trying to
18 damage my reputation, so I don't believe -- no
19 one would even come forward and say who they
20 were. So anybody that wants to stand there
21 anonymously and say things, my feeling is, as I
22 said in here, if these things actually happened
23 and somebody was doing these things to their
24 friends at the time, if it really happened, they
25 would have said something at the time.

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MAYNARD
Q. Okay. And that's what you wrote in the updates and rebuttals.
When you found out about this, the update and rebuttal number one says, "Owner of company," quote, "Nothing but lies from a skydiver with an agenda. Author, Ray, drop zone owner." Do you see that?
MR. ZABELL: Objection to the form.
A. No. Where is that?
Q. In the middle of page 2, updates and rebuttals.
A. Okay.
Q. You see that there? It say number one, company, quote, "Nothing but lies from a skydiver with an agenda." You wrote that, correct?
A. Yes, I did.
Q. Okay. It continues on to the next page, correct, and in the middle of the page it says, "Thank you truthfully RM." Those are your initials, correct?
A. Yes.
Q. And DZO means what?
A. Drop zone owner.

339
MAYNARD
were taking a different path.
Q. Okay. So you just -- okay. Was there any particular reason, or there was no reason?
MR. ZABELL: Objection to the form.
Q. I know it's an at-will business. I understand that.
MR. ZABELL: Counselor, are you withdrawing your previous question?
MR. ANTOLLINO: No, I'm not.
Q. I'm just asking was there any particular reason you let her go; did you believe her performance was not up to standards, for example?
MR. ZABELL: I am objecting to the form of the multiple questions.
You may pick one and provide an answer.
A. There was a change in direction, and it wasn't going to work anymore.
Q. Why?
A. Because there was a change in direction.
Q. What was the change in direction?

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MAYNARD
Q. And you're the drop zone owner, correct?
A. Yes, I am.
Q. Okay. Do you know who wrote the other responses? The next one is the skydiver chick from Williston Park. Do you know who wrote that?
A. No, I do not.
Q. Did Lauren Callanan write any of these responses, or did you direct her to?
A. I did not direct anybody to write anything.
MR. ANTOLLINO: Here is your copy, Counsel (handing).
Q. What happened to Lauren; why isn't she working for you anymore?
A. Things change.
Q. Did she resign, or did you fire her?
A. It's an at-will business, and I told her that things just weren't working out.
Q. So you fired her?
A. I let her go.
Q. Was there a reason why?
A. We're an at-will business, and we

340
MAYNARD
A. We were going more corporate, things were changing, other people were coming in, and it was time that -- we weren't seeing -- things were not going to be the way -- just it was time for her to go.
Q. Why did Lauren not fit into the new corporate culture?
MR. ZABELL: Object to the form.
You may answer.
A. Because it was going to be different.
Q. Okay. Do you remember we talked about at the first part of the deposition Skydive Long Island Get Laid Luau?
A. Yep.
MR. ANTOLLINO: All right. Let's just mark this as R-33.
(Exhibit R-33, Skydive Long Island Get Laid Luau document, marked for identification.)
Q. You recognize Jordan Miles, correct?
A. Yes, I know Jordan Miles.
Q. Does he still work for you?
A. Actually, he's moving on to another

1 MAYNARD 341
2 job in Denver, and he's going active, actually.
3 I believe this week he's being deployed.
4 Q. Did you fire him last summer; did
5 he -- withdrawn. Did he work for you last
6 summer?
7 A. Yes.
8 Q. Did you look into whether or not
9 this was grounds for termination, this "pulling
10 your pork" reference and the "getting laid luau"?
11 A. Well, they're talking about pulled
12 pork sandwich, and they're referring to getting
13 leis for the luau.
14 Q. How is "getting laid" spelled?
15 "Getting laid" is spelled L-A-I-D, correct, in
16 that post?
17 A. Yes.
18 Q. And "getting laid" means having
19 intercourse in the way that it is spelled that
20 way, correct?
21 A. That's your interpretation.
22 Q. What's your interpretation?
23 A. My interpretation is we were having
24 a luau. Everybody was going to get a lei.
25 Q. And do you know how lei is spelled?

1 MAYNARD 343
2 sandwich, does someone actually pull the pork, or
3 is that the job of the cook?
4 MR. ZABELL: Objection.
5 You can answer.
6 A. I don't know.
7 Q. How do you make pulled pork?
8 A. I've never made pulled pork.
9 Q. All right. When you have an
10 unemployment claim filed against you, are there
11 any economic consequences that result from that
12 to you?
13 A. I believe how the unemployment
14 insurance works, that I pay a premium for that
15 insurance, and I'm not sure -- I believe that if
16 there are multiple claims, that possibly my
17 premium goes up.
18 Q. I see. So there's a chance that if
19 someone has multiple claims or, rather, an
20 employer has multiple claims like you, that you
21 might have to pay more money?
22 A. I believe that's how it works.
23 Q. Okay. And is there a way for you to
24 prevent a unemployment claim from being approved?
25 MR. ZABELL: Objection to the form.

1 MAYNARD 342
2 MR. ZABELL: Objection; asked and
3 answered.
4 You can answer it again.
5 A. I don't know, L-E-Y.
6 Q. It's a double entendre that he's
7 making there, getting a lei on his body, but he's
8 spelling it like having intercourse, correct?
9 MR. ZABELL: Objection to the form.
10 You may answer.
11 A. I don't know for a fact that that
12 means intercourse, and that is not my
13 interpretation of that.
14 Q. What about "pulling your pork"?
15 A. They had pulled pork sandwiches.
16 Q. All right. And is "pulling your
17 pork" a double entendre, or he was just stating
18 exactly; he was referring to pulled pork
19 sandwiches?
20 A. This was being referred to pulled
21 pork sandwiches.
22 Q. All right. Can I see it for a
23 second?
24 (Witness handing.)
25 Q. When someone eats a pulled pork

1 MAYNARD 344
2 You may answer.
3 A. When an unemployment claim is put
4 in, we have a -- a letter is sent to us, which I
5 read. And if we don't have anything to dispute
6 it, it's not answered. If we believe that that
7 person is working somewhere else, then we -- it's
8 our responsibility to send that information to
9 them.
10 Q. Are there any other grounds upon
11 which an unemployment claim can be denied?
12 A. Not that I know of.
13 Q. Did you know that if an employee is
14 fired for misconduct, he or she is not entitled
15 to unemployment benefits?
16 MR. ZABELL: Objection to the form.
17 A. That's probably part of the rules.
18 Q. Is that what your understanding of
19 the rules are?
20 A. I have not read them lately, but I
21 would believe they might be.
22 Q. Okay. Well, you actually accused
23 Don Zarda of misconduct when he put in his
24 unemployment claim, correct?
25 A. Well, Lauren wrote that letter.

1 MAYNARD 345
2 Q. She wrote it at your direction,
3 correct?
4 A. Yes.
5 Q. So let's mark this -- we've already
6 marked this as R-26. It's already been marked.
7 Lauren wrote this at your direction,
8 and you approved it, correct?
9 A. Yes.
10 Q. And you accused Don of misconduct,
11 correct?
12 A. I'd like to see the letter.
13 Q. Sure (handing).
14 If you look down to the fourth
15 paragraph, I think you will find it there.
16 (Witness perusing document.)
17 Q. The question is there's an
18 accusation of misconduct in that letter, correct?
19 A. For believed misconduct.
20 Q. And the misconduct was sharing
21 personal information, correct?
22 A. Received complaints from a customer,
23 yes.
24 Q. Okay. Thank you.
25 You have insurance to pay for this

1 MAYNARD 347
2 You may answer.
3 A. The season is over this weekend.
4 Q. Well, okay. I guess I'm thinking
5 into next summer.
6 A. Oh.
7 Q. Do you have any openings for this
8 summer?
9 A. There probably will be. I haven't
10 even explored that. I put some things out.
11 There most likely will be.
12 Q. What were the circumstances of Rich
13 Winstock's leaving the Skydive Long Island?
14 A. I wish I had that answer.
15 Q. He quit.
16 A. He did.
17 Q. You wish he still worked for you?
18 A. Yes.
19 Q. He was a good chief instructor.
20 A. Yes, he was.
21 Q. Did he say anything about why he was
22 leaving?
23 A. My last conversation with Winstock
24 when we stood eye to eye and talked about a lot
25 of the changes that were going on at the drop

1 MAYNARD 346
2 case?
3 A. No.
4 Q. So you're paying it all out of
5 pocket, your defense?
6 A. That's correct.
7 Q. And how much have you paid so far?
8 A. I don't know the exact amount.
9 Q. Is it over \$200,000?
10 A. I hope not.
11 MR. ZABELL: Objection.
12 Q. What?
13 MR. ZABELL: You can answer.
14 A. I hope not.
15 Q. Is it over a hundred thousand
16 dollars?
17 A. I'm not really sure.
18 Q. Is it over \$50,000?
19 A. Most likely.
20 Q. Do you have any openings for work at
21 the new drop zone?
22 A. Not right now.
23 Q. So you've hired everyone for the
24 summer?
25 MR. ZABELL: Objection to the form.

1 MAYNARD 348
2 zone, and my last conversation with him was Rich,
3 you know, I want you to stay on, I need your help
4 here, and I really don't want you to leave, and
5 he said, I'm not going to leave. He says, I'm
6 leaving today to go to my daughter's softball
7 game, we'll talk during the week, and I will see
8 you next weekend, and I never saw him again.
9 Q. So he didn't even send in a letter
10 of --
11 A. Yeah. He sent me an e-mail stating
12 that he decided not to come back, and I asked him
13 to come back, and I never heard back from him
14 again.
15 Q. When he said I decided not to come
16 back, did he say anything else as to why?
17 A. He had some complaints about my
18 girlfriend.
19 Q. Is she working at the drop zone now?
20 A. She was never an employee there.
21 Q. Is she working there now?
22 A. She never was an employee there.
23 Q. Is she at the drop zone a lot?
24 A. Yes. She helped me out.
25 Q. Does she boss people around, maybe

1 MAYNARD 349
2 get in the way?
3 A. No.
4 MR. ZABELL: Objection to the
5 multiple question.
6 Q. So you think he quit because of your
7 girlfriend?
8 A. I don't know why he quit.
9 Q. Were you aware that he e-mailed Don
10 and said that he just couldn't take you anymore?
11 MR. ZABELL: I'm going to advise you
12 that if your answer to that question
13 requires you to reveal the content of
14 conversations between yourself and your
15 attorney, you need not answer that
16 question.
17 MR. ANTOLLINO: All right. I'll
18 hand you this. I'll hand you this.
19 Let's mark this as R-34.
20 (Exhibit R-34, E-mail, marked for
21 identification.)
22 MR. ZABELL: Have you withdrawn the
23 previous question?
24 MR. ANTOLLINO: Yes.
25 Q. Have you seen that before?

1 MAYNARD 351
2 Q. All right. Where did you sign this?
3 A. Excuse me?
4 Q. Where did you sign this?
5 A. Where did I sign it?
6 Q. What location, yeah.
7 A. I signed it here.
8 Q. All right. So you came to
9 Mr. Zabell's office?
10 A. Yes, I did.
11 Q. Did you write this affidavit
12 yourself?
13 A. Did I write this myself
14 (indicating)?
15 Q. Yeah.
16 A. No.
17 Q. Was it presented to you for
18 signature?
19 A. Yes.
20 Q. All right. And number 1 says,
21 quote, "An electronic search for electronic
22 information regarding Donald Zarda was performed
23 at my direction by Lauren Callanan at Altitude
24 Express, Inc. d/b/a Skydive Long Island." Do you
25 see that?

1 MAYNARD 350
2 A. No.
3 Q. What's your reaction to that?
4 A. My reaction to this is that -- I
5 would say two months before he left he was not
6 the same person that I knew. He hardly ever
7 talked to me. He walked around like he was very
8 unhappy all the time, and it was very noticeable,
9 even not just to myself but the other staff
10 members, and I never found out what was going on.
11 I had my thoughts, because there was a lot of
12 changes made at the drop zone, and a lot of
13 people didn't like it.
14 Q. But yet you wanted him --
15 A. I did. I wanted him to stay.
16 MR. ANTOLLINO: All right. Let's
17 mark this next as R-35.
18 (Exhibit R-35, Affidavit of Ray
19 Maynard, marked for identification.)
20 THE WITNESS: Could I have a copy of
21 this?
22 MR. ANTOLLINO: I gave one to your
23 lawyer. This is the original.
24 Q. Okay. Do you recognize this?
25 A. Yes.

1 MAYNARD 352
2 A. Yes.
3 Q. Do you know what she did?
4 MR. ZABELL: Objection to the form.
5 You may answer.
6 A. Okay. I asked her to go through any
7 e-mails, any contacts, any kind of information
8 that possibly would be in the computers and print
9 it out and give it to me.
10 Q. Okay. But you don't know what she
11 did exactly, do you?
12 A. Well, I asked her to go through
13 e-mails and anything pertaining to Don at all
14 that was in the computers.
15 Q. Okay. You asked her to do that, but
16 do you know what she did?
17 MR. ZABELL: Objection; asked and
18 answered.
19 A. I asked her to do that.
20 Q. But do you --
21 A. I was not -- I -- no.
22 Q. You don't know what she did?
23 A. No, I don't.
24 MR. ZABELL: Objection; asked and
25 answered.

1 MAYNARD 353
2 MR. ANTOLLINO: All right. We've
3 obtained, or, I should say, Don produced
4 this to me. We will mark this as R number
5 next.
6 (Exhibit R-36, E-mail, marked for
7 identification.)
8 MR. ZABELL: Do you have a copy for
9 me?
10 MR. ANTOLLINO: Yes (handing).
11 Q. Don produced this to me, and we
12 produced it to Mr. Zabell.
13 Do you know why Lauren didn't find
14 this?
15 A. I've never seen this.
16 Q. All right. This was something that
17 was e-mailed to your drop zone; is that correct?
18 A. Well, it has our e-mail address on
19 it.
20 Q. Okay. And the word "Don" does
21 appear in there, correct?
22 A. Yes, it does.
23 Q. And you don't know why Lauren didn't
24 produce that to us, correct?
25 A. No, I do not.

1 MAYNARD 355
2 transcription from a video.)
3 MR. MAYNARD: "My name is Ray
4 Maynard. I am the owner of Skydive Long
5 Island. Thank you for choosing our drop
6 zone to make your first skydive.
7 That release you just signed is a
8 very important legal document, and I am
9 going to explain why.
10 Skydiving is a dangerous sport. You
11 can be injured skydiving or even be killed.
12 When you sign that release, you agree to
13 various things. I am going to hit some of
14 the highlights of what you agree to.
15 You agree to release Skydive Long
16 Island and anyone remotely connected with
17 your skydive from liability if something
18 happens to you. You agree to release them
19 even if it happens as a result of their
20 negligence. You entered into that
21 agreement not only on behalf of yourself,
22 but on behalf of your family and your
23 estate.
24 You further agree to reimburse us
25 for any expenses in the event anyone does

1 MAYNARD 354
2 Q. All right. I want to show you -- I
3 am going to play your video. Do you have the
4 numbers? Your safety video. You know the safety
5 video, right?
6 A. Yes, I do.
7 Q. All right.
8 That's you, correct?
9 A. Yes.
10 MR. ZABELL: All right.
11 (Playing video.)
12 (Discussion off the record.)
13 MR. ZABELL: I would object. Any
14 transcription that gets done is what is
15 done here. There's no transcription that's
16 added at the conclusion of this deposition.
17 MR. ANTOLLINO: Try your best, and
18 I'll give it to you later.
19 Q. I want you to listen to this, okay.
20 You want to start over back at the beginning, or
21 should we just continue?
22 A. Sure.
23 Q. We start at 10 seconds. There we
24 go.
25 (The following portion is a

1 MAYNARD 356
2 file a lawsuit on your behalf. You agree
3 to reimburse us for any judgment that
4 someone may get. That release also
5 contains an assumption of risk. You have
6 assumed the entire risk of the skydive.
7 Another aspect of the release is the
8 limitation of warranty. Equipment that you
9 use is warrantied only to the extent it has
10 been used before. There is no warranty of
11 merchantability or fitness for a particular
12 purpose.
13 That document you signed is a very
14 important legal document. It is essential
15 that you understand it. If you want to
16 discuss it with your attorney, feel free to
17 do that. You can come back at a later time
18 and make your skydive. I want to make sure
19 you understand, you don't have to make the
20 skydive. You don't have to sign the
21 release. The bottom line on the release is
22 that you agree not to sue us, and if you do
23 sue us, you can't win.
24 Now having gotten that out of the
25 way, let's get on with the training so we

357
1 MAYNARD
2 can go out and make the skydive."
3 Q. Okay. So is that -- that was a
4 video that you showed customers?
5 A. Correct.
6 Q. All right. And you believe that
7 everything in there is true, correct?
8 A. I don't understand.
9 Q. That someone should not -- has to
10 sign the release before they go on; everything in
11 there applies to your drop zone, correct?
12 MR. ZABELL: I object to the form.
13 MR. ANTOLLINO: Withdrawn, and I
14 will just ask it again.
15 Q. Everything that you said in there
16 applies to a person who is about to go on to a
17 tandem jump, correct?
18 A. Correct.
19 Q. All right. There's another guy in
20 another video with kind of a long beard. You're
21 aware of him, right?
22 MR. ZABELL: Objection to the form.
23 Q. Do you recognize this guy
24 (indicating)?
25 A. That's Bill Booth.

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1 MAYNARD
2 people might think he's an expert.
3 Q. Do you?
4 A. Based on what he's done and the
5 things that he's manufactured, I guess.
6 Q. Okay. I am going to play a portion
7 of his safety video to you.
8 (The following portion is a
9 transcription from a video.)
10 MR. BOOTH: "Inherent risk you will
11 be taking by making a tandem parachute
12 jump. There is not now, nor will there
13 ever be a perfect parachute, a perfect
14 airplane, a perfect pilot, a perfect
15 parachute instructor or, for that matter, a
16 perfect student. Each of these systems and
17 people, all necessary for you to make a
18 tandem parachute jump, is subject to
19 malfunction or to human error."
20 Q. Do you believe that to be true?
21 A. It's not a perfect world.
22 Q. Do you believe that to be true is
23 the question, what he just said?
24 MR. ZABELL: Objection to the form.
25 A. I guess so.

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1 MAYNARD
2 Q. All right. So he's a big guy,
3 hotshot in the tandem jumping world; is that a
4 fair characterization?
5 MR. ZABELL: Objection to the form
6 of the question.
7 You may answer.
8 A. Bill Booth is the founder of the
9 Relative Workshop.
10 Q. Do you believe he's an expert?
11 MR. ZABELL: Objection to the form.
12 Q. Do you believe he's an expert in
13 this field?
14 MR. ZABELL: Are you withdrawing the
15 previous question?
16 MR. ANTOLLINO: Yes.
17 MR. ZABELL: I'm going to object to
18 the form of this question.
19 You may answer.
20 A. Do I believe he's an expert?
21 Q. Yes.
22 A. With what?
23 Q. In the field of skydiving.
24 A. He's a well -- he's a well-admired
25 skydiver. He has a couple of patents. Some

360
1 MAYNARD
2 MR. ANTOLLINO: All right. Let me
3 just go over my notes. I think we're
4 almost done.
5 THE VIDEOGRAPHER: Off the record?
6 MR. ANTOLLINO: Off the record.
7 MR. ZABELL: There is no off the
8 record.
9 MR. ANTOLLINO: All right, fine.
10 Q. Oh, yes. Since you do not believe
11 what is contained in R-32, the Ripoff Report, is
12 a legitimate complaint, you didn't investigate
13 this particular allegation; would that be fair to
14 say?
15 A. I responded to it. How could I
16 possibly investigate it?
17 Q. Well, I mean, could you ask around
18 at the drop zone if anyone had complained about
19 these allegations?
20 A. That particular propaganda, for lack
21 of a better word, was discussed in length by most
22 of the staff and all agreed that someone is just
23 trying to discredit Skydive Long Island.
24 Q. Why do you think they wanted to do
25 that?

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MAYNARD

1

2 A. Competition.

3 Q. Has your divorce been finalized?

4 MR. ZABELL: You may answer.

5 A. Yes.

6 Q. Are you married now?

7 A. No.

8 MR. ANTOLLINO: Okay. Thank you

9 very much.

10 MR. ZABELL: You may leave, walk

11 out.

12 MR. ANTOLLINO: That's it.

13 THE VIDEOGRAPHER: The time is 2:08

14 p.m., November 16, 2012, and this completes

15 today's deposition of Raymond Maynard.

16 (Time noted: 2:08 p.m.)

17

18

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363

C E R T I F I C A T E

1

2

3 STATE OF NEW YORK)

4) ss.:

5 COUNTY OF NASSAU)

6

7 I, JENNIFER FUCHS, a Notary Public

8 within and for the State of New York, do

9 hereby certify:

10 That RAYMOND MAYNARD, the witness

11 whose deposition is hereinbefore set forth,

12 was duly resworn by me and that such

13 deposition is a true record of the testimony

14 given by such witness.

15 I further certify that I am not

16 related to any of the parties to this action

17 by blood or marriage; and that I am in no way

18 interested in the outcome of this matter.

19 IN WITNESS WHEREOF, I have hereunto

20 set my hand this 26th day of November, 2012.

21

22

23

24 _____

25 JENNIFER FUCHS

362

A C K N O W L E D G M E N T

1

2

3 STATE OF)

4) ss.:

5 COUNTY OF)

6

7 I, RAYMOND MAYNARD, hereby

8 certify that I have read the transcript of my

9 testimony taken under oath in my deposition;

10 that the transcript is a true, complete and

11 correct record of my testimony, and that the

12 answers on the record as given by me are true

13 and correct.

14

15 _____

16 RAYMOND MAYNARD

17

18 Signed and subscribed to before

19 me, this ____ day of _____, 20__.

20

21 _____

22 Notary Public, State of _____

23

24

25

364

ERRATA

1

2 ELLEN GRAUER COURT REPORTING CO. LLC

3 126 East 56th Street, Fifth Floor

4 New York, New York 10022

5 212-750-6434

6

7 NAME OF CASE: ZARDA VS. ALTITUDE EXPRESS, ET ANO

8 DATE OF DEPOSITION: November 16, 2012

9 NAME OF WITNESS: RAYMOND MAYNARD

10

7	PAGE	LINE	FROM	TO	REASON
8	___	___	___	___	_____
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21	___	___	___	___	_____

22

23 Subscribed and sworn before me

24 this ____ day of _____, 20__.

25 _____

(Notary Public) My Commission Expires:

0001

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT

3 -----X

4 DONALD ZARDA,

5 Plaintiff,

6 - against -

INDEX NO.:
CV-10-4334

7 ALTITUDE EXPRESS, INC., d/b/a
8 SKYDIVE LONG ISLAND AND RAY MAYNARD,
9 Defendants,

10 -----X

11 Bee Reporting Agency, Inc.
12 32 Court Street
13 Brooklyn, New York

December 8, 2011
2:11 P.M.

14
15
16 EXAMINATION BEFORE TRIAL OF RICHARD M.

17 WINSTOCK, a non-party witness, taken by the
18 attorney for the Plaintiff, pursuant to Subpoena,
19 and held before Deborah Thier, a Notary Public of
20 the State of New York at the above-stated time and
21 place.

22

23 * * * *

24

25

0002

1 2

2 APPEARANCES:

3

4 GREGORY ANTOLLINO, ESQ.
5 Attorney for the Plaintiff
18-20 West 21st Street - Suite 802
New York, New York 10010

6

7

ZABELL & ASSOCIATES, P.C.

8 Attorneys for the Defendants
4875 Sunrise Highway - Suite 300
9 Bohemia, New York 11716
10 BY: SAUL D. ZABELL, ESQ.

11

12 ALSO PRESENT:
13 DONALD ZARDA
14 JOHN SANCHEZ, ESQ.

15

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0003

1 3

2 RICHARD M. WINSTOCK,

3 The witness herein, having first been duly

4 sworn by Deborah Thier, a Notary Public in and

5 for the State of New York, was examined and

6 testified as follows:

7 DIRECT EXAMINATION BY GREGORY ANTOLLINO, ESQ.:

8 Q Please state your name for the record.

9 A Richard M. Winstock.

10 Q What is your address?

11 A 65 Ridge Road, Hackettstown, New
12 Jersey, 07840.

13 Q Good morning, Mr. Winstock. We've met

14 before, I mean five minutes before, and I'll just

15 give you some ground rules about the deposition.

16 I'm just going to ask questions and

17 you're just going to answer them, and you've been

18 sworn to tell the truth, and I'd ask you to ask me

19 to rephrase a question if you don't understand a

20 question.

21 Would you agree to do that?

22 A Yes.

23 Q And if you don't know the answer to my

24 question, the answer is, I don't know. I don't

25 want you to guess or speculate or anything like

0004

1 Richard Winstock 4

2 that.

3 You were subpoenaed to come here

4 today --

5 A Yes.

6 Q -- for your deposition?

7 MR. ANTOLLINO: Just for the record,

8 I'm going to have this marked as Exhibit 1,

9 and I'll make copies of everything after.

10 (Whereupon, the subpoena was marked as

11 Plaintiff's Exhibit 1 for identification, as

12 of this date.)

13 Q Does this look like the subpoena that

14 you were served?

15 A Yes.

16 Q In that subpoena there's a reference to

17 production of documents.

18 A Yes, sir.

19 Q Did you read this?

20 A I did.

21 Q Were you able to find any documents

22 that were responsive to those requests?

23 A No, sir.

24 Q Let's put that aside. We're done with

25 that.

0005

1 Richard Winstock 5
2 By the way, when I'm asking questions,
3 if Mr. Zabel, who is Mr. Maynard's lawyer,
4 objects, that means he doesn't like the way I
5 asked the question and he might have the
6 opportunity to go to the judge and say, he didn't
7 ask that question right, so the answer should be
8 stricken, but that doesn't mean you don't answer.
9 It simply means that he is keeping a record.
10 A I understand.
11 Q So every time he objects, you answer.
12 You're not being represented by him,
13 are you?
14 A No.
15 MR. ZABELL: Unless you want to be.
16 I've been authorized by Mr. Maynard that if
17 you feel the need for representation at this
18 deposition, I am available to represent you,
19 but only if you feel the need.
20 THE WITNESS: Understood. Thank you.
21 Q What is your current place of
22 employment?
23 A Encore Nationwide, Inc., and the
24 address is 2780 Columbia Street, Torrance,
25 California, 09 -- I'm sorry, 90503.

0006

1 Richard Winstock 6
2 Q What do you do there?
3 A Director of sales.
4 Q What do you sell?
5 A Staff.
6 Q So it's a staffing agency?
7 A Yes.
8 Q Do you have anymore connection to Long
9 Island Skydiving?
10 A Yes.
11 Q What is your connection to L.I.S.D.?
12 A Currently I'm the safety and training
13 advisor. I'm also the chief instructor. I'm an
14 advanced free fall instructor examiner, a tandem
15 instructor examiner, a coach instructor examiner
16 and national director with U.S.P.A.
17 Q National director of U.S.P.A., that
18 does not have anything to do with L.I.S.D., does
19 it?
20 A Indirectly.
21 Q How so?
22 A Skydive Long Island is a group member
23 of the United States and we are a member of the
24 U.S.P.A. where I'm a director.
25 Q So you're a director.

0007

1 Richard Winstock 7
2 Is it a nonprofit organization?
3 A Yes.
4 Q You're the director at this nonprofit
5 organization that oversees all or many drop sites?
6 A Correct.
7 Q One of which is Long Island Sky Dive?
8 MR. ZARDA: It's Skydive Long Island.
9 You said Long Island Skydive.
10 MR. ANTOLLINO: If I've said Long
11 Island Skydive, Skydive Long Island is what I
12 meant to say.
13 MR. ZARDA: Because there is a Long
14 Island Skydive.
15 MR. ZABELL: Counsel, I'm going to ask
16 that if you need to confer with your client,
17 that should probably be done off the record.
18 It's not appropriate to do while this
19 deposition is going on.
20 MR. ANTOLLINO: All right. Thank you.
21 Q What is your highest level of
22 education?
23 A I have a master's degree in education
24 and one year PhD work in psychiatry.
25 Q From what institutions?

0008

1 Richard Winstock 8
2 A Seton Hall University was my master's
3 of education and Walden University was the PhD
4 stint.
5 Q Just tell me a little bit about your
6 professional life since leaving college as an
7 undergraduate.
8 MR. ZABELL: I'm going to object to the
9 form.
10 A Can you be a little more specific?
11 Q Why don't you start with, what did you
12 do after you graduated from college, and lead me
13 to how you've gotten to be doing what you're doing
14 today.
15 A Okay. I graduated college. I got my
16 master's degree in 1992. I started with the
17 Roxbury Township Police Department in December of
18 1992. I was a police officer for seventeen years,
19 sergeant of the emergency services unit, which is
20 a S.W.A.T. team dive team.
21 I made my first skydiving jump in 1992
22 and continued to jump primarily for sport and fun
23 until it became a part-time job, and I
24 collaterally jumped, and was a police officer for
25 the next fifteen years.

0009

1 Richard Winstock 9
2 I moved on from the police department
3 and continued skydiving at Skydive Long Island.
4 I've been employed at Skydive Long Island for,
5 approximately, fifteen years, and I am still
6 currently employed there right now.
7 Q Is that a seasonal position?
8 A Yes.
9 Q So you work there from when till when
10 every year?
11 A March, usually early, March 8th to
12 March 12th, straight to November, around
13 Thanksgiving.
14 Q How long have you known Don Zarda?
15 A I'm gonna estimate, approximately, six
16 years.
17 Q Where did you meet him for the first
18 time?
19 A I met Don for the first time at Skydive
20 Long Island. There is -- There's a very good
21 possibility we may have met up in Vermont one time
22 over the summer. So I believe I met him one time
23 in Vermont and then he came to work for us at
24 Skydive Long Island.
25 Q Was it you who invited him to come work

0010

1 Richard Winstock 10
2 at S.D.L.I.?
3 A No.
4 Q Do you know who that was?
5 A Curt Kellinger. C-U-R-T.
6 Q He was also in Vermont?
7 A Yes.
8 Q Did Don subsequent to that invitation
9 come to S.D.L.I. and work for a summer?
10 A He did.
11 Q When was that, approximately?
12 A Three years ago, possibly four years
13 ago. I'm approximating here. I'm not sure.
14 Q How long did he work there?
15 Well, if I were to ask you if this was
16 as long ago as ten years ago, would you say that
17 could be possible or --
18 A No, it wasn't ten years ago. It was
19 within the last six years.
20 Q So let's stick with the first time that
21 he's hired at S.D.L.I.
22 How long did he work there?
23 A While I was there, two summers,
24 possibly a third, and I am aware of previous
25 employment at Skydive Long Island, probably,

0011

1 Richard Winstock 11
2 maybe, eight to ten years prior.
3 Q But you weren't there at the time?
4 A I was, but I didn't -- I didn't have
5 the opportunity to meet Mr. Zarda.
6 Q How many tandem jumps have you done, do
7 you know?
8 A Seventy-five hundred.
9 Q What kind of tandem equipment did you
10 use at Skydive Long Island?
11 A Over the years they've used Strong
12 Rigs, that's the name of the manufacturer, and
13 also United Parachute Technologists, which is
14 commonly referred to as U.P.T., or Vector/Sigma.
15 We've had both manufacturers.
16 Q Is that what is used currently?
17 A Currently U.P.T. Vector/Sigma.
18 Q For how long has that been?
19 A Almost three years, approximately.
20 Q So then --
21 A Strong Rig was phased out slowly over
22 time.
23 Q In 2010 what was being used?
24 A Vector/Sigma, and specifically only
25 Sigma.

0012

1 Richard Winstock 12
2 Q As a tandem instructor, are you
3 familiar with all of the procedures required by
4 tandem instructors for gearing up tandem
5 passengers?
6 A Yes.
7 Q Are you familiar with the aspects from
8 gear up to gear down for tandem passengers on a
9 tandem jump?
10 A Yes, I am.
11 Q Do any of these procedures involve
12 touching a passenger?
13 A Yes.
14 Q In what manner?
15 A A professional manner.
16 Q Well, what do you mean by that?
17 A It's specifically covered in the U.P.T.
18 waiver, but when you're putting a harness on
19 someone, it has to be adjusted properly, securely,
20 to ensure safety, and that sometimes makes it
21 necessary to actually physically touch a person.
22 Q Can you explain?
23 A In layman's terms, if you're putting a
24 harness around your leg or thigh and I need to
25 tighten the strap, I might need to touch your

0013

1 Richard Winstock 13

2 thigh to tighten the strap.

3 Q Does the manner in which you touch a

4 passenger vary from situation to situation?

5 A Yes.

6 Q Can you briefly describe the procedure

7 for gearing up a tandem passenger?

8 A I can.

9 The tandem passenger goes through a

10 series of waivers and videos that describe what is

11 going to happen to them prior to getting them out

12 to the gear up area.

13 They're gonna take all their jewelry

14 off, empty their pockets. Depending on the time

15 of year, they may be in shorts. We may offer them

16 a jumpsuit, although it's not mandatory or

17 necessary.

18 I'm going to have them step into a

19 harness which has two leg straps, two shoulder

20 straps, like a backpack, and it has six adjustment

21 points.

22 Q Where are those adjustment points?

23 A Two leg straps, one belly, one back

24 band strap, two lateral straps and two shoulder

25 straps. Two --

0014

1 Richard Winstock 14

2 Q Go ahead?

3 A If you give me a second, I can answer

4 that.

5 Two leg straps -- two, three, four,

6 five seven, eight -- There's eight adjustment

7 points on the harness, and then when the harness

8 attaches to the rig, there's two more adjustment

9 points.

10 Q When you say the rig, you mean the

11 plane?

12 A When I say the rig, I'm referring to

13 the actual parachute itself.

14 Q So in total there appear to be ten

15 adjustment points?

16 A Correct.

17 Q So since the original answer was six,

18 let's start again with the eight adjustment points

19 on the person. So if I could just write those

20 down.

21 A Two leg straps, one belly band, one

22 lower lumbar, or back band, two lateral straps, in

23 the rear of your back, two shoulder straps.

24 That's eight right there on the actual harness

25 itself.

0015

1 Richard Winstock 15

2 There are another two that allow

3 adjustment once they attach to the parachute rig,

4 or container system.

5 Q The two that are on the leg, where on

6 the leg are they located?

7 A Inner groin, thigh.

8 Q Is it the duty of the instructor to

9 make the attachment to the passenger?

10 A I'm sorry, repeat that?

11 Q How does the instructor, and if I'm

12 asking this incorrectly, then maybe you can

13 clarify what I'm trying to get at, but how does

14 the instructor attach the adjustment points on the

15 legs of the passenger?

16 A Usually, and when I say usually, it's

17 upwards of ninety plus percent, the leg straps are

18 already fastened, they're just loosened up to form

19 almost like an open leg strap that you could slip

20 your leg through.

21 So if I were to ask a tandem student to

22 put a harness on while I held it, they would

23 basically just step into two round circles. I

24 would pull it up to their inner groin or thigh and

25 tighten up the straps.

0016

1 Richard Winstock 16

2 So if you're referring to actually

3 hooking up the strap itself, it's hooked up

4 already.

5 Q What about the shoulders?

6 A They're all -- every other strap is

7 already intact, it just would take some tightening

8 or loosening up to adjust it.

9 Q Is the instructor required to monitor

10 the tightness of the strap during the jump or is

11 that something that just doesn't vary?

12 A No, they are required to monitor it.

13 Q If a strap became loosened, what could

14 result?

15 A If a strap became loosened?

16 Q Yes.

17 A Unsafe scenario.

18 Q Have you known Ray Maynard to fire any

19 employees during your tenure?

20 A Yes.

21 Q Approximately, how many over the

22 fifteen years you've been there?

23 A Six.

24 Q So aside from Don, who were they?

25 A Alex Allen.

0017

1 Richard Winstock 17
2 Q When was that?
3 A Three years ago. Approximately, three
4 years ago.
5 Q Anyone else?
6 A There were others. I don't recall
7 names.
8 Q What was Alex Allen fired for?
9 A I don't know.
10 Q Did you ask Ray or --
11 A No.
12 Q How did you find out that Alex was
13 fired?
14 A Word of mouth.
15 Q Not from Ray, but from someone else?
16 A I don't recall.
17 Q Did you have any opportunity during the
18 summers that Don worked under your tutelage, let's
19 say, to observe his performance as an instructor?
20 A Yes.
21 Q Did you have an opinion about it?
22 A Yes.
23 Q What was it?
24 A I had no objections with his ability to
25 perform tandem instructor duties.

0018

1 Richard Winstock 18
2 Q Did you believe that Don was a good
3 instructor?
4 A Yes.
5 Q Was it known at S.D.L.I. that Don was
6 gay?
7 A Yes.
8 Q Issued say Don is gay.
9 Q How was that something that was known?
10 A I would say from Don.
11 Q Was it something that was ever
12 discussed among other people?
13 A Not specifically. It was known.
14 Q Did you ever hear anyone say to Don
15 anything like referring to his homosexuality in
16 any way?
17 A I didn't.
18 Q Over the years that you have worked at
19 Skydive Long Island, has there ever been a
20 customer complaint?
21 A While I was there about Don?
22 Q Well, has --
23 A Can you just clarify for me?
24 Q So you are aware that there was a
25 customer complaint about Don that is the basis of

0019

1 Richard Winstock 19
2 this lawsuit, correct?
3 A I am --
4 MR. ZABELL: Object to the form. You
5 can answer.
6 A I am now.
7 Q Have there been any other complaints
8 about Don that you're aware of?
9 A Not that I'm aware of.
10 Q Have there been any other complaints by
11 any other customers about anything over the years
12 that you've worked there?
13 A Not that I'm aware.
14 Q The five people other than Alex Allen
15 whose names you didn't remember, do you know what
16 any of them were fired for?
17 A I don't.
18 Q Are you also a cameraman at Skydive
19 Long Island?
20 A Yes.
21 Q What are your duties as a camera man?
22 A Primary responsibility is to video the
23 entire tandem experience for the passenger and
24 then produce a product for them to take home.
25 Q When you say, produce a product, do you

0020

1 Richard Winstock 20
2 mean edit the raw material that you've filmed?
3 A Correct.
4 Q So are there frequently out takes from
5 the video?
6 A Correct.
7 Q What is done with those, that you know
8 of?
9 A The raw footage?
10 Q Yes.
11 A I can only speak with my footage, but
12 we record over it, or destroy it. We're using
13 digital media now. It used to be, actually,
14 cassette like media where we would just record
15 over it. Some people do save it. I'm talking
16 about myself. I record over them.
17 Q When you say you use digital now, how
18 long have you been using digital?
19 A This summer, one year.
20 Q So in 2010 you were still, or the
21 company was still using the cassette?
22 A The compact cassette, yes.
23 Q Did you ever hear any staff members
24 make jokes about Don's sexuality in front of Don?
25 A No.

0021

1 Richard Winstock 21

2 Q Did there come a time that you learned
3 that Ray had suspended Don?

4 A Yes.

5 Q How did you learn about this?

6 A From Don.

7 Q What did Don tell you?

8 A He explained that he -- he explained
9 that he was suspended for an incident. He was
10 upset and I told him I would look into it and then
11 contact him.

12 Q Did he know what the incident was about
13 or did he just say he was suspended for an unknown
14 incident?

15 MR. ZABELL: I'm going to object to the
16 form of the multiple questions. You may
17 answer.

18 A I don't recall if Don knew exactly the
19 incident.

20 Q Where did you discuss this suspension?

21 A It was outside.

22 Q Outside where?

23 A Outside of -- it was in a gear up
24 tandem area outside of Skydive Long Island's
25 office in private.

0022

1 Richard Winstock 22

2 Q Is there a classroom --

3 A Yes.

4 Q -- on the premises?

5 A Yes.

6 Q Was it in the classroom?

7 A It may very well have been.

8 Q Do you remember Ray Maynard walking
9 into the meeting when Don was telling you about
10 the suspension?

11 A I don't.

12 Q So did you later approach Ray to
13 discuss the matter with him?

14 A I did.

15 Q When was that?

16 A It may have been that evening, that
17 weekend. Shortly thereafter speaking to Don.

18 Q What did you say to Ray?

19 A I asked him what happened.

20 Q What did he say?

21 A He said that he sent Don home because
22 of a complaint.

23 Q Did he say anything else?

24 A He explained the complaint briefly, and
25 when I say briefly, I knew that it was either a

0023

1 Richard Winstock 23

2 husband/wife, girlfriend/boyfriend scenario, and
3 there was a complaint about the female passenger
4 was with Don and she and the husband had a
5 complaint.

6 Q Do you remember anything else?

7 A I don't. I will say Ray Maynard was
8 the one that spoke to both of them, and I don't
9 have any intimate knowledge of the actual

10 complaint or the investigation that ensued, took
11 place, or if there was one. I don't know.

12 Q Are you certain that Ray spoke to both
13 the husband and the wife or the boyfriend and the
14 girlfriend?

15 A Ray took the complaint, and if -- I
16 need to amend that, it was from one or the other.

17 Q So you don't know anything about what
18 Ray did to investigate this complaint?

19 A I don't.

20 Q Did there come a time that you spoke to
21 Ray later about this complaint and Don's
22 suspension?

23 A Yes.

24 Q When was this?

25 A It was post Don being terminated. Post

0024

1 Richard Winstock 24

2 termination.

3 Q Let's talk about before Don was
4 terminated.

5 Did there come a time that you went to
6 Ray and argued in favor of Don not being fired?

7 A Yes.

8 Q What did you say?

9 A Ray asked my opinion, or when I -- Ray
10 asked me what I would do.

11 Q What did you say?

12 A My suggestion was a letter of
13 reprimand, spelling out the exact situation,
14 exactly what the complaint was, go over it with
15 Don and sit Don down, make it exorbitantly clear
16 that it had nothing to do with sexual orientation,
17 it was a reprimand, and have Don sign it saying
18 that if it ever happened again, that he would be
19 terminated.

20 Q What did Ray say in response to that?

21 A He just took -- he just asked for my
22 advice.

23 Q When you say that you wanted to put it
24 in the letter, this letter of reprimand, that you
25 suggested to make it exorbitantly clear that it

0025

1 Richard Winstock 25
2 had nothing to do with sexual orientation, why did
3 you suggest that?
4 A Because it's a sensitive -- it's a
5 sensitive situation.
6 Q But why mention sexual orientation in
7 the letter, or in this proposed letter I should
8 say?
9 A It was outwardly known that Don is gay,
10 and when I say outwardly, in a positive way. It
11 was Don -- in fact, I was introduced to him as gay
12 Don. So this wasn't something that was hidden.
13 When it comes to sexual orientation and
14 being politically correct, I feel that it was --
15 the advice I gave Ray was to be very sensitive to
16 that situation and be very politically correct and
17 do -- document it accordingly.
18 Q Did the complaint have anything to do
19 with sexual orientation that you can recall?
20 A Yes.
21 Q How so?
22 A It was brought up, the fact that Don
23 was gay was brought up. I believe Don brought it
24 up to the passenger, so it was definitely
25 mentioned in the complaint to Ray.

0026

1 Richard Winstock 26
2 Q How did Ray react to that?
3 A I don't know.
4 Q Well, did Ray express any opinion about
5 whether or not that was appropriate?
6 A To bring that up?
7 Q Yes.
8 A Ray's the drop zone owner, and anything
9 tandem instructor wise would usually -- he would
10 defer to me to make the decision.
11 I wasn't -- if you can clarify one
12 thing, when you say that wasn't appropriate, what
13 wasn't appropriate?
14 Q Don mentioning to the passenger that he
15 was gay.
16 A The answer to that is I don't know that
17 Ray said that was okay or not.
18 Q What is your opinion?
19 A I would instruct, or I would probably
20 give a tandem instructor advice that doing a
21 tandem is inherently an awkward situation, and if
22 you feel that can lighten the mood or possibly
23 make that person more comfortable and that would
24 make it a safer skydive, if the instructor felt
25 that it would make the skydive safer or put a

0027

1 Richard Winstock 27
2 person at ease, I personally would not have a
3 problem with it, and, of course, you can go
4 overboard with it as well.
5 So I would tread lightly on how much
6 information you gave or didn't give a passenger.
7 Sometimes no information is better than too much.
8 Q So there came to be a point when you
9 had a discussion with Don -- or rather Ray, about
10 the complaint after Don was terminated?
11 MR. ZABELL: I'll object to the form.
12 You can answer.
13 A Yes.
14 Q When was that, about how long after Don
15 was terminated?
16 A Within the week.
17 Q What did you say to Ray or what did he
18 say to you?
19 A Ray had advised me that he had
20 terminated Don under the advice of his attorney.
21 Q Do you know who his attorney was?
22 A I don't.
23 Q Do you know if it was not Saul Zabell?
24 A I don't know.
25 Q So you definitely don't know who the

0028

1 Richard Winstock 28
2 attorney was, and just to clarify this, you would
3 not be able to have say, oh, no, I know it wasn't
4 Saul Zabell because I know Don got Saul Zabell at
5 a different time?
6 A I'm sorry, Saul Zabell?
7 Q This is Saul Zabell.
8 A I don't know if it was or it wasn't.
9 It was his attorney.
10 Q That's all he said, was on the advice
11 of his attorney?
12 A I heard the name Harvey as the
13 attorney. I have no idea who gave him the advice.
14 Q Was there any further discussion?
15 A There wasn't.
16 Q Did there come a time that you learned
17 about this lawsuit?
18 A Was there a time what?
19 Q Oh, and by the way, I offer to
20 represent you as well if you feel like taking me
21 up on that, but I don't think you're going to need
22 any representation.
23 MR. ANTOLLINO: We'll have the question
24 read back.
25 (Whereupon, the requested section was

0029

1 Richard Winstock 29
2 read back.)
3 A Yes.
4 Q When was that?
5 A Shortly thereafter the termination.
6 Within three months.
7 Q What did Ray say?
8 A That he was being sued.
9 Q What did you say in response?
10 A I didn't say anything.
11 Q Did Ray say anything about this
12 lawsuit?
13 A No.
14 Q Have you spoken to him about the
15 lawsuit since then?
16 A No.
17 If I can add, I told him I was coming
18 here today.
19 Q What did he say in response to that?
20 A He didn't.
21 Q Do you know anything about the husband
22 and wife, boyfriend/girlfriend team that made the
23 complaint about Don?
24 A I don't know -- I do not.
25 Q Would it be fair to say that you were

0030

1 Richard Winstock 30
2 not on that particular jump?
3 A I wasn't -- Strike that, or let me
4 rephrase that.
5 I may have been. There's a very good
6 chance I was on the plane or at the jump zone, but
7 I do not recall the jump or the passengers
8 involved.
9 Q In your experience doing tandem jumps,
10 is it common to make jokes as one approaches the
11 point where one is going to drop out of the plane?
12 A Yes.
13 Q Why do you do this?
14 A Well, as I said earlier, I'm an
15 instructor examiner, so I teach the instructor
16 course for U.P.T., and the reason for, you called
17 it joking, or making the situation less tense,
18 really boils down to instructor and student
19 safety.
20 Q How so?
21 A The calmer a passenger is to exiting,
22 generally the safer the skydive will be. As an
23 instructor, you're given a short amount of time to
24 build a confidence between him and her and
25 yourself, and the more confidence they have in

0031

1 Richard Winstock 31
2 you, the safer the jump will be.
3 Q Have you ever heard any jokes made in a
4 situation where a boyfriend and a girlfriend are
5 going up on a skydive and the girlfriend gets
6 strapped to another guy?
7 A Have I ever heard -- Repeat that,
8 please.
9 MR. ANTOLLINO: If the reporter would
10 please read it back.
11 (Whereupon, the requested section was
12 read back.)
13 A Yes, I have.
14 Q Is that common?
15 A Yes.
16 Q Why are jokes like that made?
17 A Again, it boils down to a safety issue.
18 Q You've heard these jokes made at
19 Skydive Long Island?
20 A Yes.
21 Q So a joke is something like, wow, I bet
22 you didn't think your girlfriend was gonna be
23 crotch to crotch with another guy? Would that be
24 a type of joke that would be made?
25 A No.

0032

1 Richard Winstock 32
2 Q How about something like, I bet you
3 didn't know your girlfriend was gonna be strapped
4 to another guy?
5 A Possibly.
6 Q Can you give me an example of another
7 one you can think of?
8 A I've heard the instructor of a female
9 say, who's more important to you now.
10 Q Anything else?
11 A Not off the top of my head.
12 Q Did you ever hear Ray Maynard make any
13 disparaging comments about Don's homosexuality?
14 A No.
15 Q Did you ever hear him reference it at
16 all?
17 A Again, I'll be very clear, people
18 referred to Don as gay Don. So if that's a
19 reference to it, then, yes. A good portion of the
20 instructors, if not all of them, and all video
21 guys and coaches and everyone that works there
22 referred to Don as gay Don.
23 I thought that this was acceptable
24 because that's how I was introduced to him. I
25 didn't know if that upset him or -- then it would

0033

1 Richard Winstock 33
2 be disparaging, but that's the only thing that I
3 can think of.
4 Q Do you know where gay Don originated?
5 A I have no idea.
6 Q Did Don ever seem to be bothered by
7 being referred to as gay Don?
8 A No.
9 Q Did there come a time where Don had
10 an accident in the workplace?
11 A Yes.
12 Q Do you remember what happened?
13 A Don hurt one of his ankles.
14 Q Do you remember how that happened?
15 A Or foot or feet.
16 Without getting very specific, and I
17 believe it was a landing injury, and it was one of
18 his ankles or his left or right foot.
19 Q Is there a weight limit for passengers
20 to go on a tandem jump?
21 A Yes.
22 Q What has been the weight limit at
23 Skydive Long Island?
24 A There's a weight -- There's several
25 weight limits. Skydive Long Island has a weight

0034

1 Richard Winstock 34
2 limit of two hundred twenty-five pounds. We can
3 -- the reason for that weight limit is the wear
4 and tear on the equipment and instructor ability.
5 Based on the actual manufacturer of the
6 rig, we can take up to five hundred total pounds
7 under the system. So depending on instructor
8 weight, that two twenty-five can be exceeded.
9 Q So, in other words, if someone came who
10 weighed two hundred and fifty pounds, that would
11 be an acceptable weight, so long as the instructor
12 weighed two hundred and fifty pounds or less?
13 A The instructor would be two hundred,
14 the rig itself is fifty pounds. So, for example,
15 I am two hundred pounds. With the rig I'm
16 two-fifty. I can take up to a two hundred fifty
17 pound passenger.
18 Q So anything over five hundred is
19 inappropriate, including the rig, the passenger
20 and the instructor?
21 A It's outside of manufacturer
22 guidelines.
23 Q Was Don asked to take an overweight rig
24 on the time that he broke his ankle?
25 A An overweight rig?

0035

1 Richard Winstock 35
2 Q Yes. Was the passenger over weight at
3 the time that he broke his ankle?
4 MR. ZABELL: Object to the form of the
5 question.
6 A I have no idea.
7 Q When I say the passenger is over
8 weight, what I mean to say is did the total
9 weight, the instructor and passenger weight,
10 exceed five hundred pounds, and your answer is you
11 don't know?
12 A I don't know.
13 Q Do you ever recall Don coming back to
14 work after his injury with a cast?
15 A Yes.
16 Q Do you remember what the cast looked
17 like?
18 A Yes.
19 Q What did it look like?
20 A Bright fluorescent pink.
21 Q Was there anything else pink that you
22 saw?
23 MR. ZABELL: Objection to the form.
24 You may answer.
25 A On Don, yes.

0036

1 Richard Winstock 36
2 Q Yes. What was it?
3 A I've seen a pink hats, I've seen pink,
4 I believe, nail polish, pink shirts. That's the
5 best of my recollection.
6 Q When you say pink polish, you mean
7 toenail polish, fingernail polish or both?
8 A I believe toe.
9 Q Do you remember Ray ever making any
10 disparaging comments about that?
11 A No.
12 Q Did anyone contact you after Don was
13 fired to inquire about Don's ability as a worker
14 as a reference for future employment?
15 A I don't know. Quite possibly.
16 Q Do you know someone by the name of Doug
17 Smith?
18 A No.
19 Q You talked about a waiver that is
20 signed before the passenger goes up in the plane.
21 Do you recall?
22 A Yes.
23 MR. ANTOLLINO: So I'm just going to
24 have this marked as Plaintiff's Exhibit 2.
25 (Whereupon, the waiver was marked as

0037

1 Richard Winstock 37
2 Plaintiff's Exhibit 2 for identification, as
3 of this date.)
4 Q Is this the waiver at S.D.L.L.?
5 A This is a portion of it.
6 Q I'm sorry, did I leave something out?
7 A That is the waiver. There's usually a
8 U.P.T. waiver attached too.
9 Q So this is an S.D.L.L. waiver?
10 A Yes.
11 Q And the U.P.T. waiver is something
12 else?
13 A Correct.
14 Q What does the U.P.T. waiver have on it?
15 A It's a manufacturer waiver.
16 Q When do you give in the tandem process
17 this waiver to the passenger?
18 A Usually when they first show up. They
19 fill out the waiver in its entirety and then they
20 watch a training video.
21 Q Is there ever a circumstance where
22 they're watching the video at the same time
23 they're reading the waiver?
24 A Not to my knowledge. I don't get
25 involved in that end of it, so I'm not -- I can't

0038

1 Richard Winstock 38
2 answer either way.
3 Q Do you know anything about this waiver
4 or why this waiver was written up?
5 A Not specifically. I know it is a
6 waiver.
7 Q How many videos does the tandem
8 passenger watch?
9 A One.
10 Q Who's in that video?
11 A Currently Ray Maynard and myself.
12 Q Who was in it in 2010?
13 A 2010, very well may have been the same
14 video. The prior video was Duncan Shaw and an
15 attorney.
16 Q Mr. Shaw --
17 A Wasn't him.
18 Q Mr. Shaw is an attorney?
19 A No, Duncan Shaw is a tandem instructor.
20 So he was in a video doing -- a tandem instructor
21 needs to do the training of the student. So the
22 video suffices for the training.
23 The current one I'm in. The prior one
24 was Duncan Shaw, and there was also an attorney
25 reading some sort of disclaimer or waiver prior.

0039

1 Richard Winstock 39
2 Q It wasn't Mr. Zabell?
3 A That I know as a fact. No, it wasn't
4 him.
5 Q Did you ever hear Ray complain about
6 his wife while they were married?
7 A Yes.
8 Q Was it something that was pretty often?
9 A I wouldn't say often. I would say once
10 in a while I heard him complain about his wife.
11 Q What types of things would he say?
12 A I don't recall specifics.
13 Q How long were Ray and his previous wife
14 married?
15 MR. ZABELL: I'm going to object to the
16 form.
17 Q If you know.
18 A Eight years, seven years. Seven or
19 eight years, approximately.
20 Q Over the course of the entire marriage,
21 did you hear complaints on a continual or a time
22 to time basis, or did it happen more often at the
23 end?
24 A More often at the end.
25 Q Are you on the S.D.L.L. Facebook page?

0040

1 Richard Winstock 40
2 A Yes, as a -- Yes.
3 Q Have you ever seen Ray complain about
4 his wife on the S.D.L.L. Facebook page?
5 A Not off the top of my head.
6 Q I'm going to show you some pictures.
7 We talked about the jokey atmosphere that might
8 occur when somebody is going up in a plane before
9 you jump, and I do believe that you have a web
10 site, is that correct?
11 A I do. When you say we --
12 Q You, you have a web site?
13 A My own web site?
14 Q Yes.
15 A Yes, I do.
16 Q And I believe S.D.L.L. has its own web
17 site?
18 A Yes, they do.
19 Q Would it be fair to say that people
20 have tagged you on Facebook in videos and
21 photographs?
22 A Yes.
23 Q Some of these are publicly available?
24 A Yes.
25 Q And some of them are available to your

0041

1 Richard Winstock 41

2 Facebook friends?

3 A Yes.

4 Q And you have about three thousand

5 Facebook friends?

6 A Yes.

7 MR. ANTOLLINO: We'll go one by one.

8 We'll make copies later.

9 This will be Plaintiff's Exhibit 3.

10 (Whereupon, the photographs were marked

11 as Plaintiff's Exhibit 3 for identification,

12 as of this date.)

13 (Whereupon, a short break was taken.)

14 Q We've marked as Plaintiff's Exhibit 3 a

15 twenty-nine page document, and I've numbered each

16 of the documents in my own handwriting of stills

17 that I've taken from various point on the

18 Internet.

19 MR. ZABELL: You said twenty-nine

20 pages?

21 MR. ANTOLLINO: Twenty-nine pages.

22 Q I'm just going to give you this, and

23 you can take some time if you'd like, I don't

24 think you'll need that much time, but I'd like you

25 to look at each of these pages and tell me, A, is

0042

1 Richard Winstock 42

2 there anything improper, B, unsafe, or C,

3 inappropriate.

4 Do you understand the question?

5 A I do.

6 Q Okay.

7 A I've gone through all the photos.

8 Q And your answer?

9 A I did see one thing that I consider to

10 be unsafe.

11 Q What was that?

12 MR. ZABELL: I'm going to ask you just

13 to count the pages.

14 THE WITNESS: I think they're numbered.

15 MR. ANTOLLINO: Yes, they're numbered.

16 A Number twelve, and there's one other I

17 found. Number fourteen.

18 Q So twelve and fourteen.

19 Were there any other documents or any

20 other pages in this document where you saw

21 anything improper, unsafe or inappropriate?

22 A Other than those two, I didn't notice

23 anything.

24 Q Now, let's talk those. We'll start

25 with twelve.

0043

1 Richard Winstock 43

2 Do you recognize the people in that in

3 that shot?

4 A The instructor.

5 Q You recognize the instructor?

6 A Yes.

7 Q Who is it?

8 A John Sherman.

9 Q Does John Sherman now work for

10 S.D.L.L?

11 A He does.

12 Q What's unsafe about that?

13 A He had a mask on.

14 Q What's unsafe about wearing a mask?

15 A It could hinder his visibility.

16 Q Is that a serious safety violation, a

17 major one?

18 A No, it's not a major one. It's one I

19 would note, though.

20 Q Is there anything else that's improper

21 or unsafe or inappropriate about page twelve?

22 A No.

23 Q And you said page fourteen.

24 Do you recognize any of the people on

25 page fourteen?

0044

1 Richard Winstock 44

2 A Yes.

3 Q Who are they?

4 A Tandem instructor, Brett Nock.

5 N-O-C-K.

6 Q What is inappropriate, unsafe or

7 improper about what's happening here?

8 A Unsafe category. I would say jumping

9 with an external -- a bottle of water or plastic,

10 whatever.

11 Q So it appears that in this picture

12 Brett is putting water into the mouth of the

13 tandem passenger while they are in flight, is that

14 correct?

15 A Brett's simulating giving his passenger

16 a drink of water, correct.

17 Q Is it a simulation or was he actually

18 doing that or do you know?

19 A The bottle is empty.

20 Q How do you know the bottle is empty?

21 A I saw the video.

22 Q Do you know where this video is? Do

23 you know which of the locations this is? Is this

24 someone that tagged you or is this is on the

25 S.D.L.L. page?

0045

1 Richard Winstock 45
2 It appears this is on Facebook, right?
3 MR. ZABELL: Objection to the form of
4 the multiple questions.
5 MR. ANTOLLINO: Okay. Withdrawn.
6 Q Does this --
7 A I don't know, I don't know.
8 Q Do you know when this took place?
9 A I don't know.
10 Q Did Mr. Nock get disciplined for any
11 reason as a result of that?
12 A No. I put this into the category of
13 very minor.
14 Q Did you in any way, you know, tell him
15 that he shouldn't do that?
16 A No. Brett Nock has in excess of ten
17 thousand tandem jumps. He's one of our very, very
18 senior instructors, and if I were teaching a brand
19 new tandem instructor, I wouldn't want a new
20 instructor doing that.
21 Q You saw a lot of pictures of yourself
22 in there, right?
23 A I did.
24 Q And you saw pictures of a lot of people
25 who you recognized?

0046

1 Richard Winstock 46
2 A I did.
3 Q And there were a lot of tandem
4 instructors in there too?
5 A Yes.
6 Q And Don is on the first page?
7 A Correct.
8 Q Would you say that a lot of those
9 pictures represented the general goofiness that
10 builds ease in a customer while he is going up in
11 the plane?
12 MR. ZABELL: I'm going to object to the
13 form of the question. You may answer it.
14 A Yes.
15 Q Again, aside from those two safety
16 issues, you didn't see any goofiness that you
17 thought was inappropriate, is that correct?
18 MR. ZABELL: Object to the form of the
19 question.
20 A I didn't.
21 Q There's a couple of things I want to
22 ask about, some particular ones.
23 Number two, it looks like you are
24 landing with someone. Do you see that?
25 A Yes.

0047

1 Richard Winstock 47
2 Q Do you know why your hands are at the
3 passenger's hips?
4 A Yes.
5 Q Why?
6 A When you land a tandem, there's two
7 methods to landing in tandem. You can both sit
8 down and slide, which is a preferred method, it's
9 taught, it's for newer instructors, or you can
10 both stand up, which is more difficult.
11 If you'll notice in this picture, the
12 lower connectors are already detached, that's why
13 the passenger is allowed to move away from him.
14 When you do that, you do that up in the air so you
15 land safely.
16 This picture, and I remember the actual
17 jump, I stood up and my passenger went to stand
18 up, but he was sitting, in other words, he was
19 going to the ground, and my hands were there to
20 pick him up to stop him.
21 It's important to note you're still
22 attached at the shoulders, so if your tandem goes
23 down or goes down quick, I go down. So all I was
24 doing there was grabbing his side connectors,
25 which are natural handles or straps to hold him

0048

1 Richard Winstock 48
2 up.
3 Q You did this because you thought it was
4 in the best interest of the passenger to do that,
5 correct?
6 A No.
7 Q Why did you do that?
8 A It was in the best interest for me.
9 Q It was for your safety?
10 A Correct, and my passenger's safety.
11 Q Under the circumstances using your
12 judgment, you thought it was necessary to grab his
13 hips?
14 A Yes.
15 Q In number three, I don't know if you
16 are the tandem instructor there. Are you?
17 A No.
18 Q Do you recognize who it is?
19 A Yes.
20 Q Who is it?
21 A It's a Greek name. I call him Sully.
22 His real name is Telly, and his last name is --
23 it's a Greek last name. It's Telly. He's known
24 as Telly.
25 Q Do you know why he's touching the

0049

1 Richard Winstock 49

2 woman's head there?

3 A Yes, I do.

4 Q Why is that?

5 A There's also a few methods to exiting a

6 aircraft with a passenger. In all instances,

7 whether it be standing, sitting, kneeling, you

8 want your passenger's head to be back. If their

9 head is forward as you leave the aircraft, the

10 tendency is for the head -- it's tandem, so it's

11 going to be to go forward or do a front flip.

12 So we teach them, and this is also

13 trained in the video on the ground, that when they

14 sit in the doorway to keep their head back so if a

15 passenger sits in the doorway and they're looking

16 at the ground or scared or looking at the

17 videographer, it's very, very common, and it's

18 also taught that the tandem instructor can

19 reposition their head backwards, and that's what

20 he's doing.

21 Q It appears that their heads are very

22 close to each other, correct?

23 A Correct.

24 Q That's for the passenger's safety,

25 correct?

0050

1 Richard Winstock 50

2 A What is, that their heads are close?

3 Q Yes, or does it just depend on the

4 circumstances?

5 A You're strapped pretty closely. I can

6 say that some instructors prefer the head -- the

7 passenger's head on the left side, some prefer it

8 on the right side.

9 Virtually no instructors that I know of

10 like it right in front of them, and the reason for

11 that is when the parachute opens, the head can

12 literally knock you out or crack your teeth.

13 Usually the passenger's head is to the right or

14 left. When that happens, it causes you to put it

15 a little closer to their head.

16 Q And their chin would come close to the

17 passenger's neck, correct?

18 A Correct.

19 Q When you're up in the air, is it loud?

20 A Generally. Can you please -- In a

21 plane, free fall? When I'm in the plane?

22 Q Yes. Not free fall, but in the plane.

23 A We can hear each other speak, it's not

24 deafening, but it's loud.

25 Q When you get out in the air?

0051

1 Richard Winstock 51

2 A You can't even speak.

3 Q Is there a way to communicate when

4 you're in the air?

5 A Yes.

6 Q How is that?

7 A Hand signals.

8 Q Is there any other way?

9 A Not that I know of.

10 Q What does under canopy mean?

11 A It means the parachute has inflated and

12 you're basically using it as a wing to get

13 yourself to the ground. So you're flying the

14 parachute, and they call that under canopy.

15 Q When you're under canopy, can you

16 communicate verbally with a passenger?

17 A Yes.

18 Q How easy or hard is that?

19 A Easy.

20 Q Number seven, do you recognize this

21 still from this video?

22 A I do.

23 Q Do you know whose hand that is?

24 A I do.

25 Q Whose hand is it?

0052

1 Richard Winstock 52

2 A Dan Feitlan's.

3 Q Do you know the person with the

4 backpack there?

5 A I'm not sure.

6 Q When I say the backpack, is that the

7 parachute?

8 A Yes.

9 Q Do you know why Dan's hand is touching

10 the other person's posterior?

11 A Yes.

12 Q Why?

13 A This was a coach course evaluation, and

14 basically the person that you just referred to in

15 the front of this picture number seven is a

16 simulated student. As a coach, and that's the

17 person whose hand it is, it appears to me they're

18 putting their hand there to anticipate the student

19 leaving the plane. If the student leaves the

20 plane without you, you have to catch up with them.

21 So it's taught that you have a physical

22 presence on the student so that when they go, you

23 go, and that's exactly what they're taught to do,

24 is have a physical presence.

25 Q So in this particular circumstance,

0053

1 Richard Winstock 53
2 it's perfectly appropriate and necessary for
3 safety for the instructor to put his or her hand
4 on the posterior of the student, correct?
5 A In this particular photo, yes.
6 Q Do you recognize number fifteen?
7 A Yes, I do.
8 Q It appears that someone's giving
9 someone the finger there. Do you see that?
10 A Yes.
11 Q Do you know why?
12 A No idea.
13 Q What?
14 A I have no idea.
15 Q Do you know what this group was?
16 A What do you mean?
17 Q Do you know who these people were?
18 A I do.
19 Q Who were they?
20 A Joseph Fortune, --
21 MR. ANTOLLINO: Let me withdraw the
22 question and ask it generally.
23 Q Do you know generally who they are;
24 were they passengers, were they fun jumpers?
25 A These are two instructors and a fun

0054

1 Richard Winstock 54
2 jumper, and this is at a special event that we
3 call a Boogie, where we have planes that hold
4 upwards of thirty people. So this was just fun
5 jumpers. They're instructors acting as fun
6 jumpers.
7 Q Are the fun jumpers paying customers
8 also?
9 A Yes.
10 Q Are the fun jumpers treated differently
11 than first time customers or are they also
12 considered paying customers?
13 A They're considered experienced
14 skydivers. So there's usually a separation
15 between a first time student and someone who is a
16 student. Yes, they are treated differently.
17 Q Do you recognize who's sticking his
18 tongue out in number sixteen?
19 A I don't know.
20 Q Is that from the same video in fifteen,
21 if you know?
22 A It might be, yes.
23 Q But you're not sure?
24 A I'm not sure if that's the same time.
25 Q There are a couple of repeats here.

0055

1 Richard Winstock 55
2 On page twenty-six, it appears that
3 you're touching the passenger's head. Is that
4 what you had described earlier with regard to the
5 other page we were looking at or is that a
6 different situation?
7 A You said me? I don't know if that's
8 me.
9 Q It appears that you are tagged here,
10 so, I mean, I don't know if this is you or not.
11 Does it look like you right there?
12 A Yes, I'll give it to you, it looks like
13 me.
14 Q Do you know why you're touching that
15 passenger's head?
16 A Yes.
17 Q Why?
18 A Exactly the reason I explained earlier.
19 Q Okay.
20 A To get that passenger's head on my
21 shoulder.
22 Q So I'm done with Exhibit 3.
23 MR. ANTOLLINO: We'll mark this
24 collectively as Exhibit 4.
25 (Whereupon, the web site pages were

0056

1 Richard Winstock 56
2 marked as Plaintiff's Exhibit 4 for
3 identification, as of this date.)
4 Q I'm handing you Exhibit 4, and I'm just
5 going to ask you, do these appear to be from your
6 personal web site?
7 A Yes, they do.
8 Q Why don't you look at all three.
9 A Okay.
10 Q So they're all snapshots of your web
11 site, is that fair to say?
12 A I believe they are, yes.
13 Q One of them is a link to some videos,
14 is that right?
15 A Yes.
16 Q Two of them are a link to S.D.L.L.
17 videos, is that right?
18 A Yes.
19 Q One of them is a link to a video with
20 Rich, Tony and Curt.
21 Are those friends of yours?
22 A Yes.
23 Q On the second page of the exhibit you
24 have a page about canopy safety, is that correct?
25 A Yes.

0057

1 Richard Winstock 57

2 Q In this canopy safety, I believe you
3 refer to there having been five fatalities and one
4 critical injury that were canopy related.

5 I don't know when this was written, but
6 you refer to one fatality and one critical injury,
7 correct?

8 A Yes.

9 Q And you refer the reader --

10 A I'm sorry, if I can, I'm pretty sure
11 this is taken from the U.S. Parachute Association,
12 so it was a copy and paste. So those five
13 incidents were nationwide.

14 Q But you thought that this was something
15 that was important that you wanted to put on your
16 own web site, is that fair to say?

17 A Yes.

18 MR. ANTOLLINO: Off the record.
19 (Whereupon, there was a discussion
20 held off the record.)

21 Q Is there a safety manual that is highly
22 regarded in the industry that you recommend on
23 your web site?

24 A Yes.

25 Q What is it?

0058

1 Richard Winstock 58

2 A There's two. Skydiver Information
3 Manual, commonly referred to as the S.I.M., and
4 the Instructor's Rating Manual, commonly referred
5 to as the I.R.M.

6 Q Are these manuals that are supposed to
7 be followed at S.D.L.L.?

8 A Yes.

9 Q Are they generally followed at most
10 reputable drop zones?

11 A Yes.

12 MR. ANTOLLINO: I'm going to mark this
13 as Exhibit 5.

14 (Whereupon, the Facebook page printout
15 was marked as Plaintiff's Exhibit 5 for
16 identification, as of this date.)

17 Q Here we have a snapshot of some
18 Facebook comments, and it appears that S.D.L.L.,
19 Skydive L.L., has made a comment there, is that
20 correct?

21 A Yes.

22 Q Who's the one who's writing when it's
23 S.D.L.L. Skydive L.L.?

24 A I don't know the answer to that. I
25 didn't read these yet.

0059

1 Richard Winstock 59

2 Q Why don't you take a look at the first
3 paragraph.

4 A Okay.

5 Q Does it appear to you that anyone in
6 particular wrote that?

7 A Yes.

8 Q Who wrote that?

9 A The owner, Ray Maynard.

10 Q How do you know that it's Ray?

11 A 'Cause he's making reference to his
12 ex-wife and Barbara, who I know is his current
13 girlfriend.

14 Q Does Barbara know anything about this
15 current case?

16 A I don't know.

17 Q What's Barbara's last name?

18 A I don't know.

19 Q Is this a comment that Ray made typical
20 of the comments that Ray made about his wife
21 toward the end of their marriage that you heard?

22 A I don't take this as disparaging as --

23 Q No, I'm just asking is it the typical
24 kind of comments. I'm not saying it's disparaging
25 or not.

0060

1 Richard Winstock 60

2 A Typical, yes.

3 Q How are skydivers paid at S.D.L.L.?

4 A There's two methods. There's W-2 and
5 there's 1099.

6 Q What's the difference between a W-2
7 employee and a 1099 employee?

8 A The 1099 employee, I am one, I have my
9 own skydiving LLC, so I invoice Skydive Long
10 Island each week for my services, and then W-2
11 employees are directly working for Skydive Long
12 Island.

13 Q So are you the only 1099 that you're
14 aware of?

15 A No.

16 Q Who else might be a 1099?

17 A I know there are others. I don't know
18 specifically the financial arrangements for each
19 instructor.

20 Q For the W-2 employees, how are they
21 paid?

22 A With a paycheck biweekly -- I'm sorry,
23 weekly by paycheck.

24 Q Do they get an hourly wage, a weekly
25 wage?

0061

1 Richard Winstock 61
2 A Per jump.
3 Q How much do you get per jump?
4 A Tandems get forty dollars, training
5 tandems get fifty dollars, advanced free fall
6 jumps get fifty-five, video jumps get fifty-nine
7 dollars, coach jumps get thirty dollars.
8 I could go into a slew of other
9 recertification jumps. I don't know how far you
10 want me to go.
11 Q All right. That's good enough.
12 Are there any days where the weather is
13 bad and no one shows up to the drop zone?
14 A Yes.
15 Q On those days do the employees get
16 compensated in any way?
17 A No.
18 MR. ANTOLLINO: Let's mark these as
19 Exhibits 6 through 9.
20 (Whereupon, the e-mail was marked as
21 Plaintiff's Exhibit 6 for identification, as
22 of this date.
23 The letter dated August 17, 2010 was
24 marked as Plaintiff's Exhibit 7 for
25 identification, as of this date.

0062

1 Richard Winstock 62
2 The undated letter was marked as
3 Plaintiff's Exhibit 8 for identification, as
4 of this date.
5 The Facebook pages were marked as
6 Plaintiff's Exhibit 9 for identification, as
7 of this date.)
8 Q I just want to show you Exhibit 6 and
9 ask you if this is an e-mail exchange between you
10 and Don?
11 A Yes.
12 Q Is everything in that e-mail exchange
13 true?
14 A Yes.
15 Q I'm going to show you Exhibits 7 and 8
16 and ask you if you recognize these?
17 A Can I read this?
18 Q Sure, of course. Take your time.
19 A Yes, I recognize both pages.
20 Q Let me just ask you very quickly, is
21 Exhibit 7 a letter you received from Michael
22 Gamble and Exhibit 8 a letter you responded to
23 Michael Gamble's letter with?
24 A Yes.
25 Q Did you have any phone conversation

0063

1 Richard Winstock 63
2 with Mike Gamble?
3 A I don't believe I did. To the best of
4 my recollection, I don't believe I did.
5 Q Exhibit 9, why don't you take a look at
6 this.
7 A Yes.
8 Q Does that appear to be an e-mail
9 exchange you had with Don Zarda after he
10 was terminated?
11 A Yes. This is me forwarding those two
12 documents to Don.
13 Q Now we're going to watch some video.
14 They're not very long.
15 MR. ANTOLLINO: I brought a little
16 Phone Drive for you. If you could return it
17 tomorrow, I would appreciate it.
18 MR. ZABELL: I should be able to. If
19 not, I'll replace it with a new one.
20 MR. ANTOLLINO: I'm going to deem this
21 folder marked Rich collectively as Exhibit
22 10, and I'll make a copy for Mr. Zabell.
23 (Whereupon, the video was deemed marked
24 as Plaintiff's Exhibit 10 for identification,
25 as of this date.)

0064

1 Richard Winstock 64
2 MR. ANTOLLINO: I'm opening this
3 folder, and we'll all have to move around to
4 the other side of the table, and it appears
5 inside this folder Rich there are six items
6 marked image, 1334, 1335, 1337, 1339, 1340
7 and 1341.
8 Q Do you see that?
9 A I do.
10 Q So we're going to look at 1334, and
11 again, I'm going to ask you the question, do you
12 see anything inappropriate, unsafe or improper in
13 this video?
14 Do you want to see it again?
15 A No.
16 Q And your answer is?
17 A Inappropriate, unsafe or improper?
18 Q Yes.
19 A No.
20 Q There was some point in there where the
21 passenger exclaims, make shit happen, is that
22 correct?
23 A Yes.
24 Q And everyone in unison, including
25 instructors, respond, make shit happen, correct?

0065

1 Richard Winstock 65
2 A Correct.
3 Q And that's part of the goofiness of the
4 tandem experience, would that be a fair statement?
5 MR. ZABELL: Objection to form. You
6 may answer.
7 Q Would that be fair to say?
8 A Yes.
9 Q Let's look at 1335, and once again the
10 question is, do you see anything in here that's
11 improper, unsafe or appropriate?
12 A I saw nothing unsafe. It depends, the
13 reference -- if giving the middle finger to
14 someone else is inappropriate, you could probably
15 deem that inappropriate. It was two people having
16 fun. Unsafe though, I would probably say if you
17 played it a little further, you might see
18 something unsafe.
19 Q You've seen this video before?
20 A No, I haven't.
21 Q I only got a snippet of it, but I'm
22 just asking you about the snippet.
23 Do you remember anything about this
24 particular video?
25 A I don't.

0066

1 Richard Winstock 66
2 Q Because I have a longer shot of it on
3 my iPhone if you want to see it.
4 A I'm just making mention there's about
5 to be a collision in the air right there, and I
6 think that's unsafe.
7 Q Why is there about to be a collision in
8 the air?
9 A Rewind it a little bit and you'll see
10 that guy about to collide with -- right there.
11 Q Really?
12 A I would say that's unsafe.
13 Q How did that happen?
14 A I have no idea. I've never seen this
15 video before.
16 MR. ZABELL: I think it might have
17 something to do with physics.
18 Q What could have been done to prevent
19 that collision?
20 A That's a very gray general question.
21 They could have not jumped.
22 Q Do you know if there were any injuries?
23 A No. No one reported to me. But again,
24 all kidding aside, I've never seen that video.
25 That was unsafe.

0067

1 Richard Winstock 67
2 Q Inside a plane, though, aside from the
3 middle finger, which was a borderline
4 inappropriate, there was nothing else
5 inappropriate?
6 MR. ZABELL: Objection. You may
7 answer.
8 A Depending who you ask, that could be
9 considered borderline inappropriate.
10 Q Would it depend on the circumstances?
11 A Yes.
12 Q I'm sorry, I should really ask the
13 question for the record.
14 I'm now opening 1337, and the question
15 is again, here do you see anything improper, unsafe
16 or inappropriate, and I'm going to start it again?
17 A I didn't notice anything improper,
18 unsafe or inappropriate.
19 Q That appears to be the video of the
20 hand on the posterior in the picture that I showed
21 you earlier, is that correct?
22 A I didn't notice that on that video.
23 MR. ANTOLLINO: Withdrawn. It doesn't
24 matter.
25 Q All the videos you've seen so far,

0068

1 Richard Winstock 68
2 they're all Skydive Long Island videos, correct?
3 A Yes.
4 Q I'm going to open now 1339, and the
5 same question, do you see anything improper,
6 unsafe or inappropriate?
7 A There was a glare.
8 Q We're going to watch that one again,
9 because you said there was a glare.
10 A I didn't notice anything unsafe,
11 inappropriate or unusual.
12 Q At one point the instructor in that
13 video touched the face of the passenger, is that
14 correct?
15 A I thought he reached out for the video
16 guy, but if --
17 Q Let's watch it again.
18 A I briefly see him use his left hand, or
19 it looked like he hit him in the goggle, or he
20 might have been straightening the student's
21 goggle. But I don't deem that unsafe or improper.
22 Q What if he was just, for example,
23 joking around and was putting his hands over the
24 passenger's eyes and then taking them off?
25 MR. ZABELL: Let the record reflect

0069

1 Richard Winstock 69
2 that counsel for the plaintiff motioned for
3 the witness by putting both his hands over
4 both his eyes and removed them demonstrating
5 with the physical context of his question.
6 MR. ANTOLLINO: I'll agree with that
7 characterization.
8 Q Would there be anything inappropriate
9 about that?
10 A No.
11 Q I'm opening 1340. Same question, is
12 there anything improper, inappropriate or unsafe?
13 A No.
14 Q There came to be one point where the
15 passenger, or rather the instructor put two of his
16 fingers into the passenger's ears and made a
17 little like monkey joke. Would that be a fair
18 characterization?
19 A Yes.
20 MR. ZABELL: Let the record reflect
21 that counsel for the plaintiff is gesturing
22 with his two hands around his ears. I don't
23 know if I would characterize it as making a
24 monkey joke. I would characterize it more
25 like antlers.

0070

1 Richard Winstock 70
2 Q Was there anything inappropriate about
3 that?
4 A No.
5 Q We're going to open 1341, and same
6 question as before, do you see anything
7 inappropriate, unsafe or improper? You can forget
8 about the band, just the jump. Was there anything
9 improper, unsafe or inappropriate?
10 A I would characterize that as improper.
11 Q Why?
12 A The tandem instructor prior to drogue
13 release was in contact with the camera, the
14 videographer.
15 Q Other than that, anything else?
16 A No.
17 Q What about the part where he puts his
18 arms around the, I guess, torso of the passenger,
19 was there anything inappropriate about that?
20 A No.
21 Q Was it necessary?
22 A Yes.
23 Q Why?
24 A I'm surmising, because I know the
25 instructor, that he was keeping the student's

0071

1 Richard Winstock 71
2 hands in close to herself specifically. They're
3 holding the harness. A drogue needs to be
4 deployed. It has to be deployed usually within
5 ten seconds. If a student's hands get away from
6 their body, it's impossible to untangle. It's a
7 fatal error.
8 Again, I hate to guess what somebody
9 else is doing, but it's very important that a
10 student's hands stay in prior to that drogue
11 coming out. So I would not say that was improper.
12 Q Could you tell me the point or just tap
13 this when you get to the point where he's in
14 contact with --
15 A Yeah, he's -- I don't know if he's as
16 much holding her as he's holding the camera guy
17 right now. He might be reaching around her to
18 hold the camera guy.
19 Q That would be improper?
20 A Holding the camera guy, not reaching
21 around, I consider it inappropriate. You can do
22 whatever you have to do or whatever you feel is
23 necessary to make that skydive successful, and by
24 successful, I mean you live.
25 Q Now we're going to go to the main

0072

1 Richard Winstock 72
2 event, and we're going to watch the video of --
3 Well, I'm not going to preface it. I'm just going
4 to ask you the same question.
5 MR. ANTOLLINO: I'm going to show Mr.
6 Winstock, which I'll deem Plaintiff's Exhibit
7 11, that which is the file we had used in the
8 previous deposition and entitled
9 SKYDIVE.ABLAVI.
10 (Whereupon, the video was deemed marked
11 as Plaintiff's Exhibit 11 for identification,
12 as of this date.)
13 Q I'm going to ask you the same question,
14 is there anything in there improper, unsafe or
15 inappropriate?
16 A Do you want me to critique that video?
17 Q Was there anything you saw unsafe,
18 inappropriate or improper?
19 A I saw absolutely nothing inappropriate,
20 unsafe or improper -- Strike that.
21 If I want to get technical, if I was
22 evaluating that, I would suggest, probably
23 recommend he do a check of cut away and reserve
24 handles and probably would have advised that the
25 drogue get out there a little bit quicker, and I

0073

1 Richard Winstock 73
2 would say that the landing was outstanding.
3 So, yes, I would probably -- if I were
4 to critique it, I would say that to Don.
5 Q Would that be something --
6 A Safety, that falls under safety.
7 Q Explain again exactly what you mean by
8 that. Let's watch the video.
9 Is this a major safety violation, a
10 minor one or just something that you would
11 critique for him to do better next time?
12 A I personally, if I were given this
13 video, I would critique it and talk to him. I'm
14 sure he knows this, but, yes, it's major. You
15 could have your ratings suspended for thirty days
16 on your first violation. But he did check his
17 lower.
18 Q Was this in the jump? I'll just skip
19 ahead.
20 A Way after. Go to the exit.
21 The exit was outstanding. It was a
22 great exit. In the instructor class you're taught
23 to deploy the drogue in five seconds. You do not
24 want to get up to the terminal velocity, which is
25 usually about twelve seconds.

0074

1 Richard Winstock 74
2 Although the exit was perfect, it was
3 an outstanding exit, I would probably critique and
4 say you want to get the drogue out earlier.
5 That's a safety issue.
6 The second -- if I were critiquing it
7 for safety, which is checking your primary
8 release, secondary release, cut away handle, your
9 reserve handle, and also your R.S.L., and if you
10 press play --
11 Q Let me ask this. When you said primary
12 and secondary release, --
13 A It's right handed and left handed.
14 Q When checking your primary and
15 secondary releases, you put your hands on your
16 hips, correct?
17 A Yes.
18 Q Why does it appear that he didn't do
19 that at an earlier point?
20 A He did do that. I saw him do that. He
21 checked his right and left release, which is
22 outstanding, and also check a cut away handle,
23 which is up on your shoulder, and reserve handle,
24 which is that handle, and R.S.L. device. That
25 should be checked in free fall.

0075

1 Richard Winstock 75
2 Those should -- five handles should be
3 touched in free fall every time. You're asking me
4 a safety question, so I'm being honest.
5 Q If you were to grade it, what grade
6 would you give?
7 A I would give it a ninety-seven.
8 Q Let's just watch the rest.
9 A Right there the drogue should have come
10 out. Right there is the bottom handle. So he
11 missed the top handles. Nice landing.
12 Q So basically you had a couple of
13 critiques, but overall you'd grade it a
14 ninety-seven?
15 A I would. It was an outstanding tandem
16 jump.
17 MR. ANTOLLINO: Why don't we take a
18 break now, and I'm going to talk to Don, and
19 we'll finish up, unless Mr. Zabell has
20 questions.
21 MR. ZABELL: I have some questions, but
22 that's fine. We can take a break.
23 (Whereupon, a short break was taken.)
24 MR. ANTOLLINO: Just a few more
25 questions for me.

0076

1 Richard Winstock 76
2 Q Is it a good practice for a tandem
3 instructor to check the handle checks more than
4 once?
5 A Yes.
6 Q Is it possible that Don did all of his
7 handle checks prior to the camera man getting
8 close enough to videotape?
9 A I'd have to watch the video again. Is
10 it possible, yes.
11 Q Is it possible that the check that you
12 saw in the video was an additional check and not
13 the initial check that is required of all six
14 handles?
15 A Actually, no, it's not.
16 Q Why?
17 A Because the check I saw was after the
18 drogue came out. Any other checks would have been
19 pre-drogue, which is very, very, very rare, and
20 it's actually discouraged. I don't think there
21 were pre-drogue checks.
22 Q When we talked about the attachment
23 points, is there also a chest strap?
24 A Yes.
25 Q Where is that located?

0077

1 Richard Winstock 77
2 A It's an adjustable chest strap, so it
3 adjusts up the torso.
4 Q What is its function?
5 A Primarily to hold the passenger in the
6 harness.
7 Q Does it ever loosen and need
8 readjustment during the jump?
9 A I can say that in seventy-five hundred
10 tandems, I've never had one loosened that I had to
11 tighten up during the jump. I've had them so
12 tight that I've had to loosen them, but I've never
13 had it the other way.
14 Q How about any other attachment points?
15 A That you have to loosen?
16 Q Yes.
17 A Yes.
18 Q What about the lateral straps or the
19 lateral bands or straps?
20 A The lateral?
21 Q Are there lateral straps at the hips
22 that strap the passenger to the instructor?
23 A Side connectors. Talking about side
24 connectors, can they loosen up?
25 Q Yes.

0078

1 Richard Winstock 78
2 A It's not very common. I couldn't sit
3 here and say it could never happen, but it's not
4 very common.
5 Q Would there be any situation like you
6 suggested before where they would be too tight and
7 you had to loosen them?
8 MR. ZABELL: Ask your client not to
9 speak.
10 MR. ANTOLLINO: Don, if you want to
11 talk to me outside, we can talk outside.
12 Q When going to hook up or attach a
13 passenger in a plane, when does that occur?
14 A It really depends on the plane you're
15 in, it depends on the drops you're at. There's a
16 lot that goes into that question.
17 Are you referring to Skydive Long
18 Island?
19 Q Yes.
20 A If you're referring to Skydive Long
21 Island, we have benches in our planes. When we
22 board the plane, the passenger sits in front of us
23 and we hook up the lower side connectors right
24 then and there on the ground before we take off,
25 and then we seat belt ourself into the plane.

0079

1 Richard Winstock 79
2 Q When you say the lower side connectors,
3 are those the ones at the hips?
4 A Those are the ones at the hips, yes.
5 Q Do instructors ever have passengers sit
6 in their laps to attach them?
7 A Yes.
8 Q Why?
9 A The reason it's done -- the side
10 connectors have to be extremely tight. They
11 almost can't be too tight. When a passenger sits
12 up in your lap, it brings the attachment point
13 closer to your hips and it allows you to tighten
14 the side strap thoroughly. It also makes it
15 easier to do.
16 I could say not every instructor does
17 it, I don't teach it, but it has been done and I
18 have seen instructors do it.
19 Q And you've seen them do it at Skydive
20 Long Island?
21 A Yes.
22 Q Do instructors ever guide passengers
23 into this position?
24 A Guide them?
25 Q Yes.

0080

1 Richard Winstock 80
2 A For lack of sounding ignorant, when you
3 say guide --
4 Q Pull them toward their lap, yes.
5 A Yes.
6 Q Could that involve touching of the
7 hips?
8 A It could.
9 Q During the plane ride up -- Well, what
10 is the Caravan?
11 MR. ZABELL: Object to the form. You
12 may answer.
13 A The Caravan -- We have two planes. The
14 Caravan is one of the two planes. A Cessna
15 Caravan, they call it the Grand Caravan.
16 Q On the ride up in the Caravan, where is
17 the passenger sitting in relation to the
18 instructor?
19 A In front of.
20 Q What is the instructor supposed to do
21 with his arms at that juncture, or is there
22 anything that --
23 A What juncture?
24 Q When the passenger is sitting in front
25 of the instructor.

0081

1 Richard Winstock 81
2 A Our arms?
3 Q Yes.
4 A It's important to note that we can't
5 dictate every single movement an instructor makes,
6 but I can tell you what is commonplace or taught.
7 Instructors are supposed to do handle
8 checks in the plane the whole way up. It's not
9 uncommon that I do five, six, seven, eight handle
10 checks. So with my hands I'm touching my right
11 hand release and left hand release, cut away and
12 reserve handle, my R.S.L., and I'm also checking
13 the side connectors as well, which are attached at
14 the hips.
15 Some other functions an instructor
16 might do, they might check the harness itself on
17 the passenger, and that might involve looking over
18 his shoulder or tightening up a chest strap.
19 Q On a busy day at the drop zone, would
20 it be easy to forget the passengers that you
21 did --
22 A I can only see where this is going.
23 Q -- would it be easy to forget the
24 passengers that you had taken out on a jump?
25 A Yes. Elaborate, forget visually, face

0082

1 Richard Winstock 82
2 wise, name wise?
3 Q Yes.
4 A Yes, it would be very common.
5 Q Do you ever refer to flipping
6 hamburgers at the drop zone?
7 A To what?
8 Q Flipping hamburgers, is that an
9 expression you've heard?
10 A I never heard it used.
11 Q In the waiver there's a point about the
12 passenger acknowledges close proximity to the
13 instructor.
14 Have you familiarized yourself with
15 that portion of the waiver?
16 A Yes.
17 Q I believe it's item thirteen. Whatever
18 it is, why is that there?
19 A Again, it's important to let the
20 passenger know that they're making, first off, a
21 very dangerous -- they're making a jump out of an
22 airplane, and they're going to be in such close
23 proximity, and like I explained, those side
24 connectors are very tight, so you're violating
25 their personal space basically, and you need to

0083

1 Richard Winstock 83
2 let them know we're violating your personal space
3 to make this safe. That's the only --
4 Q I think that answers the question.
5 MR. ANTOLLINO: Don, I think we've
6 asked everything we need to ask, and I just
7 have one more question, but do you have
8 anything else you want to discuss with me
9 outside or is that enough?
10 MR. ZARDA: If you think this one more
11 question covers all that.
12 MR. ANTOLLINO: Is there anything else
13 based on these questions you want me to ask?
14 MR. ZARDA: I can't think of any other
15 questions.
16 Q When you suggested this letter of
17 reprimand you talked about before, what would the
18 reprimand have been for exactly?
19 A I was not -- It's important that you
20 understand, I wasn't involved in the complaint, I
21 wasn't involved in the decision to terminate Don
22 at all, nor did I ever get involved, and I'll go a
23 step further, that's the first time I've seen the
24 video ever. I've never seen that video, and it
25 appears to be raw footage, so I've never seen the

0084

1 Richard Winstock 84
2 footage.
3 I didn't talk to the husband, I didn't
4 talk to the wife. I advocated on Don's behalf.
5 So when I was asking for the letter of
6 recommendation, it was more a -- more so, don't
7 terminate, how about a letter of recommendation.
8 Q Letter of reprimand.
9 A I'm sorry, a letter of reprimand, and
10 my reason for that, and I've been very vocal about
11 that, Don, in my opinion, is an outstanding tandem
12 instructor. There's never been a safety issue,
13 and I advocated for him.
14 It wasn't based on a video or
15 complaint, because I didn't have that knowledge, I
16 didn't have the facts to make a decision, as I
17 don't right now, because I didn't talk to anyone,
18 and I still don't know exactly what the complaint
19 is. So the letter was really advocating for Don.
20 MR. ANTOLLINO: No further questions.
21 Thank you very much.
22 MR. ZABELL: I have a couple of
23 questions.
24 EXAMINATION BY SAUL ZABELL, ESQ.:
25 Q You said that everybody was aware that

0085

1 Richard Winstock 85
2 Don was gay, is that correct?
3 A Yes.
4 Q How did you know that everybody was
5 aware that Don was gay?
6 A Don was flamboyant. He was very
7 outwardly -- he's a friendly guy, and in his
8 friendliness he doesn't hide the fact that he's
9 gay. In fact, it's very out in the open. The
10 pink hats, the pink toenail polish, he's called
11 gay Don. I never knew that that bothered him. If
12 it did, I'm sorry.
13 MR. ZABELL: I hate to interrupt, but I
14 think the record should reflect when the
15 deponent was testifying he was called gay
16 Don, I didn't know if it bothered him, that
17 Mr. Zarda shook his head no, it didn't.
18 MR. ANTOLLINO: There's been no
19 testimony here. I didn't see --
20 MR. ZABELL: You have to let me finish
21 speaking, because I give you the courtesy of
22 that.
23 I'm saying that the record should
24 reflect that Mr. Zarda was physically shaking
25 his head from left to right while the

0086

1 Richard Winstock 86
2 deponent was saying, I didn't know that it
3 bothered him, indicating that, no, it did
4 not.
5 MR. ANTOLLINO: I didn't see that.
6 MR. ZABELL: You can feel free to ask
7 Mr. Zarda.
8 MR. ANTOLLINO: He's not under oath.
9 You can ask him tomorrow, and he's gonna tell
10 you the truth.
11 Q You can go ahead. I just needed to
12 verbally clarify that.
13 A I think I finished answering.
14 Just that Don himself was very open
15 about it. This was not something hidden or
16 something that was quiet. It wasn't clandestine.
17 Q Did you ever hear Don refer to
18 himself or introduce himself as gay Don?
19 A I may have.
20 Q Did you ever treat Mr. Zarda
21 differently because of his sexuality?
22 A No.
23 Q Did you have occasion to work with Mr.
24 Zarda?
25 A Yes.

0087

1 Richard Winstock 87
2 Q How frequently?
3 A If not every weekend, almost every
4 weekend for two summers, minus possible injuries,
5 or he might have missed a few days here and there.
6 Q Did you ever observe any of your
7 co-workers treating Mr. Zarda differently than any
8 other co-worker?
9 A I didn't.
10 Q Did you ever observe Mr. Zarda being
11 treated differently because of his sexual
12 orientation?
13 A I didn't.
14 Q Did you ever hear any jokes in the
15 workplace about Mr. Zarda's sexuality?
16 A No.
17 Q Did Mr. Maynard ever make disparaging
18 comments about Don Zarda?
19 A Not in front of me.
20 Q Are you aware if he had made any
21 disparaging comments?
22 A No.
23 Q So when you say, not in front of me,
24 does that mean you're not aware of comments that
25 were made?

0088

1 Richard Winstock 88
2 A No, I am not.
3 Q Are you aware of any of the co-workers
4 at Skydive Long Island making disparaging comments
5 about Mr. Zarda?
6 A No.
7 Q Now, you hold a special title at
8 Skydive Long Island, do you not?
9 A Yes.
10 Q What is your title?
11 A Safety and training advisor. Chief
12 instructor and instructor examiner in a few
13 different disciplines.
14 Q What does an instructor examiner do?
15 A Certifies instructors. It's the person
16 if you want to become a tandem instructor or a
17 free fall instructor, or a coach, you have to go
18 to an instructor examiner. That's the person who
19 actually gives -- signs off on the rating for a
20 tandem instructor. So it's called -- commonly
21 referred to as an I.E., and I'm the only one at
22 Skydive Long Island.
23 Q Who was the most senior skydiver at
24 Skydive Long Island?
25 A Seniority -- That's a good question.

0089

1 Richard Winstock 89
2 Seniority is determined in several ways. We have
3 license numbers. Once you become a professional
4 skydiver, you get what's called a D license
5 number, and the lower your license number, that
6 means the longer in the sport you've been.
7 So that's -- For example, if we all had
8 D licenses, whoever had the lowest number would
9 have the most time in the sport. If it's based on
10 time in the sport, I am the most senior guy,
11 instructor there. If it's based on number of
12 jumps, sometimes the guy with the most jumps
13 they'll consider the most senior guy, that's
14 another way to determine it, there are a couple of
15 guys with more jumps than myself.
16 Q What about professional qualifications,
17 is there anybody at Skydive Long Island with more
18 professional qualifications than you?
19 A No.
20 Q Now, if an instructor had a complaint
21 at Skydive Long Island, who were they to bring
22 that complaint to?
23 A Me.
24 Q Why were they to bring their complaint
25 to you?

0090

1 Richard Winstock 90
2 A Because of the title chief instructor,
3 because of my safety and training and title. It
4 depends on what the complaint involves.
5 Of course, I guess if it was a
6 complaint about me, they might go to Ray, the drop
7 zone owner, but if I'm not at the drop zone, the
8 possibility exists that they could also go to Ray.
9 Q Did Mr. Zarda ever complain to you
10 about anything that occurred at Skydive Long
11 Island?
12 A The only -- Only one time.
13 Q What did he complain about?
14 A I remember Mr. Zarda came up to me to
15 discuss that he had been sent home in reference to
16 this particular incident, and that was the only
17 time that I remember him coming to me with a
18 complaint of any sort.
19 Q Do you recall what he told you?
20 A Other than Ray sent me home, no, I
21 can't give specifics.
22 Q Did Mr. Zarda know why he was being
23 sent home?
24 A I don't know.
25 Q Now, do you know if Mr. Zarda had ever

0091

1 Richard Winstock 91
2 been fired from Skydive Long Island before?
3 A Yes.
4 Q How do you know that?
5 A Word of mouth from Ray Maynard.
6 Q What did Ray Maynard say was the reason
7 for his termination the previous time?
8 A It had to do with instructor and
9 passenger interaction.
10 Q You testified about the various roles
11 of an instructor. Is it safe to say that the
12 primary role of the instructor is to get the
13 instructor and the passenger from the airplane to
14 the ground safely?
15 A That is their primary goal, period.
16 Q Are there secondary goals?
17 A Yes.
18 Q What are the secondary goals and so on,
19 if there are?
20 A Primary goal is safety and always is.
21 Secondary would be to make sure they enjoy their
22 experience. The video would be the secondary.
23 Safety out trumps a nice pretty video if you're
24 having some sort of issue up there. Safety,
25 obviously, is number one. Video, passenger

0092

1 Richard Winstock 92
2 experience, that comes second.
3 Q Do you consider what you engage in as
4 an instructor at Skydive Long Island to be a
5 customer service business?
6 A Yes.
7 Q Why do you consider it to be that?
8 A We're offering a product. In my
9 opinion, we're offering a product and we're basing
10 it on the safety record, and I think that we have
11 the obligation to deliver the product as safely as
12 possible.
13 Q As a training instructor and chief
14 instructor of Skydive Long Island, do you teach
15 the other instructors, advise the other
16 instructors that they're responsible for their own
17 actions?
18 A Yes.
19 Q Are they taught that what works for one
20 customer may not work for another customer?
21 A Absolutely, yes.
22 Q If they do something that makes a
23 customer uncomfortable, are they responsible for
24 that?
25 A Yes.

0093

1 Richard Winstock 93
2 Q And they would, in fact, be responsible
3 for damaging the jump experience, is that correct?
4 A Correct.
5 Q Would it be inappropriate to discipline
6 an employee who for one reason or another gives
7 the customer a bad experience?
8 A No.
9 Q Even though another customer might have
10 responded positively to the same actions, is that
11 correct?
12 A Correct.
13 Q Is that because it's a customer service
14 business?
15 A Yes.
16 Q And you need to read your customers?
17 A Yes.
18 Q Now, instilling trust between yourself
19 and the customer is a big part of the jump
20 experience, is it not?
21 A Yes.
22 Q I think you testified that it's one of
23 the most crucial parts of the experience?
24 A Correct.
25 Q So if you needed to place your hand in

0094

1 Richard Winstock 94
2 a certain area or rest your head in a certain
3 area, would it be your responsibility to explain
4 to the customer exactly why you're doing it?
5 A Yes.
6 If I can elaborate, a lot of times you
7 don't have the opportunity to explain why you're
8 doing something, but at some point you would have
9 the obligation, or if you were asked, you would be
10 able to explain why you did what you did.
11 Q Did you ever take the opportunity to
12 explain to a customer that you were taking a
13 particular action because of your sexual
14 orientation?
15 A No.
16 Q Can you think of any situation that
17 might arise where discussing your sexual
18 orientation would be appropriate in the context of
19 a skydive?
20 A No.
21 Q Do you discuss your sexual orientation
22 with customers?
23 A I have told customers I'm married.
24 Other than that, no.
25 Q Are you aware of other skydive

0095

1 Richard Winstock 95
2 instructors discussing their sexual orientation at
3 Skydive Long Island?
4 A No.
5 Q Would you recommend as a training
6 instructor and a chief instructor that the
7 instructors discuss their sexual orientation
8 during a jump?
9 A I wouldn't recommend it.
10 Q Why would you not recommend it?
11 A To me that pre-jump phase is one of
12 building trust, and I think, even in the course I
13 teach I talk about this, in building trust, and I
14 think there's better ways to build trust, in my
15 opinion.
16 Every passenger is different. It's
17 important to know that every passenger is
18 different.
19 Would I recommend it was the question?
20 I would say, no.
21 Q Now, you were asked some questions
22 about Mr. Zarda appearing at the drop zone with a
23 cast?
24 A Correct.
25 Q Do you recall that?

0096

1 Richard Winstock 96
2 A Yes.
3 Q Do you remember Mr. Zarda appearing at
4 the drop zone with a cast?
5 A Yes, I do.
6 Q Was he working at that time that he was
7 there with the cast?
8 A I do not believe so, no.
9 Q And you can't be a skydive instructor
10 with a casted foot or ankle, is that correct?
11 A No.
12 Q No, that's not correct or, no --
13 A I'm sorry, no, you cannot be a skydive
14 instructor with a cast on your foot.
15 Q Can you think of why Ray Maynard
16 wouldn't want someone hanging around the drop zone
17 with a cast on not during a workday?
18 A Yes.
19 MR. ANTOLLINO: Objection to form. Go
20 ahead.
21 A Yes.
22 Q What would that reason be, or those
23 reasons be?
24 A It would kind of fall into the -- I
25 don't have to explain the bad karma category. If

0097

1 Richard Winstock 97
2 you see someone with a cast at a skydiving
3 operation, I think it's probably not the best for
4 business.
5 If I was Ray, or if I was the owner and
6 I had to make that decision, I probably wouldn't
7 want someone, especially an instructor, walking
8 around with a cast on or possibly in a wheelchair
9 or something that would bring up -- we're trying
10 to be positive and build trust and get a good
11 feeling going.
12 So, no, I wouldn't think there would be
13 any reason for an instructor with a cast on -- It
14 wouldn't help the business, let's put it that way.
15 Q Did you ever hear Ray Maynard comment
16 about any of the colors that Don Zarda was
17 wearing?
18 A I didn't hear, no.
19 Q Did you ever hear any of the co-workers
20 comment on the colors that Don Zarda wore?
21 A I didn't.
22 Q Do you think Don Zarda was treated any
23 differently at Skydive Long Island because he's
24 gay?
25 A No.

0098

1 Richard Winstock 98
2 Q Did you ever hear Ray Maynard complain
3 about Don Zarda?
4 A I didn't.
5 Q Did you ever hear Don Zarda complain
6 about Ray Maynard?
7 A I did not -- Strike that.
8 Minus the one time, the very last
9 incident when he was upset that he was sent home,
10 that he came to me with a complaint about Ray
11 because I was his direct supervisor at the time,
12 other than that, I never heard Don complain about
13 Ray at any time.
14 Q I believe you were shown an e-mail by
15 counsel for Mr. Zarda, and in that e-mail Mr.
16 Zarda had commented about whether or not Mr.
17 Maynard came to his senses.
18 Do you recall that?
19 A Yes.
20 Q Do you believe that's an appropriate
21 question to ask, A, of your supervisor, and, B,
22 about the owner of the company?
23 A I believe -- I think I could classify
24 Don and my personal relationship as friendly. I
25 think it was a friendly e-mail. I know Don was

0099

1 Richard Winstock 99
2 definitely upset about the situation and that I
3 would put that in the category of that is how Don
4 would speak to me. I didn't take it as
5 disrespectful.
6 Q Do you see how somebody could see that
7 as being disrespectful?
8 A Yes.
9 Q Do you see how Mr. Maynard could see
10 that as disrespectful?
11 A Yes.
12 Q Do you know on how many different
13 occasions Mr. Zarda was terminated from Skydive
14 Long Island?
15 A To the best of my recollection, one
16 time prior to this incident.
17 Q So a total of two times?
18 A To the best of my knowledge.
19 Q Do you know how many times Mr. Zarda
20 was hired by Skydive Long Island?
21 A Two. I'm surmising here.
22 Q Let's work this through.
23 If he was hired once and terminated
24 once --
25 A Correct.

0100

1 Richard Winstock 100
2 Q -- and hired again and then terminated
3 again, then two would be correct, right?
4 A Right.
5 Q Was Mr. Zarda hired while you were
6 employed at Skydive Long Island?
7 A Yes.
8 Q Were you responsible for the hiring?
9 A No.
10 Q Did you have any input in the hiring?
11 A No.
12 Q When he was hired, were you advised of
13 anything regarding Mr. Zarda?
14 A Yes.
15 Q What were you advised of?
16 A Curt Kellinger, who is the instructor
17 who introduced me to Don up in Vermont, told me
18 that he asked Don to come to Skydive Long Island.
19 He told me that Don was gay and he told me that
20 Don was an excellent tandem instructor, and that's
21 all that was told to me prior to his being hired.
22 Q In any of your experiences with Don,
23 did you ever find any of that to be untrue?
24 A No.
25 Q I'm sorry, who was that that told you?

0101

1 Richard Winstock 101
2 A Curt Kellinger.
3 Q Does Curt Kellinger work at Skydive
4 Long Island?
5 A He does.
6 Q The fact that Curt Kellinger told you
7 that Don Zarda was gay, did that effect whether or
8 not Don Zarda was hired by Skydive Long Island?
9 A No.
10 Q So, in fact, he was hired even though
11 his sexuality was known?
12 A Correct.
13 Q Did it effect what he was paid?
14 A No.
15 Q To your knowledge, did it effect how he
16 was treated?
17 A No.
18 Q Is there anything else you'd like to
19 tell me?
20 A No.
21 MR. ZABELL: Thank you for your time.
22 I appreciate it.
23 Would you like to reserve the right to
24 the see a copy of this deposition at the
25 conclusion of the deposition?

0102

1 Richard Winstock 102
2 THE WITNESS: At the conclusion?
3 MR. ZABELL: Not immediately.
4 THE WITNESS: Yes, I would.
5 MR. ANTOLLINO: All right. There's a
6 few things to follow-up on here.
7 CONTINUED EXAMINATION BY MR. ANTOLLINO:
8 Q You said that Don wasn't hired by you,
9 but did you inform Ray that Don was gay before Ray
10 made the decision to hire Don?
11 A Ray knew Don prior -- I think -- I
12 don't know who's confused here. Ray had already
13 worked with Don, so Ray knew Don. All I was
14 saying to the question was I didn't have much to
15 do with the hiring. So when Ray hired Don, Ray
16 knew Don was gay.
17 Q The first termination of Don, do you
18 know when that was?
19 A I don't.
20 Q Was that before you were working at
21 S.D.L.L?
22 A I was working at Skydive Long Island,
23 but I wasn't there for this incident, or I wasn't
24 there while he was working.
25 Q You testified that you believe it had

0103

1 Richard Winstock 103
2 to do with a passenger and instructor interaction?
3 A That's right.
4 Q And Ray told you that?
5 A Yes.
6 Q When did Ray tell you that?
7 A Sometime over the course of the last
8 three to last four years.
9 Q So it could have been after this
10 lawsuit had been filed?
11 A No, this is back when, approximately,
12 around the time that he was hired. Ray explained
13 to me that he hired Don and that he also explained
14 to me that he was terminated once before.
15 Q But you don't recall any of the
16 specifics about what Ray said about this
17 interaction?
18 A It was passenger/instructor interaction
19 was the reason he was terminated.
20 Q If a passenger complains about an
21 unwillingness to violate safety standards, is that
22 a legitimate complaint?
23 A If a passenger --
24 Q If a passenger --
25 A I'm trying to get -- If a passenger

0104

1 Richard Winstock 104
2 complains about an unwillingness to violate a
3 safety, can I -- My passenger is asking me and I
4 don't want to violate safety standards?
5 Q No. If the passenger says something
6 like, can we do X, Y or Z, whatever it is, and you
7 know that violates safety standards and you say no
8 because that violates safety standards, is that a
9 legitimate passenger complaint?
10 A No.
11 Q You said you've told some passengers
12 that you're married?
13 A Yes.
14 Q So this happened over the course of say
15 the last ten years?
16 A Over the course of the last thirteen
17 years, give or take.
18 Q So certainly between 1998 and 2011?
19 A Yes.
20 Q Before last year, if you told someone
21 that you were married, that person would
22 understand that you were heterosexual, correct?
23 A Correct.
24 Q Did you show Ray Maynard that e-mail
25 where Don said, has Ray come to his senses?

0105

1 Richard Winstock 105
2 A I don't believe I did.
3 Q Did you go to Ray and say, Don wants to
4 know if you've come to your senses?
5 A No.
6 Q Early in the deposition I believe you
7 testified whether or not to reveal one's sexual
8 orientation would be something that depended on
9 the circumstances, correct?
10 A Correct.
11 MR. ZABELL: Object to the form.
12 Q Do you know if anyone ever called Don
13 gay Don in front of another customer?
14 A Quite possibly, but I can't give you a
15 specific instance. It wouldn't surprise me if it
16 did happen.
17 MR. ANTOLLINO: I'm hoping he has no
18 further questions, but I have to speak to my
19 client outside.
20 (Whereupon, a short break was taken.)
21 MR. ANTOLLINO: As usual, my client has
22 excellent questions he wants me to ask, and
23 he's happy to have written these down.
24 MR. ZABELL: Object to the questions
25 being excellent, but...

0106

1 Richard Winstock 106
2 Q Have you ever heard any gay tandem
3 jokes made over the years in the air, such as
4 jokes as when two guys are strapped together?
5 A Yes.
6 Q Can you give me an example?
7 A I can say that over the last twenty
8 years I've heard quite a few tandem instructors
9 with quite a few different ways to loosen up the
10 situation in order to make their passengers feel
11 more comfortable.
12 A specific joke or comment, one's not
13 coming to my mind right now. If you know of one,
14 I'll tell you if I've heard it used, if that'll
15 work. I can't think of a particular joke.
16 Q Did you ever hear a joke, I bet you
17 didn't guess you were gonna be strapped to another
18 guy for this experience?
19 A I've probably heard that.
20 Q And that is when the speaker is
21 presuming that the speaker is heterosexual and is
22 being put into an intimate situation with a man,
23 correct?
24 A Hundred percent correct.
25 Q When Don was out on injury leave let's

0107

1 Richard Winstock 107
2 call it, did Ray ever call a mandatory staff
3 meeting in which he asked everyone, whether out on
4 injury leave or not, to come to the workplace?
5 A I have absolutely no idea. I don't
6 recall it if he did.
7 Q Does Skydive Long Island ever have a
8 summer party where it invites the community and
9 customers?
10 A A summer party?
11 Q A summer party.
12 A They have different gatherings and
13 parties during the summer, yes.
14 Q Did they ever have a luau called, get
15 laid?
16 A They may have. I do not remember a
17 party called get laid. There was a luau five, six
18 years ago. I don't remember it being categorized
19 like that.
20 Q Has Ray ever fired and rehired other
21 instructors?
22 A Yes.
23 Q Do you know who?
24 A Jerry Hannick was fired and rehired.
25 There's been so many. He's the one

0108

1 Richard Winstock 108
2 that comes to mind right now. That's the most
3 recent.
4 Q I notice you're not wearing a wedding
5 band. Would it be fair to say looking at you one
6 would not be able to tell you're married?
7 A Correct.
8 Q Would it be fair to say that your
9 marriage is personal information?
10 A No.
11 Q Why not?
12 A I would say it's public information.
13 My -- whether or not -- whether I'm married or not
14 -- if you were to ask me whether I'm married, I
15 don't take that as a violation of my personal
16 stock or knowledge.
17 Q When I walked into this room, I didn't
18 know you were married, and I didn't see any ring
19 on your finger. So would you agree that in this
20 setting, without any other indicia, that your
21 marriage is personal information to you that you
22 might be willing to share, but it's not obvious?
23 A Okay.
24 Q There's nothing I can tell by looking
25 at you that says, this is a married guy?

0109

1 Richard Winstock 109
 2 A Okay.
 3 Q Is that fair to say?
 4 A Yes, it is.
 5 Q Would you agree that your marriage is
 6 personal information in this circumstance?
 7 A Yes.
 8 MR. ANTOLLINO: No further questions.
 9 MR. ZABELL: Just a few.
 10 In what kinds of context would you
 11 reveal to customers that you were married?
 12 THE WITNESS: It's a very, very
 13 specific context, actually.
 14 Over the years, I personally find that
 15 women, female passengers, usually older, when
 16 they're extremely nervous, and their mothers,
 17 I have to calm down my passenger, especially
 18 when they're extremely nervous I have to,
 19 otherwise it's a safety issue, and like I
 20 said earlier, our job is to land safely, and
 21 I want to go home to my three kids.
 22 Every passenger is different. So when
 23 you're dealing with an older woman who is a
 24 mother, I say, I'm married, I have three
 25 children, I want to go home to my family,

0110

1 Richard Winstock 110
 2 it's okay.
 3 That's when, and that's the only
 4 scenario I reveal it, and I'll add that I
 5 have three children, and it tends to calm
 6 older women down. That's in my mind when I
 7 said that. That's the one time I do that.
 8 So I do in certain situations. That's
 9 why the question was asked, do I recommend
 10 not bringing it up. Yes, of course I
 11 recommend you don't bring it up, but there
 12 are situations where it could benefit you.
 13
 14
 15
 16
 17 (Continued on following page to
 18 allow for signature and jurat.)
 19
 20
 21
 22
 23
 24
 25

0111

1 Richard Winstock 111
 2 MR. ZABELL: Thank you.
 3 (Whereupon, the examination of
 4 this witness was concluded at 5:00 P.M.)
 5
 6 * * * * *
 7
 8 STATE OF NEW YORK)
 9)ss.:
 10 COUNTY OF)
 11 I have read the foregoing record of my
 12 testimony taken at the time and place noted in the
 13 heading hereof and I do hereby acknowledge it to
 14 be a true and correct transcript of same.
 15
 16 _____
 17 RICHARD M. WINSTOCK
 18
 19 Subscribed and sworn to
 20 before me on this ____ day
 21 of _____, 2011.
 22
 23 _____
 24 NOTARY PUBLIC
 25

0112

1 112
 2 I N D E X
 3
 4 EXAMINATION OF BY PAGE
 5 Richard Winstock Mr. Antollino 3-84
 6 Mr. Zabell 84-102
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0001

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NEW YORK
 3 -----X
 4 DONALD ZARDA,
 5 Plaintiff
 6 CASE NO.:
 7 -against- 10 civ 4334
 8 (JFB) (ARL)
 9 ALTITUDE EXPRESS, INC. d/b/a SKY DIVE
 10 L.I. and RAY MAYNARD,
 11 Defendants
 12 -----X
 13 4875 Sunrise Highway
 14 Bohemia, New York
 15 December 21, 2011
 16 1:00 P.M.
 17 EXAMINATION BEFORE TRIAL of LAUREN CALLANAN, a
 18 Non-Party Witness, taken by the attorney for the
 19 Plaintiff pursuant to Subpoena and held at the above
 20 stated time and place before Joseph J. Pontillo, a
 21 Notary Public of the State of New York.
 22 -----
 23
 24
 25

0002

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

0003

1 L A U R E N C A L L A N A N ,
 2 The witness herein, having first been duly sworn
 3 by Joseph J. Pontillo, a Notary Public in and for the
 4 State of New York, was examined and testified as
 5 follows:
 6 DIRECT EXAMINATION BY GREGORY ANTOLLINO, ESQ.:
 7 Q State your name for the record, please.
 8 A Lauren Callanan.
 9 Q What is your address?
 10 MR. ZABELL: Your business address.
 11 A My business address is 525 Jan Way,
 12 Calverton, New York 11933.
 13 Q You're here pursuant to a Subpoena, is that
 14 correct?
 15 A That is correct.
 16 Q Did you receive that Subpoena in the mail?
 17 A I did not.
 18 Q You did not. Is your address P.O. Box 353
 19 Yaphank, New York?
 20 A Yes.
 21 Q You received the Subpoena?
 22 A I have not been to my post office box
 23 probably since the second week of November.
 24 MR. ANTOLLINO: Let's mark this as
 25 Callanan Exhibit 1.

0004

1 LAUREN CALLANAN
 2 (Whereupon, a Subpoena was marked as
 3 Callanan Exhibit 1 for identification, as of
 4 this date.)
 5 Q Have you ever seen this before?
 6 A I have not.
 7 Q Why do you have a post office box?
 8 A Because I need a place to get my mail.
 9 Q Do you get mail anyplace else?
 10 A Sometimes at work. Most of my mail is
 11 electronic.
 12 Q You have not been to that post office box in
 13 how long?
 14 A Since my birthday, which was November 13th.
 15 Q You have never seen that Subpoena before?
 16 A I have not.
 17 Q Well, you're here today at 1:00, which is a
 18 date that Mr. Zabell and I agreed upon. The Subpoena
 19 requests certain information that you provide. I'd
 20 like you to read the production box to yourself and
 21 tell me when you're finished.
 22 MR. ZABELL: You may do so.
 23 A I have finished, yes.
 24 Q Would it be fair to say that you have not
 25 searched for any documents such as those that are referred

0005

LAUREN CALLANAN

1
2 to in the production box?
3 A I have not.
4 MR. ANTOLLINO: So counsel, I'll put it
5 on the record. We don't have to argue about
6 it now.
7 You gave me Lauren Callanan's P.O. Box
8 in the list of employees. I couldn't serve
9 her with a Subpoena. The witness has never
10 seen the Subpoena. I sent it to you. I told
11 you that I didn't have her physical address.
12 I hoped that mailing it would be
13 acceptable. The witness has not responded to
14 the Subpoena so we don't have an answer as
15 to whether or not there is anything.
16 MR. ZABELL: That is actually incorrect.
17 You could have asked the deponent if she has
18 in her personal possession any documents
19 that would have matched or have been
20 responsive to those requested at which
21 point she would have told you no, she does
22 not. You did not ask that question, so you
23 don't know the answer to that question.
24 MR. ANTOLLINO: She has not done a
25 search for them. Therefore, the answer is

0006

LAUREN CALLANAN

1
2 unclear. We'll deal with that at a later
3 date.
4 Q Have you ever testified under oath before?
5 A For a traffic violation multiple years ago.
6 Q Anything else?
7 A No.
8 Q Do you understand what it means to be under
9 oath?
10 A Yes.
11 Q Do you understand that you are sworn to tell
12 the truth?
13 A Yes.
14 Q Do you understand that even though we are in
15 an informal setting here in this office, your answers
16 have the same force and effect as if you were in a
17 courtroom with a judge and jury?
18 A Yes.
19 Q Do you understand that any false testimony
20 could be a basis for a perjury charge?
21 A Yes.
22 Q Do you understand what perjury is?
23 A Yes.
24 Q Is there anything that would prevent you from
25 giving me your full attention today?

0007

LAUREN CALLANAN

1
2 A No.
3 Q Are you taking any medications or suffering
4 from any illness that would prevent you from
5 understanding my questions?
6 A I am not.
7 Q If you don't understand any of my questions,
8 will you let me know?
9 A Yes.
10 Q I don't think we'll be here for too long,
11 but if you need a break will you let me know?
12 A Yes, I will.
13 Q Did you prepare for this deposition?
14 A I met with Mr. Zabell.
15 Q When was that?
16 A Earlier today.
17 Q At what time?
18 A I got here about twelve-twenty.
19 Q Did you look at any documents?
20 A I saw one document, yes.
21 Q What document?
22 A Regarding a letter that my name was on that I
23 had written.
24 Q Would that be the document that is part of
25 Exhibit 1?

0008

LAUREN CALLANAN

1
2 A That is the document, yes.
3 MR. ANTOLLINO: Why not mark this as
4 Callanan 1-A, since it is part of Exhibit 1.
5 (Whereupon, a letter was marked as
6 Callanan Exhibit 1-A for identification, as
7 of this date.)
8 Q When did you retain Mr. Zabell.
9 A Earlier today.
10 Q Was it a suggestion made by him that he would
11 represent you?
12 MR. ZABELL: Objection. I'm going to
13 advise you that if answering that question
14 requires you to reveal the contents of
15 conversations that you had between yourself
16 and myself, you may simply say, I can't
17 answer that question. If you can answer the
18 question without revealing the content of
19 conversations between yourself and myself,
20 you may do so.
21 A I apologize. The question is?
22 * Q Did Mr. Zabell tell you that he was going to
23 represent you or did you ask him to represent you?
24 A I apologize, I can't answer the question.
25 MR. ANTOLLINO: Mark it for a ruling.

0009

LAUREN CALLANAN

1
2 Q Did Ray talk to you about this deposition?
3 A All I was told was that there was a
4 deposition going on. I made a call.
5 Q Who told that you?
6 A Ray told me that.
7 Q Did Ray tell you anything about the case?
8 A No, not anything specific. Just basically
9 that the case was going on.
10 Q Did you speak to Mr. Zabell before today?
11 A Before today I spoke with him regarding --
12 MR. ZABELL: You can only confirm that
13 you spoke to me. You cannot disclose the
14 contents of our conversation.
15 Q You can answer.
16 A Yes.
17 Q How many times?
18 A Once.
19 Q When was that?
20 A That was, I believe, on Friday. I believe on
21 Friday. I apologize. Was it Monday? I don't recall.
22 Either Monday or Friday regarding a deposition today at
23 one p.m.
24 Q Within the last week or so?
25 A Yes, within the past week.

0010

LAUREN CALLANAN

1
2 Q Anytime before that?
3 A No.
4 Q The time that you spoke to him last Friday or
5 Monday, whenever it was, was before you retained Mr.
6 Zabell this morning, correct? I note you're looking at
7 your lawyer.
8 A I apologize. Can you repeat the question.
9 MR. ANTOLLINO: Can you read it back.
10 (Whereupon, the above referred to
11 question was read back.)
12 A When I spoke to him within the past week,
13 yes, that was before I retained him this morning.
14 Q Who dialed the number? Was that Mr. Zabell
15 that called you or was it you that called Mr. Zabell?
16 MR. ZABELL: Objection to the form of
17 the multiple questions. You may pick one and
18 answer.
19 A I dialed the phone and called the office.
20 Q You dialed the phone from where?
21 A On my cell phone. I called the office.
22 Q You called this office or Sky Dive Long
23 Island?
24 A I called this office.
25 Q Why did you call this office?

0011

LAUREN CALLANAN

1
2 A Because I received a message to call the
3 office.
4 Q Who did you receive the message from?
5 A I don't recall. Actually, I do believe I
6 received a message from Ray to call the office.
7 Q What did Ray say in the message, simply to
8 call the office or something else?
9 A To call the office regarding the deposition.
10 Q Was anything else said?
11 A No.
12 Q When you called the office, did you speak to
13 Mr. Zabell?
14 A I did.
15 * Q What did you say to him?
16 MR. ZABELL: Objection. The same
17 direction I gave you before regarding
18 communications between yourself and myself.
19 A I cannot answer the question.
20 MR. ANTOLLINO: Mark it for a ruling
21 since she said she retained you this morning.
22 Q Did you do any search for documents in
23 connection with this lawsuit?
24 MR. ZABELL: Objection to the form. You
25 may answer.

0012

LAUREN CALLANAN

1
2 A I previously did gather information, yes.
3 Q When was that?
4 A That was over the winter last year.
5 Q How did you gather information?
6 A I searched e-mails and documents.
7 Q How did you search e-mails?
8 A I believe by doing a general search.
9 Q How did you do a general search?
10 A I went into the e-mails and I searched Don or
11 Zarda.
12 Q And.
13 A To see if any correspondences populated.
14 Q What did you come up with?
15 A I don't recall specific documents off the top
16 of my head.
17 Q You said you searched documents, how did you
18 search documents?
19 A I searched documents in terms of a legal
20 waiver that was written.
21 Q Anything else?
22 A Also other legal waivers.
23 Q When was that?
24 A Last winter.
25 Q What other documents did you search for?

0013

LAUREN CALLANAN

1
2 A I can't remember specific documents?
3 Q On what computer did you search for the
4 e-mails?
5 A One of the computers at Altitude Express.
6 Q Did you search any of the other computers at
7 Altitude Express?
8 A We have multiple computers. I'm not aware of
9 which computer I used to perform any search.
10 Q Do you have a server?
11 MR. ZABELL: Objection to the form. You
12 may answer?
13 A We currently have a server. We did not
14 previously have a server.
15 Q In order to do a search for e-mails, a
16 comprehensive search for e-mails, you would have to go
17 to each individual computer before you had the server.
18 Is that a fair statement?
19 MR. ZABELL: Objection to the form of
20 the question. You may answer.
21 A I cannot confirm whether I went to each
22 individual station to perform any type of comprehensive
23 search. Therefore, I can't say whether I performed a
24 comprehensive search or not.
25 Q So, you don't remember the particular

0014

LAUREN CALLANAN

1
2 computer you looked on, correct?
3 A Correct. It may have been multiple
4 computers.
5 Q Wait a minute. Before you said it was one
6 computer. Now, you're saying it was multiple computers
7 perhaps.
8 MR. ZABELL: Objection to the form. To
9 the extent you can, you may answer.
10 A I'm saying, I do not recall which computer I
11 used. I did not say it was a single computer that I
12 used to perform the search. I may have used multiple
13 computers to perform the search. I use multiple
14 computers on a daily basis.
15 Q How many computers are there in total?
16 MR. ANTOLLINO: Objection to the form of
17 the multiple question. You may pick one and
18 answer.
19 A Last year there were four computers in my
20 office or in the manifest office, the office which I
21 work in.
22 Q The computer or computers that you searched
23 were in the manifest office alone, correct?
24 A Correct.
25 Q You didn't search anything on Ray's computer,

0015

LAUREN CALLANAN

1
2 correct?
3 A Not that I recall, no.
4 Q Have you ever used Ray's personal computer?
5 A I have previously, yes. It's not his
6 personal multiple computer. It's a business computer.
7 Q What do you mean by that? Is it one of the
8 four in the manifest room or a different one
9 altogether?
10 A A different computer.
11 Q Do you have any document retention policy at
12 Sky Dive Long Island?
13 A Document retention in what respect?
14 Q For how long do you keep documents?
15 MR. ZABELL: Objection to the form. You
16 may answer.
17 A It depends on the document.
18 Q What is the longest you would keep a
19 document?
20 MR. ZABELL: Objection to the form. You
21 may answer.
22 A There is no time line that we have set aside
23 for a particular document. It depends on the document.
24 Q Well, I guess -- you say it's depending on the
25 document. Is it just a document by document basis or

0016

LAUREN CALLANAN

1
2 do you have a category of documents that you keep for
3 longer than others?
4 MR. ZABELL: Objection to the form of
5 the multiple questions. You may pick a
6 question and answer.
7 A It depends on the actual document at hand,
8 whether we are going to keep it for a length of time or
9 not. A general e-mail, I may discard it. If it's a
10 legal waiver, I would keep it on file.
11 Q How long would you keep a legal waiver on
12 file?
13 A I would never destroy a legal waiver.
14 Q How about employee time and wage documents?
15 MR. ZABELL: Objection to the form. You
16 may answer.
17 A Everything is in digital format and
18 automatically stored.
19 Q Forever?
20 A To my knowledge, I cannot tell you how long
21 it is stored. I would imagine it being stored with the
22 actual payroll company.
23 Q What is your title at Sky Dive Long Island?
24 MR. ZABELL: Objection to the form of
25 the multiple question. You may pick a

0017

LAUREN CALLANAN

1
2 question and answer it.
3 A I'm the office manager at Altitude Express.
4 Q Can you describe the chain of command at Sky
5 Dive Long Island?
6 A You have Ray, the owner and president of the
7 company. You have Rich Winstock, our safety and
8 training advisor. Myself in the office. Multiple
9 instructors, vidiographers, packers and grounds crew,
10 that all work together on the common grounds.
11 Q Anyone else in the office?
12 A Currently or at that time?
13 Q Well, start with at that time.
14 A On a daily basis there may have been two
15 other girls present in the office.
16 Q Who are they?
17 A Who, the manifest workers?
18 Q Yes.
19 A Employees, office employees.
20 Q What are their names?
21 A One is Megan Ayers and the other is Alison
22 Rodriguez.
23 Q Are they still working at Sky Dive Long
24 Island?
25 A The business is currently closed for the

0018

LAUREN CALLANAN

1
2 winter, so no.
3 Q Are they expected to come back in the summer?
4 A I do not believe that the hiring has been
5 done for next year.
6 Q Is there any reason, that you know of, why
7 Megan or Alison would not be hired next year?
8 A No.
9 Q Do you have a year long job there?
10 MR. ZABELL: Objection to the form. You
11 may answer.
12 A My main employment is during the spring,
13 summer and fall months. Now, during the winter, I'm
14 sometimes in and out. But, I'm not employed full-time.
15 Q Do you collect a part-time salary during the
16 winter or a full-time salary?
17 MR. ANTOLLINO: Objection to the form of
18 the multiple question. Objection to the form
19 of the question. You may answer.
20 A I do not collect a salary during the winter.
21 Q What is your training and experience?
22 MR. ZABELL: Objection to the form.
23 Training and experience in what?
24 MR. ANTOLLINO: Withdrawn.
25 Q What is your highest level of education?

0019

LAUREN CALLANAN

1
2 A A bachelor degree.
3 Q In what?
4 A Social sciences.
5 Q When did you graduate?
6 A I graduated in January of 2010.
7 Q From what institution?
8 A Dowling College.
9 Q Where is that?
10 A There is a campus in Oakdale and a Campus in
11 Brookhaven.
12 Q Are they both on Long Island?
13 A Correct.
14 Q After that what did you do?
15 MR. ZABELL: Objection to the form of
16 the question. Did you throw your mortar
17 board in the air, did you have a drink.
18 Q After you graduated did you obtain any
19 employment?
20 A I remained employed at my current employer.
21 Q What was that?
22 A Altitude Express.
23 Q Were you working at Altitude Express while
24 you were in college?
25 A Correct.

0020

LAUREN CALLANAN

1
2 Q Have you worked for any company, other than
3 Altitude Express, in between the time you graduated and
4 the present?
5 A In between the time I graduated, yes.
6 Q Where?
7 A I worked at an oil company during the winter.
8 Q Other than that?
9 A No.
10 Q When did you start working at Altitude
11 Express?
12 A In June or July of 2005.
13 Q How did you get the job?
14 A I moved out to Long Island with my
15 ex-boyfriend. Then I asked if they needed help in the
16 office.
17 Q How did you get in contact with Sky Dive Long
18 Island?
19 A My boyfriend was an instructor at the time.
20 Q Who is that?
21 A His name was Russ Smith.
22 Q Where were you working before that?
23 A Sky's the Limit.
24 Q Where is that?
25 A It's currently in Stroudsburg, Pennsylvania.

0021

LAUREN CALLANAN

1
2 Q How long had you been working there?
3 A From 2003, to the best of my knowledge.
4 Q From 2003 to 2004 or 2005?
5 A Correct, 2003 to 2005.
6 Q Have you ever worked in any other drop zones?
7 A No.
8 Q What is your training in skydiving, if any?
9 A Pertaining to?
10 Q Pertaining to any aspect of the actual
11 activities?
12 A Formal training, it depends on what you're
13 asking, how to answer the question.
14 Q Well, have you ever done a tandem?
15 A Yes, I have.
16 Q How many?
17 A I have multiple tandems.
18 Q More than ten?
19 A Yes.
20 Q More than a hundred?
21 A No.
22 Q More than fifty?
23 A I do believe so. I can't guarantee the exact
24 number.
25 Q In the range of up to fifty, is that fair?

0022

LAUREN CALLANAN

1
2 A That is fair.
3 Q What about solo jumps?
4 A Yes.
5 Q How many?
6 A Up to three-hundred.
7 Q You have done fifty tandems, approximately.
8 I'm not holding you to that.
9 A I can't say that I have done fifty. I have
10 done more than one, multiple tandems, yes.
11 Q Were you the instructor for any of the
12 tandems?
13 A No.
14 Q The solo jumps about three-hundred.
15 A Up to.
16 Q Up to three-hundred?
17 A Yes.
18 Q Have you received any training to be a tandem
19 instructor?
20 A I have not.
21 Q Have you ever received any other type of
22 training to do anything other than go on fun jumps or
23 be the tandem passenger in skydiving?
24 A I'm a USPA coach.
25 Q What is that?

0023

LAUREN CALLANAN

1
2 A A coach could teach new jumpers different
3 functions of a skydive, under the direct supervision of
4 a safety training advisor or a coach examiner.
5 Q So, a safety training advisor or a coach
6 examiner, who at Sky Dive Long Island would fit that
7 category, if anyone?
8 A Either Ray Maynard or Rich Winstock.
9 Q So, you can do a tandem with a passenger?
10 A No, I did not say I could do a tandem.
11 Q I'm just asking for a clarification.
12 A I have never received any tandem training to
13 become an instructor or instruct, for that matter.
14 Q What is it that you can do? Can you describe
15 that in a conversational way. What is it that you can
16 do under the supervision of Ray or Rich at the drop
17 zone?
18 MR. ZABELL: Objection to the form.
19 A I can perform the functions of a USPA Coach.
20 Q What is it that you do as a USPA Coach, in
21 laymen terms?
22 A I could basically take a student that
23 graduated the AFP program and take them on a coached
24 jump, training them on different aspects of the
25 skydive.

0024

LAUREN CALLANAN

1
2 Q But not to tandem?
3 A No.
4 Q If you did that would you both be solo
5 jumpers?
6 A Correct.
7 Q You'd be giving the person instructions, do
8 this next, do that next, look out there, follow certain
9 procedures?
10 A Yes, follow certain guidelines.
11 Q Okay. When did you meet Don?
12 A In 2009, I believe.
13 Q Under what circumstances?
14 A Don had been hired back by Ray for the 2009
15 season.
16 Q Alright. Did Ray say anything about Don
17 before Don arrived on the grounds of Sky Dive Long
18 Island?
19 A I can't remember anything specific.
20 Q Did anyone say anything about Don?
21 A Other than that he was an employee, I can't
22 remember anything specific said.
23 Q When you say, a former employee, was anything
24 said about the ending of the relationship that was
25 previous to 2009?

0025

LAUREN CALLANAN

1
2 A I don't remember any discussions verbatim.
3 But, I do believe it was mentioned in passing that Don
4 had previously been let go from the company.
5 Q Who said that?
6 A I cannot absolutely tell you for sure.
7 Q Could it have been Ray?
8 A It could have.
9 Q It could have been someone else?
10 A It could have been another instructor. It
11 could have been anyone that knew Don previously.
12 Q Didn't you meet Don in 2008 at a fun jump?
13 A I don't recall.
14 Q Don worked at Sky Dive Long Island in 2009
15 and 2010 when you were at Sky Dive Long Island,
16 correct?
17 A Yes.
18 Q You were not at Sky Dive Long Island in 2001?
19 A I was not.
20 Q What do you know about his employment in
21 2001, other than what you have just testified to?
22 A I don't have any knowledge. I was not there,
23 I cannot say.
24 Q Did you have an opinion on whether Don was a
25 good instructor or not?

0026

LAUREN CALLANAN

1
2 MR. ZABELL: Objection to the form. You
3 may answer.
4 A I never received instructions from Don. So,
5 I couldn't form that opinion.
6 Q Did anybody ever say that they were happy
7 with Don's instructions?
8 MR. ZABELL: Objection to the form. You
9 may answer.
10 A Absolutely. Customers would come up and
11 leave tips and say that they had a great time.
12 Q That happened on a regular basis?
13 A It happened for all the instructors on a
14 regular basis.
15 Q Including Don?
16 A I would imagine so, yes.
17 Q Do you remember anyone in particular
18 mentioning Don and saying how much they enjoyed their
19 jump with Don?
20 A Any specific cases, off the top of my head, I
21 cannot. But, there might be. I'm sure there were.
22 Q Do you remember ever giving Don an e-mail
23 from a customer that really enjoyed his tandem?
24 A Like I said, I'm sure there were many happy
25 customers. Specifically, I cannot remember.

0027

LAUREN CALLANAN

1
2 MR. ANTOLLINO: Plaintiff's Exhibit 2,
3 please.
4 (Whereupon, an e-mail was marked as
5 Callanan Exhibit 2 for identification, as of
6 this date.)
7 Q Do you recognize that document?
8 A No. Unfortunately, I do not remember it off
9 the top of my head.
10 Q Do you see what the e-mail address is?
11 A I do see it's addressed, fun jumps.
12 Q What is fun jumps?
13 A It's printed for Ray Maynard, Jumper Ray, who
14 is Ray Maynard.
15 Q Can you tell what computer that came from?
16 A No, unfortunately not.
17 Q Do you know whose e-mail that was?
18 A Fun jumps is a general e-mail for Sky Dive
19 Long Island.
20 Q Can you think of any reason why this would
21 not have been found in the search that you did?
22 A I can't say that it wasn't found. But,
23 seeing as it was printed for Ray Maynard, I would take
24 it that Ray printed that.
25 Q Do you recall handing that to Don and saying

0028

LAUREN CALLANAN

1
2 Don, look someone just complimented you on a jump, I
3 wanted to give that to you?
4 A That specific piece of paper, no. I do not
5 recall. I apologize.
6 Q No need to apologize.
7 MR. ZABELL: Counsel, I'll ask that the
8 documents you have marked, put them in the
9 center of the table, at least until we get
10 them photocopied. Thank you, counselor.
11 Q Have you watched any videos of Don do a
12 tandem jump?
13 A I have seen video footage before, yes.
14 Q How many times?
15 A I couldn't tell you with any certainty.
16 Q Have you seen the video in this particular
17 case?
18 A What video?
19 Q Do you understand that there was a customer
20 that made a complaint about Don?
21 A I do understand a complaint was made, yes.
22 Q Did you ever watch the video of the customer
23 and his girlfriend?
24 A What customer are you referring to?
25 Q Do you know who the customer was that made

0029

LAUREN CALLANAN

1
2 the complaint?
3 MR. ZABELL: Objection to the form. You
4 may answer.
5 A The customer that made what complaint?
6 Q How many complaints have there been about
7 Don?
8 A I couldn't tell you off the top of my head.
9 Q Were there more than one?
10 MR. ZABELL: Objection to the form of
11 the question. You may answer.
12 A There may have been.
13 Q You don't know if there were or not, correct?
14 A I cannot remember specific complaints. But I
15 do believe that yes, multiple complaints have been
16 made.
17 Q Why do you believe that?
18 A Because I don't recall only receiving one
19 complaint.
20 Q What other complaints?
21 A Unfortunately, I don't remember.
22 Q It could have been anything?
23 MR. ZABELL: Objection. That is a
24 statement to which no response is required.
25 Q Correct?

0030

LAUREN CALLANAN

1
2 MR. ZABELL: Objection. That is one
3 word to which no response is required.
4 Q It could have been anything, correct?
5 MR. ZABELL: Counsel, are you
6 withdrawing your two previous statements?
7 Q You can answer the question.
8 MR. ZABELL: If you can. If you can't,
9 you don't have to.
10 A I apologize. Yes, the complaint could have
11 been regarding anything.
12 Q It could have been a complaint of the color
13 of his hat, correct?
14 A No. I don't believe that is what a complaint
15 was. No, I don't believe so.
16 Q You have no documentation about any of these
17 complaints, correct?
18 A I don't believe -- personally, I don't have
19 anything on me, no.
20 Q I know you don't have anything on you. You
21 don't have anything back at the office either, do you?
22 A I don't think so, but I don't know.
23 Q You don't remember anything about these other
24 complaints?
25 MR. ZABELL: Objection, asked and

0031

LAUREN CALLANAN

1 answered. You can answer again, if you can.
2 A At this time, I do apologize, I do not.
3 MR. ANTOLLINO: We'll leave a space in
4 the transcript. Since you'll ask for a copy
5 of the transcript, I'll send it to you.
6 Q Will you fill in anything, at a later date,
7 that you remember when you review the transcript.
8 We'll leave a space in the transcript.
9 A Of course.
10 INSERT:
11 Q Have there been complaints about other
12 skydivers?
13 A I'm sure that complaints have been received
14 in the past. I don't remember any specifically off the
15 top of my head.
16 Q You do remember that there were some
17 complaints made about other instructors at some point,
18 correct?
19 A I can't answer that one way or the other. I
20 don't have any specific complaints that I can think of.
21 Q I'm not asking about specifics, just --
22 A Unfortunately, if I can't remember specific
23 complaints, I can't verify whether a complaint had been
24 made.
25 made.

0032

LAUREN CALLANAN

1
2 Q You were able to verify that complaints had
3 been made about Don. You couldn't remember the
4 specifics of those complaints --
5 A No, that --
6 Q Wait until I finish asking the question.
7 MR. ANTOLLINO: Read back the question,
8 please.
9 MR. ZABELL: Slow down a little bit.
10 When he says wait, he means wait, please.
11 Because we are going to maintain all
12 appropriate levels of civility at the
13 deposition. Correct, counsel?
14 MR. ANTOLLINO: Can you read it back.
15 MR. ZABELL: If he will not maintain all
16 appropriate levels of civility, I will impose
17 my standards civility. If he refused to say
18 please, please allow me to ask you please.
19 MR. ANTOLLINO: Can you read it back.
20 (Whereupon, the above referred to
21 question was read back.)
22 Q Can you answer that question, please.
23 A I know that a specific complaint was made
24 against Don. I could not verify whether other
25 complaints had been made.

0033

LAUREN CALLANAN

1
2 Q So, there was at least one complaint made
3 against Don, correct?
4 A Correct.
5 Q You could not verify whether there were any
6 other complaints, whatsoever, against Don, correct?
7 A At this time I do not have anything to
8 support any other complaints. I couldn't tell you with
9 a hundred percent accuracy.
10 Q I'll leave another line in the transcript.
11 Would you agree to fill that in if you come up with any
12 other complaints?
13 A Sure.
14 INSERT:
15 Q Do you know who made the complaint about Don,
16 the one you are aware of?
17 A Okay, yes. It was the boyfriend. David, I
18 do believe is the name.
19 Q Is the name David Kengle?
20 A That does ring a bell, yes.
21 Q Did you take his complaint, initially?
22 A I did receive a phone call, yes.
23 Q What did he say?
24 A He called very upset. He brought his
25 girlfriend skydiving for her birthday. Her birthday

0034

LAUREN CALLANAN

1
2 was ruined because she felt very uncomfortable during
3 the skydive and when she landed. Basically, he said
4 that it had ruined her birthday.
5 Q Did he say anything else, anything more
6 specific than that?
7 A He basically told me that Don rested his head
8 on his girlfriend's shoulder and was whispering into
9 her ear. Multiple times during the plane ride or
10 rather the time that they spent together, he told her
11 multiple times that he was gay. And not to worry while
12 he was adjusting certain straps because he was gay.
13 Q Anything else?
14 A That was basically the phone call that I
15 remember.
16 Q Did you speak to Mr. Kengle any other time?
17 A I don't recall having any further
18 conversation with him after that.
19 Q Did you speak to the girlfriend?
20 A I don't recall speaking to the girlfriend.
21 Q Do you know the girlfriend's name off the top
22 of your head?
23 A I believe it's Roseanna.
24 Q Have you ever seen the jump video of Don and
25 Roseanna or the other instructor and David Kengle?

0035

LAUREN CALLANAN

1
2 A I do not recall seeing a video of David. I
3 did see a video of Roseanna and Don.
4 Q Did you notice anything improper in the
5 video?
6 A Unfortunately, it was a short video. I did
7 recall seeing Don making gestures with his fingers
8 around his lips, I do believe, or hand gestures in
9 general.
10 Q When you say it was unfortunately a short
11 video, why was it unfortunately a short video?
12 MR. ZABELL: Objection to the form. You
13 may answer.
14 A The video clip was very short with respect to
15 the actual plane ride and skydive. A plane ride
16 typically takes about fifteen to twenty-five minutes.
17 Q When you say unfortunately, why was it
18 unfortunate that it was short?
19 A Because it only showed a very short picture
20 of the plane ride.
21 Q So, when was the first time that you saw that
22 video?
23 A I do believe I saw the video after the
24 complaint was made.
25 Q When?

0036

LAUREN CALLANAN

1
2 A I don't remember.
3 Q After the complaint was made, the complaint
4 was made, I believe, in June of 2010, correct?
5 A Unfortunately, I don't remember. I don't
6 have any notes with me.
7 Q It was a couple of years ago, correct?
8 A It was not within this past year.
9 Q Not within this past year, okay. Do you
10 remember when Ray fired Don?
11 A Do I remember?
12 Q Yes.
13 A I don't remember when, specifically. I do
14 remember when Don was fired.
15 Q It was before this lawsuit was filed,
16 correct?
17 A I would imagine so.
18 Q Did you see the video before the lawsuit was
19 filed?
20 A I do not recall. I don't remember.
21 Q Is it fair to say that you were the one that
22 searched for the raw footage of the video in response
23 to this lawsuit?
24 A No.
25 Q No?

0037

LAUREN CALLANAN

1
2 A No.
3 Q So, you don't remember if you saw the video
4 before the lawsuit was filed or not, correct?
5 A I do not remember.
6 Q When was the last time you saw the video?
7 A I saw the video today.
8 Q You're reaction to it was that you thought
9 there was something wrong with the way Don was using
10 his hands or something?
11 A I didn't say that I thought there was
12 something wrong with it. You asked if I noticed
13 anything.
14 Q Have you seen a lot of skydive videos in your
15 career?
16 A I have.
17 Q About how many do you do in one season?
18 MR. ZABELL: Objection to the form. You
19 may answer.
20 A I don't do any videos. I own video
21 equipment, but I don't actually -- I'm not a
22 vidiographers.
23 Q How many videos of skydivers does Sky Dive
24 Long Island do in a season?
25 A A couple of thousand maybe.

0038

LAUREN CALLANAN

1
2 Q Do most people who go on skydives request
3 video?
4 A Not everyone. I want to say half, maybe
5 fifty percent.
6 Q So as we sit here today, you can't remember
7 any other complaints that have been made about any
8 other instructors?
9 A No specific complaints come to mind at this
10 time.
11 Q I'm not asking you whether or not a specific
12 complaint comes to mind. Whether or not there have
13 been any complaints or not?
14 A If I cannot verify a specific complaint, I
15 cannot say whether or not one has come through.
16 Q I'm not asking you to verify a complaint. Do
17 you have in your mind, do you ever remember anyone
18 complaining about something, without being able to put
19 your finger on what the complaint was about?
20 MR. ZABELL: Objection to the form of
21 the multiple questions pending before you.
22 You may pick any one of the questions and
23 provide an answer to that.
24 A I do not recall any complaints at this time.
25 Q We'll leave a space again in the transcript.

0039

LAUREN CALLANAN

1
2 If you can think of any complaints, you can put them
3 the there. Would you agree to do that.
4 A I would.
5 INSERT:
6 Q I just have to ask you again, just to make
7 sure I understand. As we sit here today, regardless of
8 what the complaint was, you cannot recall anyone
9 complaining about any other skydiver, other than Don,
10 is that a fair statement?
11 MR. ZABELL: Objection to the form of
12 the question. Objection, asked and answered.
13 You can answer.
14 A Were you asking about complaints against
15 instructors?
16 Q Yes.
17 A I can't remember any complaints at this time.
18 Q How about complaints against any employees at
19 Sky Dive Long Island?
20 A Complaints from who?
21 Q From any customers.
22 A Complaints from customers, I cannot recall
23 any other complaints, other than the complaint at hand,
24 from any other customers at this time.
25 Q About any employees, whatsoever.

0040

LAUREN CALLANAN

1
2 A At this time, no. I do apologize.
3 Q There are some complaints about Sky Dive Long
4 Island on-line, is that correct?
5 A There may be.
6 Q Are you aware of any websites that have
7 complaints on-line?
8 A I don't recall the name. Rip Off Report. I
9 recall one web-site with a complaint that is on-line,
10 yes.
11 Q Was that responded to?
12 A That was responded to.
13 Q Who responded to that?
14 A Multiple people.
15 Q Who were they?
16 A I don't know specifically, at this time, who
17 responded.
18 Q Do you know anyone that responded?
19 A I know I responded.
20 Q Did Ray respond?
21 A I do believe he did, yes.
22 Q Did anyone else that works at Sky Dive Long
23 Island respond?
24 A I believe Alison may have responded. Yes
25 Alison, I do believe, responded to it.

0041

LAUREN CALLANAN

1
2 Q Who is Alison?
3 A Alison was one of the other manifest workers
4 at that time.
5 Q Is there anyone else that responded?
6 A I don't have --
7 Q Anyone else that worked at Sky Dive Long
8 Island that you recall?
9 A I don't recall.
10 Q So, Ripoffreport.com. Have you ever worked
11 at any other drop zones on Long Island?
12 A No.
13 Q What was the complaint at Rip Off Report
14 about?
15 A I don't recall, unfortunately.
16 Q Did you think that it was an actual customer?
17 A From what I do remember I do not believe it
18 was an actual customer.
19 Q Who do you think it was?
20 A I can't point fingers. I don't know who it
21 was. From what I remember, the information that was in
22 the complaint was false, from my knowledge.
23 Q What was in the complaint?
24 A I don't have the complaint to tell you that.
25 I don't remember what was in it.

0042

LAUREN CALLANAN

1
2 Q Do you remember when it was posted?
3 A No, I do not recall.
4 Q Did the compliant concern any of the
5 instructors.
6 A I do believe that it did quite possibly, but
7 there were no names.
8 Q Did you do a search to find out who the
9 customer might have been?
10 A There was no way to search for that
11 information.
12 Q Have you seen any other complaints about Sky
13 Dive Long Island on-line?
14 A I believe I saw a complaint from a gentleman
15 that was upset about not receiving his video.
16 Q That was a complaint, I believe, he was
17 complaining about the ladies in the office, correct?
18 A I don't know what complaint you're referring
19 to.
20 Q What about that complaint did you do to
21 address the problem?
22 A What complaint are we talking about?
23 Q The complaint you just spoke about.
24 A The complaint, which I vaguely recall, was
25 regarding a video that a customer did not receive. I

0043

LAUREN CALLANAN

1
2 do believe it was a weekend day. I can't say for sure
3 when he jumped.
4 There were two people with similar names and
5 the videos got mixed up. I recall once that customer,
6 I do believe if that is the correct complaint that we
7 are speaking of, had left, we mailed him out another
8 copy of the right video. Making sure that he had the
9 proper video in his possession.
10 Q Did he suggest, in that complaint, that the
11 people that he dealt with on the phone were rude?
12 A I don't recall.
13 Q Did you or anyone else discipline anyone as a
14 result of that complaint?
15 A As a direct result of that complaint, I can't
16 say that any disciplinary action came of it. I know
17 from my office experience, I very definitely would have
18 talked to everyone, if we received any type of
19 complaint. I'm sure that no customer is treated with
20 any disrespect.
21 Q Are you aware of an injury that Don suffered
22 in 2009?
23 A I am.
24 Q What was that injury?
25 A It was an ankle injury, a fractured ankle.

0044

LAUREN CALLANAN

1
2 Q Do you remember how it happened?
3 A That happened on a landing.
4 Q Did you see the video?
5 A I don't recall if I saw the video.
6 Q Was there an overweight passenger that he was
7 taking on that trip, if you know?
8 A I don't know what is classified as
9 overweight.
10 Q Did he just look like he was two-hundred
11 fifty pounds or higher, if you recall?
12 A I can't really judge that. I do apologize.
13 I don't remember.
14 Q What happened after Don was injured? Did he
15 say, I got hurt, I need to go to the hospital? Do you
16 recall any specifics?
17 A This is definitely going back some time. I
18 recall Don coming into the office. He was basically
19 limping into the office and telling me that he hurt his
20 ankle on the landing.
21 I recall Don not wearing sneakers and
22 advising him that he should probably be jumping in
23 tennis shoes or a more supportive footwear. He should
24 go and get his ankle x-rayed.
25 I remember Don telling me later that he went

0045

LAUREN CALLANAN

1
2 to Tanger Outlets and bought a pair of sneakers, I do
3 believe. I can't guarantee they were sneakers. He
4 bought a different footwear. He then went to the
5 emergency room to get an x-ray, in which it was
6 determined that his ankle was fractured.

7 Q When you said that he was not wearing
8 sneakers, are you saying he was bare foot?

9 A No. He had footwear on. I believe he was
10 wearing boots.

11 Q Why do you believe that sneakers would be
12 better than the boots that he was wearing?

13 A We always advise, tandem passengers and
14 jumpers in general, to wear supportive footwear. No
15 shoes with hooks or boots or anything of the sort.

16 Q Do you think that Don did anything wrong on
17 that jump?

18 A I can't be the judge of that.

19 Q Did you doubt Don's injury?

20 A I did not doubt Don's injury. I asked Don to
21 go get an x-ray. I may have even offered to take him
22 to get an x-ray.

23 Q Was Ray notified about Don's injury?

24 A He was.

25 Q What did you say?

0046

LAUREN CALLANAN

1
2 A I don't recall whether Don notified Ray or I
3 notified Ray or who notified him of the injury.

4 Q What was Ray's reaction?

5 A I don't recall.

6 Q Do you remember having a conversation with
7 Don's partner, from the hospital, about Don's injury?

8 A No, I do not recall.

9 Q Do you know Bill Moore?

10 A I believe I met Bill Moore before. I can't
11 say that I know him.

12 Q Do you know what his relationship to Don is?

13 A I do believe, to the best of my knowledge,
14 that he was his partner, business partner and possible
15 boyfriend, I believe. But I do not know for sure.

16 Q Did you have a conversation with Bill Moore
17 from the hospital?

18 A I don't recall.

19 Q Do you remember Don ever coming to the drop
20 zone with a cast?

21 A I do.

22 Q Do you remember what the cast looked like?

23 A I remember that Don came to the drop zone
24 with a fluorescent pink cast.

25 MR. ANTOLLINO: Let's mark this as

0047

LAUREN CALLANAN

1 Exhibit 3.
2 (Whereupon, a photograph was marked as
3 Callanan Exhibit 3 for identification, as of
4 this date.)

5 Q Does this photograph fairly and accurately
6 represent the cast that Don wore to the drop zone after
7 he was injured?

8 MR. ZABELL: Before you answer that.

9 Counselor, it's been our practice
10 throughout the depositions, and I know you
11 know this, at previous depositions you have
12 had copies of the exhibits ready to go. I
13 don't understand why you don't feel it's
14 appropriate to have courtesy copies of the
15 exhibits which are introduced into evidence.

16 MR. ANTOLLINO: I didn't have the time
17 to get a color copy. Off the record.

18 (Whereupon, a discussion was held off
19 the record.)

20 MR. ZABELL: I want this on the record.

21 MR. ANTOLLINO: We don't need to discuss
22 it. I'll get you a copy.

23 MR. ZABELL: Just understand Counsel,
24 it's not just the color copies that you are
25

0048

LAUREN CALLANAN

1 not providing, it's even the black and white
2 copies that you failed to provide today.

3 MR. ANTOLLINO: I did not make copies
4 before I left. There are very few exhibits
5 in this deposition. You'll get copies, don't
6 worry.

7 Q Can you answer the question, please.

8 MR. ZABELL: You may, if you can.

9 A I do apologize. I must have been mistaken of
10 the color of the cast. The cast is apparently pink,
11 not fluorescent. It appears that the toenails are
12 fluorescent pink.

13 Q When you say the toenails, what do you mean,
14 that his toenails are painted?

15 A Correct.

16 Q Did you make any comments about the toenails
17 to Don?

18 A Not that I can recall.

19 Q Did you believe that it was inappropriate for
20 Don to paint his toenails?

21 A Inappropriate, not necessarily. I paint my
22 nails.

23 Q What color do you paint your nails?

24 A I paint my nails any color to go with what
25

0049

LAUREN CALLANAN

1
2 I'll be wearing that requires painted toenails or
3 fingernails.
4 Q Including the color pink?
5 A Sure. I can't say what color or what shade.
6 I have definitely had pink coral, fluorescent pink, red
7 fingernails and toenails before.
8 MR. ANTOLLINO: Let's mark Exhibit 4.
9 (Whereupon, a photograph was marked as
10 Callanan Exhibit 4 for identification, as of
11 this date.)
12 Q Does this fairly and accurately represent the
13 color of Don's pink toenails after he was injured?
14 A I cannot recall if that is the exact shade or
15 if that is, unfortunately, the color that I saw. That
16 does appear much more faded and orange than what I
17 recall.
18 Q How would you characterize that color? What
19 would you call that?
20 A If I had to come up with a color I would --
21 Unfortunately, the picture is very, to me, it appears
22 to be pixilated. It looks like a mixture of colors.
23 It doesn't appear to be a clear picture. There is not
24 one color that could describe the color I'm seeing
25 based on the mixture of colors.

0050

LAUREN CALLANAN

1
2 Q When you say a mixture of colors, the big toe
3 has a happy face on it, right?
4 A I can't make out a happy face on the big toe.
5 Q There is a little face there, right?
6 A I can't tell if that is a happy face or not
7 that I'm looking at currently.
8 Q Aside from the big toe, can you identify the
9 color on the other two toes?
10 A The image quality is the same.
11 Q So sitting here today, you could not pick a
12 shade of nail polish that you know and describe it?
13 A Not with the picture provided. There is a
14 mixture of colors.
15 Q What about the toenails in Exhibit 3?
16 A It's a much smaller picture. They look much
17 brighter. I would have to say they look much more like
18 a shade of pink or an identifiable color. Then again,
19 it's a very small picture.
20 Q Is that a color that you have worn before?
21 A I can't say that I have worn the exact shade.
22 But, I think my toenails are probably painted a very
23 similar color at this time.
24 Q Has anyone ever complained about that, to
25 you, at work?

0051

LAUREN CALLANAN

1
2 A Not that I recall.
3 Q Do you remember ever making fun of Don or his
4 pink cast or his toenails?
5 A I don't recall that, no.
6 Q Do you recall saying to him, that's a bit
7 much?
8 A Unfortunately, I do not recall.
9 Q Do you deny saying that?
10 A I do not deny it. I just do not recall.
11 Q Did you say anything to Don like, Don that's
12 really just too gay?
13 A I don't believe I'd say anything like that.
14 Q Do you recall Ray saying anything about the
15 pink cast or the toenails?
16 A I do not recall anything specific.
17 Q Well, would you recall anything in general?
18 A I do recall Don was sitting at the entrance
19 of our office building. Everyone was walking through
20 that door to which Don was sitting next to at the
21 office. I recall that everyone would have to walk past
22 him at that specific point.
23 I do believe that's when he first arrived
24 with the pink cast. Other than that, I can't recall
25 anything specific that was said.

0052

LAUREN CALLANAN

1
2 Q Do you recall Ray asking Don to paint the
3 cast black?
4 A I do not recall that.
5 Q Do you recall Ray asking Don to cover his
6 toenails with a sock?
7 A I do not specifically recall that, no.
8 Q Do you remember Ray saying, that's really
9 gay?
10 A I do not recall that.
11 Q Are you denying that that happened or you
12 just don't recall?
13 A I am not denying it. I just don't remember.
14 Q Was that time when Don first showed at the
15 drop zone, for the first time after injury, at a staff
16 meeting?
17 A I honestly don't remember if it was. It's a
18 possibility.
19 Q Did you think that Don's cast was funny?
20 A I don't think any cast is funny.
21 Q The way that he decorated it, I mean.
22 A It was not a decorated cast to me. It was a
23 regular cast.
24 Q He has a certain color, he chose a certain
25 color, didn't he?

0053

LAUREN CALLANAN

1
2 A You can go to the orthodontist and choose
3 colored bands for your teeth. You can go and choose
4 colors to paint your room. Everyone has a right to
5 choose their own colors.
6 Q You felt there was nothing wrong with Don
7 choosing those colors?
8 A Personally, I don't think there is anything
9 wrong with that, no.
10 Q What about professionally, did you think it
11 was unprofessional?
12 A He was not instructing at that point. So,
13 from a professional level, I mean he was not working at
14 that point.
15 MR. ZABELL: You have something to say,
16 counsel.
17 MR. ANTOLLINO: I don't have to say
18 anything.
19 MR. ZABELL: You're grunting. I'm
20 trying to clarify on the record what the
21 grunting is.
22 MR. ANTOLLINO: I have no clarification
23 to make.
24 MR. ZABELL: Your grunting, you'll just
25 leave it at that.

0054

LAUREN CALLANAN

1
2 Q Did Ray ever talk to you about the cast
3 later?
4 MR. ZABELL: Objection to the form. You
5 may answer.
6 A I don't recall.
7 Q What time of day was it?
8 MR. ZABELL: Objection to the form.
9 MR. ANTOLLINO: Withdrawn.
10 Q The day you first saw the cast, what time of
11 day was it?
12 A Unfortunately, it was so long ago, I can't
13 remember.
14 Q That's the answer then. Do you know Don's
15 sexual orientation?
16 A I do, from what he has told me, yes.
17 Q Was it that he told you or someone else told
18 you?
19 A He told me.
20 Q When was that?
21 A I don't remember specifically.
22 Q Were you offended, in anyway, that he told
23 you his sexual orientation?
24 A No.
25 Q Why not?

0055

LAUREN CALLANAN

1
2 A Because I have many friends that are gay as
3 well and that doesn't offend me.
4 Q Have you ever talked to any of them about
5 whether or not homosexuality is something that is
6 inborn or not?
7 A Have I talked to who?
8 Q Your gay friends about whether or not they
9 were born that way?
10 A No, I haven't had that conversation with my
11 friends. I have taken college classes regarding human
12 sexuality.
13 Q In your opinion, is someone born that way or
14 is that something that is --
15 A That is a very vague question to ask. I
16 mean, I have not thought about that deeply enough to
17 tell you absolutely one way or the other. I don't
18 really have an opinion on that.
19 Q You said before that you have a boyfriend?
20 A I have had a boyfriend, yes.
21 Q That implies that you're a heterosexual,
22 correct?
23 A I am.
24 Q Do you believe that you were born that way?
25 A I could have been. It could have been a

0056

LAUREN CALLANAN

1
2 process of socialization. It could have been a process
3 or a product of the environment that I grew up in.
4 Q Do you keep a record of the tips that workers
5 get at the drop zone?
6 A No.
7 Q How are the tips divided up?
8 A We have tip envelopes. Basically, we have
9 little coin envelopes that we leave out for the
10 students. They can grab a coin envelope and put
11 whatever tip they feel they would like to leave for an
12 instructor.
13 Then they will typically either hand it
14 directly to the instructor if they didn't hand it to
15 them previously or if they are going to at all.
16 Otherwise, they can leave them at the office and we put
17 them in a specific envelope for that instructor.
18 Q You don't keep a record of how much is
19 tipped?
20 A No. Lots of times they're sealed envelopes.
21 The student will put a tip in an envelope, seal it and
22 there is no record.
23 Q What is a typical tip for a tandem jump, if
24 you can answer?
25 A Unfortunately, I'm not an instructor. I

0057

LAUREN CALLANAN

1
2 can't say for sure what a typical tip is.
3 Q What have they discussed with you?
4 MR. ZABELL: Objection to the form. You
5 may answer.
6 A I have heard that the average is about ten to
7 twenty dollars. I have heard people say they have not
8 gotten a tip. I have heard people say that have gotten
9 a hundred dollar tip.
10 Q Are there ever any days that no one gets a
11 jump at all?
12 A Of course, it's a very weather related sport.
13 Q Are there ever any days that are sunny where
14 people still don't get a jump?
15 A It goes back to being a very weather
16 dependant sport as well. Even though it's sunny, it
17 may be very windy.
18 Q Do you keep a record of those days? What are
19 the rules for the employees who are at the drop zone
20 when you're waiting for customers?
21 MR. ZABELL: Objection to the compound
22 question, the multiple questions. You may
23 pick any of one of the multiple questions
24 that were posed before you and answer.
25 A So, basically it is depending upon the

0058

LAUREN CALLANAN

1
2 schedule. In the season, you know, some days we may
3 not have anyone scheduled. In that respect, we may
4 choose to close. Or if we get a call that people want
5 to come in, we may call and see who is available to
6 possibly come in and work.
7 On weather related days, basically, it
8 depends on the weather. Quite honestly, if it's a
9 beautiful July day and a passing shower goes through,
10 then everyone will typically wait until the shower
11 passes. If the forecast is for a hurricane, then
12 probably more so likely that we will call it a day and
13 everyone can go about their business.
14 Q Who makes the final decision?
15 A That would be Ray.
16 Q Sometimes is there any pressure put on Ray to
17 call the day?
18 MR. ZABELL: Objection to the form. You
19 may answer.
20 A I'm sure there is pressure when people don't
21 want to hang around or it looks like there is going to
22 be inclement weather for an extended period of time.
23 Q What are the instructors instructed to do
24 with regard to waiting for customers to come?
25 A Are we talking about weather related issues

0059

LAUREN CALLANAN

1
2 or are we talking about waiting for customers as per on
3 a schedule?
4 Q Let's talk about, first, waiting for
5 customers without weather related issues.
6 A We have a schedule. So, the instructors will
7 basically find out what time we have tandems coming in
8 or students coming, for that matter. Then they will be
9 there for the student's arrival. Typically, Ray would
10 like people there a half an hour prior.
11 Q You don't always know when someone is going
12 to show up, right?
13 A That is correct. People could show up, but
14 if we're not open or we have already called the day,
15 there is no guarantee that those people will be able to
16 jump.
17 Q If you have not called the day, is the
18 instructor expected to stay on the grounds?
19 A Not necessarily. It's depending on the day
20 and the time.
21 Q Explain how certain circumstances may vary.
22 Can you give me an example.
23 MR. ZABELL: Objection to the form of
24 the multiple questions. You may pick anyone
25 of those questions that were posed before you

0060

LAUREN CALLANAN

1
2 and provide an answer.
3 A Sure, on a busy Saturday if we have a hundred
4 people scheduled and you know, we basically will go
5 until five o'clock. Five o'clock comes and we're done
6 with work for the day. If we don't have anything
7 scheduled, Ray will typically allow everyone to go
8 home.
9 If people come in at seven o'clock, even
10 though there is still daylight, unfortunately we're
11 done for the day at that point. We're not going to
12 call everyone back when Ray has let everyone go for the
13 day. The work has been done.
14 Q When you say, let everyone go, what does that
15 mean, just go home?
16 A We're done working for the day, you can go
17 home. If more students come in and we are still able
18 to fly and there is still daylight, then there is a
19 possibility of calling instructors and seeing if they
20 want to work. But, at that point, if people have gone,
21 they're gone.
22 Q Is it fair to say that Ray wants them to stay
23 on the grounds, during the day, until he calls the day?
24 MR. ZABELL: Objection to the form. You
25 may answer.

0061

LAUREN CALLANAN

1
2 A It depends on the weather. It depends on the
3 day.
4 Q If the weather is good?
5 A If the weather is good on a busy Saturday,
6 then yes. He would like people to be available to work
7 on a busy Saturday when the weather is good. If
8 they're scheduled to work and if the weather is bad,
9 then no. He doesn't expect them to be on property. If
10 it's raining outside and we're not able to jump, he
11 doesn't expect people to sit there.
12 Q What are his expectations?
13 A We put people usually on call. If all of a
14 sudden it starts raining and it doesn't look like we're
15 able to jump, then instructors are free. Staff, in
16 general, are free to go do whatever they would like to
17 do.
18 Then typically if they could be within a
19 twenty to thirty minute radius, we typically call it a
20 twenty minute call. That's basically what we put the
21 plane on, a twenty minute call. If you can be within
22 the vicinity and ready, that's what's expected.
23 Q Do you have an employee handbook now?
24 A There is an employee handbook that is in -- I
25 do not personally have an employee handbook, no.

0062

LAUREN CALLANAN

1
2 Q Does Sky Dive Long Island have an employee
3 handbook?
4 A I believe so.
5 Q Have you ever seen it?
6 A I have seen an employee handbook. I,
7 unfortunately, do not know what is contained within it.
8 I do not know if it's an official handbook or not.
9 Q Where did you see this employee handbook?
10 A I saw the employee handbook at the office.
11 Q When? When was the first time you saw it?
12 MR. ZABELL: Objection to the form of
13 the multiple question.
14 MR. ANTOLLINO: Withdrawn. I'll ask it
15 again.
16 Q When was the first time you saw it?
17 MR. ZABELL: Objection to the form of
18 the question. If you understand what he is
19 asking you, you may answer.
20 A Saw the handbook?
21 MR. ZABELL: Let the record reflect that
22 counsel shook his head in the affirmative.
23 A I do believe last year.
24 Q In 2010?
25 A No. The first time I saw and held the

0063

LAUREN CALLANAN

1
2 handbook or what may be the handbook would have been
3 in 2011.
4 Q Did someone tell you about the handbook?
5 A Ray told me that he wanted to make a
6 handbook.
7 Q When did he tell you that?
8 A We have been talking about having a handbook
9 for years. When was the first time that we talked
10 about it, I can't say for sure.
11 Q Was it shortly after you started working at
12 Sky Dive Long Island?
13 MR. ZABELL: Objection to the form. You
14 may answer.
15 A I do recall inquiring if we had any type of
16 employee or instructor contract, after I started
17 working at Sky Dive Long Island, Altitude Express, yes.
18 I do not believe, at that time, we did.
19 Q Did you discuss the possibility of the
20 handbook with Ray at the time you discussed this
21 contract?
22 A I do believe so. That probably would have
23 gone hand in hand.
24 Q Why did Ray say he wanted a handbook?
25 A Back when we first discussed it, I can't say

0064

LAUREN CALLANAN

1
2 that he did say he wanted a handbook.
3 Q When was the first time Ray expressed that he
4 wanted a handbook?
5 MR. ZABELL: Objection to the question.
6 Objection to the form of the question. I'll
7 advise you that you can reveal that, to the
8 extent that it does not reveal the contents
9 of any communications between you and counsel
10 or Ray and counsel. You may answer.
11 A I don't know when the first time that Ray
12 expressed the desire for a handbook. I do believe it's
13 going back a number of years.
14 Q Why did he say he wanted a handbook?
15 MR. ZABELL: Objection, asked and
16 answered. You may answer.
17 A I, unfortunately, don't know exactly his
18 reasoning.
19 Q Did he tell you what his reasoning was?
20 A I don't recall, no. I recall asking him,
21 when I first started working for the company, whether
22 we had any type of contracts or anything in place.
23 But, I don't recall him saying any specific reason
24 behind him wanting a handbook.
25 Q What color is the handbook?

0065

LAUREN CALLANAN

1
2 A I don't recall.
3 Q Is it in a spiral bound notebook or is it
4 bound on the sides like a book?
5 MR. ZABELL: Objection to the form of
6 the multiple questions. You can pick a
7 question and provide an answer.
8 A I do not believe it is a bound handbook.
9 Q How would you describe it?
10 A If it is an official handbook of the company,
11 which I do not know, the only thing that I can possibly
12 say might be the handbook was printed on regular
13 paper, I believe. I believe it was in some type of
14 folder. It might be slipped into a folder, but I can't
15 say for certain.
16 Q Is there only one or are there many copies?
17 A Many copies of whatever the document was were
18 made.
19 Q Did employees see them in 2011?
20 A At that time employees did see them, yes.
21 Q Did they have to sign that they would abide
22 by the employee handbook?
23 A They were asked to sign the handbook at that
24 time.
25 Q What does the signature signify?

0066

LAUREN CALLANAN

1
2 A Unfortunately only a few people signed the
3 paper.
4 Q Not everyone?
5 A Not nearly half, I don't believe, signed the
6 paper.
7 Q Have you ever been injured?
8 A Injured how?
9 Q Were you ever in a wheelchair?
10 A Yes, I was.
11 Q Did you ever go to the drop zone in a
12 wheelchair?
13 A I did not.
14 Q Have you ever seen any other injured
15 skydivers at a drop zone?
16 A I have.
17 Q On how many occasions?
18 A I have been at a skydiving center for ten
19 years. I cannot really tell you how many occasions
20 specifically.
21 Q More than ten?
22 A I don't believe so.
23 Q Anyone other than Don?
24 A Have I seen anyone other than Don at a drop
25 zone that had been injured?

0067

LAUREN CALLANAN

1
2 Q Yes.
3 A Yes, I'd have to say yes. I don't recall how
4 many people.
5 Q Do you remember Don owning a pink parachute?
6 A I do not.
7 Q You received a call from David Kengle. What
8 did you say to Ray?
9 MR. ZABELL: Objection to the form of
10 the question.
11 Q After receiving the call.
12 MR. ZABELL: Objection to the form. You
13 may answer.
14 A I recall going into Ray's office and
15 informing him that we had received a complaint. I gave
16 him David's name and phone number. It was basically
17 exactly what I said before, what I heard from what I
18 recall on the phone, from David.
19 Q Did Ray say anything in response?
20 A I do believe Ray said that he was going to
21 call him.
22 Q When you say him, you mean?
23 A David.
24 Q Did he say anything about Ray?
25 A I'm sorry, who?

0068

LAUREN CALLANAN

1
2 Q Did Ray say anything about Don, I should say.
3 MR. ZABELL: Are you withdrawing the
4 previous question?
5 MR. ANTOLLINO: Yes.
6 MR. ZABELL: Objection to the form. You
7 may answer.
8 A Did Ray say anything about Don in what
9 respect?
10 Q In anyway.
11 A I don't recall anything specifically, no.
12 Q How long was the conversation about David
13 Kengle's complaint?
14 A The conversation with Ray, are you asking?
15 Q Yes.
16 A It was enough time for me to tell him about
17 the phone call I received as well as give him the
18 information that I had for David.
19 Q So, one or two minutes at most?
20 A I'd say less than ten.
21 Q Well, do you remember anything Ray was saying
22 other than he was going to call David Kengle?
23 A I'm sorry, it's a very long time ago. I
24 don't remember specifically, no.
25 Q What did Ray do in response to David Kengle's

0069

LAUREN CALLANAN

1
2 complaint?
3 A I don't know details of what Ray did in
4 response to the complaint.
5 Q You don't know anything about what Ray did in
6 response?
7 MR. ZABELL: Asked and answered.
8 A I don't recall.
9 Q Well, I mean were you present at the time
10 that Don was terminated?
11 A I was.
12 Q Would you agree that David Kengle's complaint
13 was a factor in terminating Don?
14 A I do believe that, yes.
15 Q Were there any actions taken by Ray before
16 the termination with regard to Don?
17 MR. ZABELL: Objection, asked and
18 answered multiple times. Objection to the
19 form of the question. You may answer.
20 A To the best of my knowledge, Don was
21 suspended before he was terminated.
22 Q Were you present at the moment when Don was
23 suspended?
24 A I don't recall.
25 Q Did you speak to Ray about why Don was

0070

LAUREN CALLANAN

1
2 suspended?
3 A I don't recall.
4 Q Did you speak to Rich Winstock about why Don
5 was suspended?
6 A I don't recall.
7 Q Did you have any curiosity, at that time,
8 about why Don was suspended?
9 A I don't recall. I know I was notified that
10 Don was suspended and would not be working for the next
11 week. That was pretty much what had affected me, in
12 terms of the office, trying to run the office. We
13 were going to be down an instructor. Other than that,
14 I don't recall details of what was said.
15 Q Do you recall wondering why Don was
16 suspended?
17 A Sure, I was curious. But I can't say that
18 that was the only concern that I had on that day.
19 Q Did Ray dock Don's pay at the time that he
20 was suspended?
21 MR. ZABELL: Objection to the form of
22 question. You may answer.
23 A Dock his pay how?
24 MR. ZABELL: He is not under oath. You
25 don't have to ask him questions. For that

0071

LAUREN CALLANAN

1
2 matter, if you do ask him questions, because
3 he is not under oath, you have no obligation
4 to believe him or that his words are
5 accurate. That's just a fancy way of saying,
6 don't ask him questions. Just answer the
7 question, if you can.
8 Q Would you like it read back?
9 A I can't answer the question in the format you
10 asked.
11 Q What is it that you didn't understand about
12 the question?
13 A You're asking me if Ray docked his pay. I
14 don't know, in what respect?
15 Q In any respect.
16 A Instructors are paid per jump. So, if an
17 instructor is not jumping, there is no money to be
18 made.
19 Q But there were jumps that Don had not been
20 paid for at the time that he was suspended, correct?
21 A I don't recall.
22 Q Do you do the payroll?
23 A I do.
24 Q Were you aware that Ray had taken the amount
25 that he had refunded to Mr. Kengle and Ms. Orlana, out

0072

LAUREN CALLANAN

1
2 of Don's pay, that he had not been paid for?
3 A I do not specifically recall that. But I
4 remember him giving money back to Don. I believe that
5 that is what that was for. Specifically, no I cannot
6 say for certain. I do recall him giving Don money
7 back.
8 Q Do you think that was fair for Ray to take
9 that money away from Don for even a week?
10 MR. ZABELL: Objection to the form of
11 the question. You may answer.
12 A It's Ray's business. So, Ray has the
13 executive decision.
14 Q Therefore, the answer to the question is yes,
15 you think it was fair?
16 MR. ZABELL: Objection.
17 A I did not say that.
18 MR. ZABELL: That is not what she said.
19 Q I know it's Ray's decision. I'm asking you,
20 in your opinion, whether you thought it was fair?
21 MR. ZABELL: Objection, asked and
22 answered.
23 Q You can answer.
24 MR. ZABELL: You may answer. You may
25 simply say if it is appropriate. The same

0073

LAUREN CALLANAN

1
2 way --
3 MR. ANTOLLINO: Don't direct her to
4 answer in a certain way.
5 MR. ZABELL: Counsel, stop. I will not
6 allow you to badger her. I will not allow
7 you to make unsupported comments to me. Ask
8 your questions like a human being and we'll
9 get through this. Are we clear?
10 MR. ANTOLLINO: Can you read the
11 question back.
12 MR. ZABELL: Are we clear, counselor?
13 MR. ANTOLLINO: Can you read the
14 question back, please.
15 (Whereupon, the above referred to
16 question was read back.)
17 A My opinion is irrelevant. It's not my
18 business. I don't make decisions.
19 * Q You're here pursuant to a Subpoena and your
20 under oath. I'm asking you to give your opinion, even
21 if it is irrelevant.
22 A Unfortunately, I don't feel that I can answer
23 that. Because, if it was my business I may have acted
24 differently. I'm not in that position.
25 Q Are you refusing to answer or --

0074

LAUREN CALLANAN

1
2 MR. ZABELL: She answered the question.
3 Don't ask if she is refusing to answer a
4 question when you have just asked a question.
5 Counsel, move on. If you want a
6 different answer, ask a different question.
7 This is not your first day at the rodeo.
8 Let's land this plane and get it over with.
9 MR. ANTOLLINO: I'd like an answer as to
10 what her opinion is.
11 MR. ZABELL: You just got the answer.
12 MR. ANTOLLINO: No, I didn't. Mark it
13 for a ruling.
14 Q Has Ray ever docked anyone else's pay for even
15 a week?
16 MR. ZABELL: Objection to the multiple
17 questions asked of you and to the form of the
18 questions. To the extent you can, you may
19 pick a question and provide an answer.
20 A I don't know what you mean. In what respect,
21 docking pay?
22 Q Do you know what it means to dock pay?
23 A I do believe I know what docking pay is, in
24 my own definition.
25 Q What would your definition be?

0075

LAUREN CALLANAN

1
2 A To take money out of an employee's paycheck.
3 That, to me, would be docking pay.
4 Q Given that definition of docking pay, has Ray
5 ever docked anyone's pay, other than Don?
6 A I do not know.
7 Q I forgot if I asked this. Were you present
8 when Ray suspended Don?
9 MR. ZABELL: Objection, asked and
10 answered.
11 Q Remind me of your answer. You were not
12 present.
13 A I do not remember.
14 Q After Don was suspended, did you speak to Ray
15 about Don in between that time and the time of his
16 termination?
17 MR. ZABELL: Objection to the form. You
18 may answer.
19 A I had to have talked to Ray, yes. But I
20 don't recall what was talked about.
21 Q Do you recall if you spoke to Ray about Don
22 during that period?
23 MR. ZABELL: Objection, asked and
24 answered.
25 A I don't recall what we spoke about. But, I'm

0076

LAUREN CALLANAN

1
2 sure we had to have spoken about Don. He was an
3 instructor and I would have needed to know whether we
4 were going to be properly staffed.
5 Q Did you recommend to Ray that he get Don back
6 on staff?
7 A It was not my business to say. It was Ray's
8 decision.
9 Q I just asking you if you recommended it or
10 not?
11 MR. ZABELL: Objection, asked and
12 answered. You can answer it again.
13 A I couldn't make any recommendation. I was
14 not in that position.
15 Q Therefore, you didn't make a recommendation.
16 Is that fair to say?
17 A I can't say that one way or another. It was
18 not my position to make a recommendation.
19 Q I understand entirely that it was not your
20 position to make a recommendation. Are you saying that
21 you did or you did not make a recommendation to Ray
22 about whether he should put Don back on staff?
23 A I do not recall.
24 Q When Ray was firing Don, were you aware that
25 Don was recording the conversation?

0077

LAUREN CALLANAN

1
2 MR. ZABELL: Objection to the form. You
3 may answer.
4 A I was not.
5 Q Did you learn that at a later time?
6 MR. ZABELL: Objection to the form. You
7 may answer.
8 A I did.
9 Q Have you listened to the tape?
10 A I have.
11 Q Do you remember, at the end of the tape, Don
12 asking you whether or not the complaining customers had
13 gotten video?
14 A I do recall.
15 Q Do you remember what your response was?
16 A I believe it was something along the lines
17 of, I was not able to release information or if any
18 information was to be released, it was to come from
19 Ray. Something along those lines.
20 Q Did you know, at that time, whether those
21 people had gotten video?
22 A I do not recall.
23 Q Did Ray tell you not to give him information
24 about the customers?
25 A No.

0078

LAUREN CALLANAN

1
2 Q Did you provide Don with a list of his jumps
3 in the past week?
4 A I believe Don asked me for a printout of his
5 jump log for the season. I believe I provided him with
6 a jump log. Which I did on a regular basis for many
7 instructors.
8 Q Why did you provide him information and not
9 provide him information about whether or not there was
10 video?
11 A Because the video was specific to something
12 that should come from the owner. The jump log was the
13 actual instructors log of jumps. They need to record
14 their jumps, because their jumps are definitely
15 important to their profession.
16 Q Is it fair to say that Don just wanted to
17 find out if there was video at all at the end of the
18 termination interview?
19 A I do not know.
20 Q Why not listen to a portion of the tape to
21 see if it refreshes your recollection.
22 MR. ANTOLLINO: This does not need to be
23 transcribed.
24 (At this time a recording was played.)
25 Q Does that refresh your recollection as to

0079

LAUREN CALLANAN

1
2 whether Don was asking to see the video or whether or
3 not there was actual video?
4 A No, it does not. In what respect is the
5 question?
6 Q Did you hear your voice on the tape?
7 A Yes.
8 Q You heard Don's voice on the tape?
9 A I did.
10 Q Did you hear Don, twice, asking you to look
11 and see if these people got video?
12 A I do recall him asking that, yes.
13 Q Just asking to look if they had video,
14 correct?
15 A Correct.
16 Q You refused to do that, correct?
17 MR. ZABELL: Objection to the form.
18 A At that time Don had been terminated and I
19 could not give out any information unless it was
20 cleared with Ray.
21 Q You did not ask Ray, did you?
22 A At that time, no. Don very well could have
23 asked Ray as well.
24 Q Did Ray instruct you not to provide any
25 information to Don about the video?

0080

LAUREN CALLANAN

1
2 A He did not.
3 Q Do you remember when Don asked you twice
4 would you please look to see if these people got video,
5 you responded, Don it doesn't make a difference?
6 A I said Ray made a decision. It does not make
7 a difference. I have to go with what Ray has said.
8 Unfortunately, at that time, Don had already been
9 terminated. I could not give out any information.
10 Q Could not Don have learned more about the
11 jump and the complaint by knowing if there was a video?
12 MR. ZABELL: Objection to the form. You
13 can answer, if you can.
14 A There is a possibility. I don't know what
15 was contained on the tape that would be of importance.
16 It's not my place to say.
17 Q In between the time that this jump took place
18 and the time that Don was suspended, he had
19 approximately thirty jumps. Is that fair to say?
20 A I do not recall.
21 Q Would it be typical in a weekend for an
22 instructor to have twenty to thirty jumps?
23 A Yes, depending on the weather.
24 Q If you recall, the jump took place on a
25 Friday and the complaint was not made until Monday,

0081

LAUREN CALLANAN

1
2 correct?
3 A I do not recall.
4 Q You did have the ability, at that moment, to
5 look up and see, simply yes or no, whether those
6 customers had video, correct?
7 MR. ZABELL: Objection to the form. If
8 you can, you may answer.
9 A It is a confidential system. But yes, I
10 could have looked it up.
11 Q Have you ever known Ray to fire an
12 instructor?
13 A It's not a regular practice, no. But yes, he
14 has fired an instructor in the past.
15 Q Other than Don?
16 A Yes.
17 Q Who?
18 A He fired Jerry Hannon, Gerard Hannon.
19 Q When?
20 A I don't recall the date.
21 Q Anyone else?
22 A I believe that he did not ask an instructor
23 back after a lapse of work over the winter.
24 Q Who was that?
25 A Specifically during the season, I don't

0082

LAUREN CALLANAN

1
2 remember him firing anyone while I was there.
3 Q Who was not asked back?
4 A There was a Michael Thamaras.
5 Q When was that?
6 A I do not recall the actual date.
7 Q What about Alex Allen?
8 MR. ZABELL: Objection to the form.
9 What about Alex Allen?
10 Q Has Alex Allen ever been fired?
11 MR. ZABELL: Are you withdrawing your
12 previous question?
13 Q You can answer.
14 MR. ZABELL: Are you withdrawing your
15 previous question?
16 Q You can answer.
17 A No, I cannot answer.
18 Q Why was Jerry Hannon fired?
19 A I don't know the specifics. I don't know the
20 specifics of why Jerry Hannon was fired. I can't
21 comment on that.
22 Q What do you believe Jerry Hannon was fired
23 for?
24 A I'm aware that Jerry Hannon assaulted
25 another employee.

0083

LAUREN CALLANAN

1
2 Q Who?
3 A He had punched Duncan Shaw.
4 Q What about Michael Thamaras, why wasn't he
5 asked back?
6 MR. ZABELL: Asked and answered.
7 A I don't why he was not asked back.
8 Q Has Ray ever suspended an employee, other
9 than Don?
10 A I can't remember.
11 Q Do you ever remember a time that a group of
12 gay skydivers came to Sky Dive Long Island in the
13 summer of 2010?
14 A I don't know what you're referring to. I
15 can't answer.
16 Q That doesn't ring a bell, a group of about
17 twenty gay skydivers who came to Sky Dive Long Island
18 in 2010?
19 MR. ZABELL: Objection to the form of
20 the multiple questions. You may answer
21 questions such as whether it rang a bell or
22 the remainder of the question, either one.
23 A I can't comment on that. We have hundreds of
24 people skydiving on the weekend alone. I cannot
25 comment on a specific group of twenty individuals, no.

0084

LAUREN CALLANAN

1
2 Q Were you aware that one of your instructors
3 told a tandem customer that we used to have a gay
4 instructor here?
5 A Not that I recall, no.
6 Q Would that have been inappropriate in any
7 way?
8 MR. ZABELL: Objection to the form. You
9 may answer.
10 A I can't remember it being said. So, I can't
11 comment on it.
12 Q If it did happen, would it have been
13 inappropriate?
14 MR. ZABELL: Are you asking a
15 hypothetical, counselor?
16 Q You can answer.
17 MR. ZABELL: You don't have to answer
18 until he clarifies whether or not he is
19 asking a hypothetical question.
20 MR. ANTOLLINO: I asked a clear
21 question.
22 MR. ZABELL: Are you asking a
23 hypothetical question?
24 Q You can answer the question.
25 MR. ZABELL: Please don't.

0085

LAUREN CALLANAN

1
2 MR. ANTOLLINO: Mark it for a ruling.
3 You're not allowed to limit my questions. If
4 you want to do it this way --
5 MR. ZABELL: I am not limiting the
6 questions.
7 MR. ANTOLLINO: I asked a very clear
8 question.
9 MR. ZABELL: You have. I just want to
10 clarify whether it's hypothetical or not.
11 MR. ANTOLLINO: I don't have to. Then
12 you'll come up with something else. I asked
13 a clear question. I'd like an answer. If
14 you don't want to, I'll just make it a part
15 of the discovery pile motion I'm going to
16 make.
17 MR. ZABELL: Identify whether the
18 question is hypothetical or not and I'll
19 allow her to answer it.
20 MR. ANTOLLINO: It's a clear question.
21 I don't have to ask it in your way. I have
22 asked it my way. I am not going to be
23 bullied by you. We'll just take it up for a
24 ruling. If you are directing the witness not
25 to answer the question, I'll take it up for a

0086

LAUREN CALLANAN

1
2 ruling.
3 MR. ZABELL: I'm directing you not to
4 answer the question, unless he clarifies
5 whether or not it is a hypothetical question.
6 Once he makes a clarification as to yes or
7 no, it is hypothetical, you are free to
8 answer.
9 MR. ANTOLLINO: It's clear on its face.
10 MR. ZABELL: What is clear on its face.
11 Question don't have faces.
12 Q Are you aware of the rules of conduct
13 governing instructors at Sky Dive Long Island?
14 A To the best of my knowledge, there is no
15 official written words. So, therefore no. I am not
16 aware of rules of conduct, no.
17 MR. ZABELL: You answered.
18 Q Do you ever remember Don bringing some of his
19 friends to Sky Dive Long Island and not being able to
20 jump because of weather?
21 A I do not recall.
22 Q Is Sky Dive Long Island an adult playground?
23 A You need to be eighteen years of age in order
24 to skydive. So, it is for adults, yes.
25 Q Have you ever seen a sign like that at a drop

0087

LAUREN CALLANAN

1
2 zone?
3 A I have heard of drop zones referred to as
4 playgrounds in the past.
5 Q Have you seen them or referred to as an adult
6 playground?
7 A Not necessarily an adult playground. But as
8 I said, you have to be eighteen in order to skydive.
9 Q Are pets allowed at Sky Dive Long Island?
10 A Currently, not at this time.
11 Q Were there any times when pets have been
12 allowed?
13 A Previously, I would imagine so, yes.
14 Q Why?
15 A I previously brought my dog to the drop zone.
16 Q You're not allowed to bring your dog to the
17 drop zone anymore?
18 A No. My dog passed away.
19 Q I'm sorry. What about Ray?
20 MR. ZABELL: Ray is not a dog.
21 Q What about Ray, does Ray bring his dog to the
22 drop zone?
23 A Ray previously brought his dog to the drop
24 zone.
25 Q Does he no longer do that?

0088

LAUREN CALLANAN

1
2 A I have not seen his dog in a long time.
3 Q Did Ray ever instruct you that, from now on
4 we're are not going to be able to bring our dogs to the
5 drop zone?
6 A Ray has expressed yes, the desire to not have
7 any pets at the drop zone.
8 Q Do you, in fact, have a sign at the drop
9 zone, no pets allowed?
10 A There is a sign or there was a sign at the
11 drop zone. There has been a sign for years at the drop
12 zone, no dogs allowed or no pets allowed. I don't
13 remember the exact terminology of the sign. There has
14 probably been signs long before I got there.
15 Q Do you recall a time when Don's cat died?
16 A I do.
17 Q What do you remember about that?
18 A I recall Don being very upset.
19 Q In what way did you come to the conclusion
20 that he was upset?
21 A Don came into the manifest office and sat
22 there for a length of time expressing his sadness.
23 Q In what way was he expressing his sadness?
24 A He was talking about the passing of the cat.
25 Q Was he crying?

0089

LAUREN CALLANAN

1
2 A I can't remember if he was actually crying.
3 I cannot say for sure.
4 Q Did he say he was unable to do tandems?
5 A I don't recall.
6 Q Did you commiserate with about that with him?
7 MR. ZABELL: Objection to the form.
8 A Of course I would sympathize with the loss of
9 a pet.
10 THE WITNESS: Can we take a break.
11 MR. ZABELL: Sure.
12 (Whereupon a pause in the proceeding was
13 taken.)
14 Q Your ex, Ben Lowe, was fired by Ray, wasn't
15 he?
16 MR. ZABELL: Objection to the form of
17 the question. If he is offending you, feel
18 free to tell me. If you think he is being
19 obnoxious, you may tell him that. You may
20 answer.
21 MR. ANTOLLINO: Withdrawn.
22 Q Did I just offend you?
23 A Well, I wouldn't say offended.
24 Q You described earlier that Ben Lowe was your
25 ex, didn't you?

0090

LAUREN CALLANAN

1
2 A He was, yes.
3 Q I asked and I'll ask again, was your ex, Ben
4 Lowe, ever fired by Ray?
5 MR. ZABELL: Same objection. You may
6 answer.
7 A No. No, he was not fired, I don't believe.
8 Q Were you in a relationship with Ben when Ben
9 ended working for Ray?
10 A I was.
11 Q Do you know a Doug Smith?
12 A I do not know Doug Smith.
13 Q Did anyone call after Don was fired to find
14 out about Don's work?
15 A No, I do not know.
16 Q Has that ever happened before, where someone
17 has called to inquire about a previous employee?
18 MR. ZABELL: Objection to the form. You
19 may answer.
20 A Other employers may have called to verify
21 employment, sure.
22 Q What is the practice in responding to those
23 inquires?
24 MR. ZABELL: Objection to the form. You
25 may answer.

0091

LAUREN CALLANAN

1
2 A It depends on the question.
3 Q Well, if a person was calling to verify
4 employment, would you answer the questions?
5 MR. ZABELL: Objection to the form. You
6 may answer.
7 A Yes.
8 Q If a person was calling to verify employment
9 and get an assessment of the instructor's ability,
10 would you answer the question?
11 MR. ZABELL: Objection to the form of
12 the question. You may answer.
13 A I personally would not be able to answer
14 that.
15 Q Do you know if Ray does and what his practice
16 is?
17 MR. ZABELL: Objection to the form of
18 the question. You may answer.
19 A I'm not aware of his practice in that
20 respect.
21 Q Do you ever do reference checks before hiring
22 your employees?
23 MR. ZABELL: Objection to the form. You
24 may answer.
25 A I'm not in charge of hiring employees.

0092

LAUREN CALLANAN

1
2 Q When did you learn that Don was suing Sky
3 Dive Long Island?
4 A I don't recall the exact time when I was
5 informed.
6 Q How were you informed?
7 A I believe I overheard people talking about
8 it.
9 Q Where?
10 A At the drop zone.
11 Q What people?
12 A Staff members.
13 Q What staff members?
14 A I said I don't remember.
15 Q What was said?
16 A I just recall that there was talk about a
17 lawsuit.
18 Q Do you remember what was said about the
19 lawsuit?
20 A No, I don't remember.
21 Q Were any opinions expressed about the
22 lawsuit, in anyway?
23 A I don't recall.
24 Q Did Ray say anything about the lawsuit?
25 A I do not recall.

0093

LAUREN CALLANAN

1
2 Q Has Ray said anything to you about this
3 lawsuit from the day you learned about it at the drop
4 zone to the present?
5 A Other than that there was a lawsuit, I don't
6 recall what was said about anything pertaining to the
7 lawsuit.
8 Q Has he ever complained about Don since the
9 time the lawsuit was filed and the present?
10 A Not that I'm aware of. I don't remember.
11 Q Has he ever complained about how much he has
12 had to pay his attorney between the time the lawsuit
13 was filed and the present?
14 A Not that I can verify, no. I don't recall.
15 Q I don't want you to verify anything. I just
16 want you to testify to the best of your recollection.
17 To the best of your recollection, has Ray ever
18 complained about how much he has had to pay defending
19 this lawsuit?
20 MR. ZABELL: Objection, obnoxious
21 question asked and obnoxious question
22 answered. You can answer again.
23 A I don't recall specific to this case, no.
24 Q Has he complained about his legal bills in
25 general?

0094

LAUREN CALLANAN

1
2 MR. ZABELL: Same objection.
3 A I don't remember.
4 Q Ever?
5 A I can't say for certain.
6 Q Has Ray ever talked about his wife at the
7 work place?
8 A Yes.
9 Q Would you say that he has talked about his
10 wife on numerous occasions?
11 A I don't know to whom he talks to. But I have
12 talked to Ray about his wife on numerous occasions, his
13 ex-wife.
14 Q What have you talked to Ray about his ex-wife
15 about on numerous occasions in the past?
16 A On a personal level I have talked to Ray
17 about his ex-wife.
18 Q On what personal level?
19 A As a friend, I have talked about his past
20 relationships.
21 Q What advice have you offered him with regard
22 to his past relationships?
23 MR. ZABELL: Objection to the form of
24 the multiple question. You may answer.
25 A I do not recall specific advice.

0095

LAUREN CALLANAN

1
2 Q Has he complained about his ex-wife to you?
3 A Yes, I have talked to him about complaints
4 about his ex-wife.
5 Q Has he told you things that she has said to
6 him?
7 A Previously, I'm sure he has. Specifically, I
8 don't recall.
9 Q On more than one occasion?
10 A Yes.
11 Q Would you agree that skydiving is not for
12 everyone?
13 MR. ZABELL: Objection to the form.
14 A I would.
15 Q What type of people should not consider
16 skydiving?
17 A General rules for skydiving, you must be at
18 least eighteen and in good general health.
19 Q Okay.
20 A There is a published weight limit, which is
21 very flexible, depending on how you compare the
22 weights.
23 Q So, say someone meets the weight limit, is
24 old enough and in good health, are there any people
25 that are not well suited for skydiving that fall within

0096

LAUREN CALLANAN

1
2 those parameters?
3 A Those are the general qualifications. Beyond
4 that --
5 Q What about someone that is claustrophobic, do
6 you think that someone that is claustrophobic should go
7 skydiving?
8 A I'm claustrophobic and I skydive. I have
9 never been diagnosed.
10 Q What do you mean you have never been
11 diagnosed? Describe your claustrophobia?
12 MR. ZABELL: Objection.
13 MR. ANTOLLINO: Withdrawn.
14 MR. ZABELL: Which question?
15 MR. ANTOLLINO: Both.
16 Q Describe your claustrophobia?
17 A I don't enjoy being enclosed in small spaces.
18 Q How small?
19 A A room like this is not a problem. If I was
20 in a very small room, very small, where I could not
21 move, I would not be comfortable.
22 Q Like a closet?
23 MR. ZABELL: Objection.
24 Q Correct?
25 MR. ZABELL: Putting correct at the end

0097

LAUREN CALLANAN

1
2 of a statement doesn't make it a question.
3 That is a statement to which no answer is
4 required.
5 Q You can answer.
6 MR. ZABELL: There is no question
7 pending before you.
8 MR. ANTOLLINO: Counselor, you're just
9 making this longer. It's so unnecessary.
10 Withdraw the question. I'll ask it like
11 this.
12 Q Like a closet, correct?
13 MR. ZABELL: That is not a question that
14 you can answer.
15 Q Would you answer the question.
16 MR. ZABELL: You need not answer the
17 question.
18 MR. ANTOLLINO: Counsel, you can't tell
19 me how to ask my questions. It's a follow up
20 question that is completely appropriate.
21 You're making speaking objections. You have
22 the right to object to the form. I am asking
23 you not to make this kind of objection.
24 MR. ZABELL: Ask big boy questions and
25 you'll get adult answers.

0098

LAUREN CALLANAN

1
2 Q Can you answer the question, please.
3 A I don't enjoy being confined in tight spaces,
4 such as a small closet. However, I couldn't say that
5 someone else that feels that they may be
6 claustrophobic, shouldn't go skydiving. Because, who
7 knows what they don't feel comfortable with.
8 Q There might be some people that feel
9 uncomfortable being in a room this size, correct?
10 A Sure.
11 Q This is about twelve by twenty,
12 approximately?
13 A Okay.
14 Q I'm asking you. Would that be a fair
15 estimate of how big this room is?
16 A I don't have a tape measure. It is a
17 conference room, yes. It's not a closet.
18 Q Okay. It's a conference room, not a closet.
19 What about someone that doesn't like being touched, is
20 that a good person that is well suited for skydiving?
21 MR. ZABELL: Objection to the form.
22 Q You can answer.
23 MR. ZABELL: If you can.
24 A People who are going skydiving for the first
25 time, are going tandem. They are going tandem under

0099

LAUREN CALLANAN

1
2 the assumption that an instructor will be attached to
3 them. That is their own decision to make whether they
4 would like to partake in those activities. If they
5 don't like to be touched, then no, I wouldn't recommend
6 a tandem for them.
7 Q Have you ever heard sexually suggestive jokes
8 made at the drop zone?
9 A Specifically, no. But I cannot remember.
10 Q Have ever seen a situation where a boyfriend
11 and a girlfriend are getting strapped to different
12 instructors and one instructor says to the boyfriend, I
13 bet you didn't expect that your girlfriend is going to
14 be strapped to another guy?
15 A I'm in the office. So I, unfortunately, do
16 not see when people are getting geared up.
17 Q You have never heard that?
18 A Unfortunately, I cannot say that I have.
19 Q You have been up in a plane before?
20 A I have.
21 Q Other people have been tandem and you have
22 done some tandems too, correct?
23 A Yes, I have.
24 Q Have you ever heard jokes like that up in the
25 planes you have been in?

0100

LAUREN CALLANAN

1
2 A No, not that I recall.
3 Q What kind of atmosphere is it up in the plane
4 before people exit the airplane?
5 MR. ZABELL: Objection to the form. You
6 may answer.
7 A There are multiple emotions going on until
8 the time of exit.
9 Q Explain that. What are some of the emotions
10 going on?
11 A The people are excited. There is lots of
12 adrenalin. People are scared. It's exhilarating.
13 Q Are there any ways that instructors loosen
14 the tension for tandem skydivers?
15 A I'm sure that there are.
16 Q Have you ever seen any evidence of that?
17 A Not that I can comment on.
18 Q Has Ray ever talked to you about his sister?
19 A Yes, I do talk about his sister.
20 Q When?
21 A I believe when she started getting ill, is
22 when I last recall speaking of her.
23 Q What about the first time, was that the first
24 time also?
25 A No. I believe I talked about her in the

0101

LAUREN CALLANAN

1
2 past. I don't remember.
3 Q How would you characterize their
4 relationship, if you could?
5 A Unfortunately, I can't.
6 Q Did he attend her funeral.
7 A I believe so.
8 Q Are you sure?
9 A No, I'm not. But I don't know why he
10 wouldn't.
11 Q Has Ray ever said anything derogatory about
12 gay people in your presence?
13 A Not that I'm aware of.
14 Q Have you ever spoken to any particular
15 employees about Don since this lawsuit has been filed?
16 A Yes.
17 Q Who?
18 A I have spoken to Ray. I spoke to Rich
19 Winstock. I believe I spoke to Marco Marcovich.
20 Q Anyone else?
21 A Not that I can specifically recall.
22 Q When did you speak to Marco?
23 A Probably about a month ago.
24 Q What did you say to Marco?
25 A I don't recall specifically.

0102

LAUREN CALLANAN

1
2 Q Why were you calling Marco?
3 A I didn't call Marco.
4 Q Did Marco call you?
5 A No. I don't recall.
6 Q Do you remember any circumstances as to how
7 you spoke to Marco?
8 MR. ZABELL: Objection to the form of
9 the question.
10 A I can't remember. Unfortunately, I can't
11 recall. I can't say.
12 Q Do you remember what you asked Marco about
13 Don?
14 MR. ZABELL: Object to the form of the
15 question.
16 A I can't remember asking Marco anything about
17 Don. I recall asking Marco if he heard anything about
18 the court case or anything pertaining to a deposition.
19 Q What did he say?
20 A He said he had not.
21 Q Was there any further conversation?
22 A He was aware that Rich Winstock was scheduled
23 for a deposition.
24 Q Did you ask Marco to come in and meet with
25 anyone?

0103

LAUREN CALLANAN

1
2 A I did not.
3 Q Why did you ask Marco that question about the
4 deposition?
5 A It was general conversation.
6 Q There was no reason to ask the question. You
7 just felt like it?
8 MR. ZABELL: Objection.
9 MR. ANTOLLINO: Withdrawn.
10 Q Why were you curious about what Marco knew
11 about this lawsuit?
12 A I was curious if I may have to come in for a
13 deposition.
14 Q Were you trying to find out if Marco was
15 going to have to come in for a deposition also?
16 A No. I was just curious if he had heard
17 anything.
18 Q Was there any further conversations, other
19 than what you just testified to?
20 MR. ZABELL: Object, asked and answered.
21 You may answer.
22 A Not that I recall.
23 Q What was Marco's relationship with Don?
24 A He was a co-worker.
25 Q Did they have any other aspect to their

0104

LAUREN CALLANAN

1
2 relationship?
3 A I know they had jumped together at least on
4 one base jumping trip. Which, I don't recall where
5 they went. I know they did go away. I believe
6 together. I don't know how they ended up in the same
7 place. But they were jumping together at another
8 location.
9 Q You don't know the extent of whether they are
10 just acquaintances or friends or jumping buddies or
11 anything like that?
12 A I don't know personal details, no.
13 Q Has Marco said anything negative about Don?
14 A Not that I recall.
15 Q What was your relationship with Don?
16 A Co-workers.
17 Q Well, would you characterize it as a good
18 relationship?
19 A I would say so.
20 Q Why?
21 A I never had any problems with Don on a
22 personal level or a professional level.
23 Q Do you think he's a nice guy?
24 A I do.
25 Q A good instructor?

0105

LAUREN CALLANAN

1
2 A I have never received instructions. So, I
3 can't comment on the instructions.
4 Q Is it okay for an instructor to tell a
5 customer that he is married?
6 A That's an opinion. I can't unfortunately
7 comment on that. I would have to say that if a
8 customer asked the instructor, are you married, then it
9 would be an okay response.
10 Q Otherwise, not?
11 A I don't see how that would come up otherwise.
12 Q What about military status?
13 A We have a lot of military jumpers at the drop
14 zone. Again, if a student asked if an instructor was
15 in the military, I would expect the instructor to want
16 to talk about that, sure.
17 Q If they just offered the information, would
18 that be inappropriate?
19 A I don't know why they would offer that
20 information. There is really no need for it on a
21 professional level.
22 Q What about age, do instructors ever tell the
23 students their age?
24 A If the student asks, I'm sure they would.
25 Q Under any other circumstances?

0106

LAUREN CALLANAN

1
2 A I don't feel there would be a need to share
3 that.
4 Q Did you ever see Don flirt with any women at
5 the drop zone?
6 A Not that I recall, no.
7 Q Do you believe that Don has any interest in
8 women, whatsoever?
9 MR. ZABELL: Objection to the form. You
10 may answer.
11 A I don't know.
12 Q Were there any complaints about Don from
13 other employees at SDLI?
14 A I cannot recall specifically. I know I have
15 heard people say in passing that Don liked to talk a
16 lot, if you want to classify that as a complaint.
17 Q Anything else that you recall?
18 A There is nothing else that I can specifically
19 remember.
20 Q Did Ray ever make that complaint, that Don
21 liked to talk a lot?
22 A I don't recall.
23 Q After Don was fired he applied for
24 unemployment insurance, is that right?
25 A That is correct.

0107

LAUREN CALLANAN

1
2 Q When did you find out about that application?
3 A When Ray received the letter in the mail?
4 Q Did you open that letter?
5 A No, I do not believe so.
6 Q Did Ray tell you about the letter?
7 A Correct, I do believe so. I can't say for
8 sure.
9 Q Did he show you the letter?
10 A I believe he did, yes.
11 Q What did he say to you in response to that
12 application for unemployment insurance?
13 A I believe, we're going back some time, that
14 he had asked me if I knew or had heard that Don may
15 have been working elsewhere or possibly owned another
16 business, while he was collecting unemployment or
17 attempting to collect unemployment.
18 Q Did he say anything else?
19 A He asked me to basically write back in
20 response.
21 Q What did he tell to write back in response?
22 A He asked me to basically look into whether
23 Don was working, as well as just drafting the letter.
24 Which I did. I basically showed it to him.
25 Q Did he review it?

0108

LAUREN CALLANAN

1
2 A He did.
3 Q Did he say this is accurate?
4 A He said, yes.
5 Q Is this the letter, Exhibit 1-A, that you
6 drafted in opposition to Don's unemployment insurance?
7 A Correct.
8 Q Did Ray ask you to make any changes in the
9 letter?
10 A Not that I recall.
11 Q That is your signature there, correct?
12 A Yes, that is my signature.
13 Q Whether or not he asked you to make any
14 changes, he definitely didn't ask you to make any
15 changes in this one, correct?
16 (Continued on the next page to include
17 the jurat and signature line.)
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0109

LAUREN CALLANAN

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A I do not believe so.

MR. ANTOLLINO: I have nothing further.

Thank you very much.

(Whereupon, the examination of

this witness was concluded at 3:40 p.m.)

* * *

I have read the foregoing record of my testimony taken at the time and place noted in the heading hereof and I do hereby acknowledge it to be a true and correct transcript of the same.

LAUREN CALLANAN

Subscribed and sworn to before me this ____ day of _____, 2012

NOTARY PUBLIC

0110

I N D E X

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EXAMINATION OF	BY	PAGES
Lauren Callanan	Mr. Antollino	3-109

E X H I B I T S

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I N F O R M A T I O N T O B E S U P P L I E D

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0111

C E R T I F I C A T I O N

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I, Joseph J. Pontillo, a Notary Public of the State of New York do hereby certify:

That the testimony in the within hearing was held before me at the aforesaid time and place. That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS HEREOF, I have hereunto set my hand this 11th day of January, 2012.

JOSEPH J. PONTILLO

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT

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DONALD ZARDA,

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Plaintiff,

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- against - INDEX NO.:

7

CV-10-4334

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

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Defendants,

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-----X

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Bee Reporting Agency, Inc.

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800 Veterans Memorial Highway

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Hauppauge, New York

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November 9, 2011

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3:39 P.M.

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EXAMINATION BEFORE TRIAL OF DAVID

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23

KENGLE, a non-party witness, taken by the
attorney for the Plaintiff, pursuant to Subpoena,
and held before Deborah Thier, a Notary Public of
the State of New York at the above-stated time and
place.

* * * *

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APPEARANCES:

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GREGORY ANTOLLINO, ESQ.

Attorney for the Plaintiff

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ZABELL & ASSOCIATES, P.C.

Attorneys for the Defendants

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Bohemia, New York 11716

BY: SAUL D. ZABELL, ESQ.

ALSO PRESENT:

JHON SANCHEZ, ESQ.

DONALD ZARDA

0003

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FEDERAL STIPULATIONS

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IT IS HEREBY STIPULATED AND AGREED,
by and between the parties hereto, through
their respective Counsel, that the certifi-
cation, sealing and filing of the within
examination will be and the same are hereby
waived;

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the question, will be reserved to the
time of the trial;

IT IS FURTHER STIPULATED AND AGREED
that the within examination may be signed
before any Notary Public with the same
force and effect as if signed and sworn to
before this Court.

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DAVID KENGLE,

The witness herein, having first been duly
sworn by Deborah Thier, a Notary Public in and
for the State of New York, was examined and
testified as follows:

DIRECT EXAMINATION BY GREGORY ANTOLLINO, ESQ.:

Q Please state your name for the record.

A David Kengle.

Q What is your address?

A 9 Garfield Place, East Northport, New
York, 11731.

Q Good afternoon, Mr. Kengle. My name is
Greg Antollino.

A Good afternoon.

Q I'm going to be asking you some
questions today.

MR. ZABELL: I should point out that

Mr. --

MR. ANTOLLINO: Would you not
interrupt.

MR. ZABELL: Mr. Kengle has agreed to
provide testimony as long as he's provided
with a copy of his deposition transcript to
review prior to signing it.

0005

1 David Kengle 5
2 Q Did Mr. Zabell talk to you about that
3 before this deposition?
4 A He let me know that that was an option
5 that I have.
6 Q We'll certainly give you a copy of the
7 deposition transcript.
8 MR. ANTOLLINO: Before Mr. Zabell
9 interrupted me, what did I say.
10 (Whereupon, the requested section
11 was read back by this reporter.)
12 Q I represent Mr. Zarda.
13 Have you ever been deposed before?
14 A I was trying to remember. I don't
15 believe so.
16 Q Have you ever testified before?
17 A I don't think so.
18 Q Did you ever go to court and raise your
19 right hand and --
20 A I may have. When I was a teenager I --
21 Q One of the rules of the deposition, and
22 I'd like you to agree to, if you don't mind, is to
23 wait for me to ask the question in its entirety
24 before you give an answer.
25 A Sure.

0006

1 David Kengle 6
2 Q Will you agree if you don't understand
3 the question, to tell me you don't understand a
4 question?
5 A Sure.
6 Q Will you agree to tell me if you don't
7 an answer to a question?
8 A Sure.
9 Q You were talking about something that
10 happened when you were a teenager.
11 A I was once -- when I was a teenager,
12 one of the kids that we hung out with, he had like
13 an unloaded gun or something like that, and I
14 remember a couple of us had to answer some
15 questions about it. I don't remember if we were
16 actually deposed or anything like that. That was
17 the only thing.
18 Q So you went to court?
19 A No, I said I don't believe so. I said
20 I just remember having to answer questions to a --
21 police or something like -- some kid we went to
22 high school with -- I don't remember -- I don't
23 even remember his name.
24 Q So the police didn't say, raise your
25 right hand?

0007

1 David Kengle 7
2 A No, I don't think so.
3 Q Do you understand what it means to
4 swear under oath?
5 A Do I, of course.
6 Q Do you know false testimony under oath
7 constitutes perjury, correct?
8 A Yes.
9 Q Do you know what perjury is?
10 A I do.
11 Q Are you employed at this time?
12 A No.
13 Q What were you employed last as?
14 A I worked at Four Food Studio as a
15 server.
16 Q When was the last time you were
17 employed?
18 A June.
19 Q When was the first time you spoke with
20 Mr. Zabell?
21 A The first time I spoke to Mr. Zabell
22 would probably be, what, early this year. I think
23 he notified me of -- maybe it could have been the
24 end of last year, early this year. Actually, it
25 was somebody in his office first that contacted us

0008

1 David Kengle 8
2 and Mr. Zabell took up the case after, I guess,
3 when he was no longer on it.
4 Q Do you remember the names of any of
5 these people?
6 A What is his name, Tim? Tim, I believe,
7 maybe. I don't really know.
8 MR. ZABELL: I can't help you when
9 you're answering.
10 A Nobody who worked in his office.
11 Q When was the first time you met Mr.
12 Zabell?
13 A He came by my apartment once. I think
14 it was late spring, early summer.
15 Q What happened?
16 A You know, he just -- we had spoken on
17 the phone first. He let us know everything that
18 was going on and he said he needed to get my
19 statements. So he came over and we gave him our
20 statements.
21 Q Did he write anything down?
22 A I'm sure he did.
23 Q You saw him writing something down?
24 A I think he took notes. I could be
25 mistaken. I just assumed that he did.

0009

1 David Kengle 9
2 Q Was anyone else there?
3 A My girlfriend, Rosana.
4 Q That was at this location, 9 Garfield
5 Place?
6 A Correct.
7 Q That was the first time you had met Mr.
8 Zabell?
9 A Right, met him, and we'd spoke once on
10 the phone before that, I believe.
11 Q What did you talk about when you spoke
12 on the phone?
13 A Like I said, he just gave us -- he let
14 us know that there was a lawsuit going about and
15 he needed our statement.
16 Q What did he tell you about the lawsuit?
17 A He mentioned that the skydiving
18 instructor that we had made a complaint about --
19 had been fired and that he was now suing the owner
20 of Skydive Long Island I believe it's called, for,
21 you know, wrongful termination based on his
22 sexuality, whatever.
23 Q Did he say anything else?
24 A No, he just gave us the broad strokes.
25 Q What did you say in response?

0010

1 David Kengle 10
2 A What did I say in responses? I
3 didn't --
4 Q Yes.
5 A I didn't really have a response. I was
6 wondering why we were being contacted, and he
7 asked for our statement, and so I gave a statement
8 when he came over to the apartment.
9 Q Did you sign anything at the time?
10 A No.
11 Q How long was the phone conversation?
12 A Very brief. You know, just setting up
13 a time where he could, you know, meet.
14 Q That was in the early part of this year
15 or the spring, the summer?
16 A I'm gonna -- well, the phone
17 conversation -- I feel like we were getting
18 messages a couple of times before I really knew
19 what it was about. You know, I remember getting a
20 couple of messages like, you know, I'm an attorney
21 representing Skydive Long Island, and I just
22 remembered kind of not wanting to be bothered with
23 it. So I let them call back a couple of times
24 before I talked.
25 I'm pretty sure it was after the new

0011

1 David Kengle 11
2 year, because I had -- I kind of clear out my
3 stuff toward the end of the year, and I don't
4 remember that being there. So I'm sure it was
5 early this year.
6 Q How long after the phone conversation
7 did Mr. Zabell come to your apartment?
8 A Within a couple of weeks.
9 Q Did he tell you anything about a
10 subpoena?
11 A I believe I asked him if we would be
12 subpoenaed, or I asked him if we would have to go
13 to court for any of this, and he said, yeah, you
14 might, there might come a point.
15 Q Did you tell him to accept subpoenas on
16 your behalf?
17 A No.
18 Q Did you hear anything in the media
19 about this case?
20 A Did I hear anything in the media?
21 Q Yes.
22 A No, I didn't hear anything in the
23 media.
24 Q When you met Mr. Zabell, how long was
25 he at your house, how long was the meeting?

0012

1 David Kengle 12
2 A Couldn't have been more than a half
3 hour.
4 Q What did he say to you and what did you
5 say to him?
6 A Well, we did most of the talking. We,
7 you know, gave our accounts. He kind of again --
8 already filled us in on what was going on, so he
9 needed our statements and we gave him our
10 statements and we told him our story.
11 I can give you the whole story, if you
12 like.
13 Q Sure, I'll ask you about that, but did
14 he say anything about what happened?
15 A Did he say anything about what
16 happened?
17 Q Yes.
18 A He told me there was a lawsuit, what I
19 told you the first time.
20 Q Did he say anything about my client,
21 Mr. Zarda?
22 A No.
23 Q Did he say anything about his client,
24 Mr. Maynard?
25 A No. I mean, I know that, you know, Ray

0013

1 David Kengle 13
2 is the guy that owns Skydive Long Island and your
3 guy was the skydiving instructor, and nothing more
4 than that.
5 Q When you say Ray, do you know him by
6 his first name?
7 A No, I just -- I heard it mentioned
8 today.
9 Q Have you ever met Ray or just spoken to
10 him on the phone?
11 A I've spoken to him on the phone. I've
12 never met him.
13 Q How many times have you spoken to him
14 on the phone?
15 A Just the one time. Right? Once was
16 it, twice -- no, once.
17 Q Now, in preparation for preparing for
18 today's deposition, I sent you a subpoena that
19 asked you to attend today, and you have attended.
20 Thank you. But also there was a section in there
21 for you to produce any documents or e-mails that
22 you've received or sent to Mr. Zabell, any of his
23 employees, Mr. Maynard, any of his employees.
24 Do you remember that on the subpoena?
25 A Yeah.

0014

1 David Kengle 14
2 Q Is there anything that's responsive to
3 that?
4 A No, there are no documents.
5 Q I just wanted to make sure.
6 Q So let's go back to June 18th, 2010.
7 MR. ANTOLLINO: We can mark this as
8 Plaintiff's Exhibit, I guess we'll call this
9 4.
10 MR. ZABELL: Was there a 2 and a 3?
11 MR. ANTOLLINO: Yes, the two videos.
12 (Whereupon, the release was marked as
13 Plaintiff's Exhibit 4 for identification, as
14 of this date.)
15 Q Do you recognize this document?
16 A This looks like what we filled out.
17 Yeah, that's my handwriting. It's what we filled
18 out when we went skydiving.
19 Q It appears to have your signature on --
20 A Correct.
21 Q Is there any handwriting here that's
22 not yours?
23 A You know, the notes, the identifying
24 and stuff, but all the rest is mine.
25 Q What about on the pages on the

0015

1 David Kengle 15
2 left-hand side starting on page two, there are a
3 lunch of initials under each paragraph, did you
4 initial those?
5 A Yes, I did.
6 Q Did you fill out this document after
7 watching a video?
8 A Yeah, I believe we filled it out,
9 actually, while we were watching the video. I
10 think they gave it to you to fill out while
11 watching.
12 Q So you're filling this out and watching
13 a video at the same time?
14 A Yeah, I think so.
15 Q Did you pay attention to the video?
16 A Yeah, for the most part.
17 Q Were you reading this carefully while
18 you were watching the video?
19 A For the most part, yeah.
20 Q So you were reading this document and
21 looking at the video at the same time?
22 A Well, I mean, you watch and then maybe
23 when there's silence or something, or maybe I
24 waited until after. Somehow I paid attention,
25 because I wanted to understand what, you know, the

0016

1 David Kengle 16
2 deal was legally, and also what the deal was as
3 far as safety.
4 Q Did you talk to Rosana about it?
5 A Did I talk to her about it, no. I
6 mean, we just filled out our forms.
7 Q Was she reading the document?
8 A Yeah. I mean, she probably skimmed it.
9 I don't think she read it as attentively as I did.
10 Q She did not as attentively as you did
11 is what you recall?
12 A She may have. I don't know. Just
13 knowing her, I would assume that, you know, she
14 probably left it for me. She trusts my judgment,
15 and I'm kind of a -- the brains of the operation,
16 I guess. I'm the legal person, you know.
17 Q What is the highest level of education
18 you have --
19 A I graduated from Hofstra University
20 with a B.A. in liberal arts.
21 Q So you signed this form, you filled out
22 this form and you watched the video.
23 What happened next?
24 A Well, I mean, we got ready to go, make
25 the jump. I think they -- you know, we went

0017

1 David Kengle 17
2 outside. We had to wait a while. I think
3 somebody else -- I think another group was going
4 about their jump, so they set us up. You know,
5 they put our chute on and they just -- you know,
6 we got ready to go.
7 Q They put your shoe gun on?
8 A The chute.
9 Q Oh, your chute?
10 A Yeah, the harness.
11 Q Was the chute on you or on the tandem
12 instructor?
13 A Oh, right. The chute is actually on
14 the tandem. So we had the harness, the vest.
15 Q How were you attached to the
16 instructor?
17 A My back was attached to his front.
18 Q So were you attached inside the plane
19 or outside the plane?
20 A Inside the plane.
21 Q How were you situated with regard to
22 the instructor?
23 A He was sitting behind me, I was
24 sitting, you know, between his open legs and we
25 attached by, I think G clips, I guess, they were,

0018

1 David Kengle 18
2 whatever they use.
3 Q You're motioning towards your hips?
4 A Correct.
5 Q So you say he clipped himself to two
6 clips at your hips?
7 A I don't know if there were two. How
8 many -- whatever equipment they use, but he
9 attached himself at the hip, maybe the chest too.
10 Q Do you remember at how many points
11 there were clips?
12 A I don't.
13 Q Was your body, you know, except for the
14 clothes, physically touching him?
15 A Yeah, fairly close. I mean, I don't
16 know how -- there was definitely contact. I don't
17 know how closely pressed we were, but there was --
18 we were definitely -- yeah, in close proximity.
19 Q Could you feel his clothing through
20 your clothing?
21 A I don't understand what you mean.
22 Q Did you feel that there was someone
23 behind you?
24 A I can feel that there was a presence
25 behind me. I don't know that -- I didn't feel his

0019

1 David Kengle 19
2 body like on top of my body, but, yeah, he was
3 close.
4 Q Did you expect him to be close?
5 A We were aware that there would be close
6 proximity.
7 Q How long were you up in the air?
8 A I mean, it took a little while to get
9 up there. I think at least, right, ten minutes.
10 Q What was going on on the way up?
11 A Well, there was a bunch of instructors
12 and people, you know, getting ready to jump. It
13 wasn't just the four of us, it was at least ten
14 people. The -- you know, the crowd -- the
15 instructors I feel like were mostly guys, so there
16 was a lot of comrade and there was a joke, I
17 think, that when we were actually harnessing --
18 when Roxie -- I call Rosana Roxie -- when they
19 were harnessing Don to Roxie, you know, there was
20 a joke, you know, how do you feel about, you know,
21 your girlfriend's getting strapped to another guy,
22 you know, ha ha.
23 So, you know, we took it in stride.
24 I'm not really threatened by a joke, but as time
25 went on, I felt like he was being a little

0020

1 David Kengle 20
2 familiar with my girlfriend. That's the word I
3 like to use, a familiar way of touching, and I
4 took notice because I noticed that my guy was not
5 touching me like that and I didn't see anybody
6 else touching their students like that. So it
7 kind of struck me as, you know, inappropriate.
8 Q So who made this joke about, did you
9 know that your girlfriend was going to be strapped
10 to another guy?
11 A I think it was a third instructor that
12 was neither one of our instructors.
13 Q So did everyone laugh?
14 A I think it was the guy with the camera,
15 actually.
16 Q The guy with the camera?
17 A Maybe.
18 Q You're not a hundred --
19 A I'm not a hundred percent sure, but I
20 think.
21 Q You recall there was about ten people?
22 A I shouldn't throw out numbers, because
23 I can't be exact. It could be eight, it could be
24 twelve. I don't really know.
25 Q You got video in this case, right, you

0021

1 David Kengle 21
2 got a video of your jump?
3 A I got a video.
4 Q Who have you shown that to?
5 A You know, randomly to my family, my
6 parents, grandparents. I don't know. You know,
7 it hasn't really -- big a deal that we make a big
8 mental note of it that we show it to somebody. If
9 somebody asks us about it, we show it. It might
10 just be my family.
11 Q So you saw it about five or six times,
12 would that be fair?
13 A Yeah, five times.
14 Q How many times --
15 A We also watched it ourselves when --
16 ourselves when we got home that night, you know.
17 Q Let's talk about this inappropriate
18 touching.
19 What was inappropriate about what Don
20 was doing?
21 MR. ZABELL: Objection to form. You
22 may answer.
23 A There's a certain way that you, you
24 know, touch a female, you know, especially
25 someone's girlfriend. It's almost like dancing.

0022

1 David Kengle 22
2 You put your hands on their hips and you put, you
3 know, your chin on their shoulder like in a very
4 casual cavalier way.
5 When I noticed that he's talking, you
6 know, he's touching his lips in like a -- it's a
7 provocative way of doing things. I mean, I'm not
8 -- I don't know if that's a matter of opinion or
9 not, but if you ask most people, they would feel
10 uncomfortable with them acting like that with
11 their significant other.
12 Q Let's break it up one by one.
13 Where were you situated in the plane
14 that you could see Don touching his lips?
15 A Let's see. If I was in the plane -- if
16 we entered the plane and now, let's say, I'm
17 facing forward, I'm on the left side of the plane,
18 and I believe I was in the very last seat. So I'm
19 pretty sure Roxie was just slightly to my
20 right-hand corner. I don't believe she was
21 directly next to me, I believe there was somebody
22 there, and she was right in front of that person.
23 So it's kind of like -- it was slightly
24 to my left-hand corner, but not so much the
25 corner. I couldn't see her front as well, just at

0023

1 David Kengle 23
2 a little bit of an angle.
3 Q What did you see Don do?
4 A Well, the first thing I noticed was
5 that he had his hands on her hips. Now, I
6 understand that you have to harness, it requires,
7 you know, clipping, but that's it. I mean, I sat
8 there for the entire time with my guy and he
9 didn't put his hands on me. He didn't have to
10 hold me like this. It was just an unnecessary
11 thing. So you're thinking to yourself, why is he
12 touching her like this.
13 MR. ZABELL: Let the record reflect
14 when the deponent said, like this, he had
15 both hands on his hips.
16 Q So you saw Don putting his hands on
17 Rosana's hips --
18 A Right.
19 Q -- from where you were situated?
20 A Right.
21 Q How long were they there for?
22 A I mean, I felt practically the whole
23 time he was just holding her. It was like he was
24 holding her, that's what I mean. It wasn't like I
25 with my instructor. He was sitting behind me and

0024

1 David Kengle 24
2 I was sitting in front of him, but he wasn't
3 holding me. We happened to be latched together,
4 but with him, with Don and my girlfriend, he was
5 holding her the entire time.
6 Q Did you say anything?
7 A No, I didn't. Normally that would be
8 -- you know, I mean, I'm very vocal. I'm used to
9 -- my girlfriend is a very beautiful girl. I'm
10 used to her getting attention. So I wouldn't feel
11 uncomfortable voicing myself, but under this
12 particular set of circumstances, getting ready to
13 jump out of a plane, it's not something I can deal
14 with at the time.
15 Q Why?
16 A Because I'm about to jump out of a
17 plane. I didn't feel comfortable -- I mean,
18 you're a little nervous about the actual jump the
19 first time you're doing it, and also your
20 instructors, you have to trust them. I mean, they
21 aren't the type of people you want to have a
22 confrontation with right before you're about to
23 jump out of a plane. I mean, he wasn't my
24 instructor, but it didn't seem like the time and
25 place.

0025

1 David Kengle 25
2 Q Had you ever been up in a plane before?
3 A Plane skydiving, no.
4 Q Had you ever taken any course in how
5 it's appropriate to touch a person who's tandem
6 skydiving?
7 A Have I ever taken a course, no. I
8 think common sense plays a big role.
9 Q What does common sense tell you?
10 A I mean, because I understand the video
11 tells you there's going to be contact and the form
12 tells you there's going to be contact, but all
13 contact doesn't mean it's legitimate touching.
14 But he can't grab her chest or breast and say --
15 I'm not saying he did that, but there's definitely
16 a line in the sand, as far as what's appropriate
17 and not. Just because there's contact involved
18 doesn't mean all contact, anything goes.
19 Q So it depends on the circumstances?
20 A Yeah, of course.
21 Q If your girlfriend's safety were at
22 issue, you'd want him to hold her breast?
23 A If it meant saving her life, yes.
24 MR. ZABELL: Don't answer his questions
25 like you're having a conversation.

0026

1 David Kengle 26
2 THE WITNESS: Sure.
3 Q What did you see Don doing with his
4 lips?
5 A I noticed he was putting his finger
6 kind of in his mouth. He was talking kind of like
7 this to me. It's a little provocative. I mean,
8 it's a form of flirting, if you ask me, and that's
9 my opinion, and I noticed on the video, I guess
10 maybe I couldn't see his eyes, you know, the angle
11 as well, but when I was watching the video, we
12 noticed that not only was he doing that into the
13 camera for a brief second, but he was also kind of
14 going like this to the camera guy like this, as if
15 to say, you know, check it out. So I think that
16 added to my feelings of being uncomfortable with
17 it.
18 MR. ZABELL: Let record reflect the
19 deponent was shaking his head in a gesturing
20 manner.
21 Q You felt that what he did was sexually
22 harassing of Rosana?
23 A Well, I mean, I don't know the legal
24 definition of sexual harassment, if it's a
25 textbook -- you know, if it qualifies for that

0027

1 David Kengle 27
2 extreme a term, but it was -- made us feel
3 uncomfortable enough to complain about it and it
4 was inappropriate.
5 So, I mean, is everything inappropriate
6 sexual harassment, I don't know, but it was
7 definitely inappropriate in my opinion, and being
8 that I was a paying customer, I felt that I should
9 complain about it.
10 Q You say he was touching his lips. Was
11 there anything else other than touching his lips
12 or touching your girlfriend's hips that you felt
13 was inappropriate?
14 A And he rested his chin on her shoulder
15 at a certain point, again, in a very familiar way
16 of interacting with somebody you just met, and
17 again, my instructor did not at any point put his
18 chin on my shoulder. He did not put his hands on
19 my lips and he did not touch his lips and wiggle
20 his tongue around when he was talking to me, and
21 he was, my impression in the camera, you know,
22 look at this, guy. It was very unique what I was
23 seeing going on between Zarda and my girlfriend.
24 Q So you thought that he was flirting
25 with Rosana?

0028

1 David Kengle 28
2 A Yes.
3 Q Did you think he was sexually
4 attractive to Rosana?
5 A I don't know. I can't testify as to
6 how he felt.
7 Q Well, did it appear that he was
8 sexually attracted to Rosana?
9 A I honestly don't know.
10 Q Based on what it appeared, not what he
11 was actually feeling, what did it appear to you?
12 A It appeared like he was being flirty.
13 Now, one, he could have been flirty
14 because he was sexually attracted to her, he could
15 have been flirty just because he was showing off
16 in front of his co-instructors, or he could have
17 just been a flirty person. Some people are just
18 flirty. I don't know why he was being like that,
19 but that was the way he was --
20 Q Was there anything --
21 MR. ZABELL: Wait a minute, Counsel,
22 you have to let him finish answering.
23 MR. ANTOLLINO: You know what, I
24 thought he was finished.
25 A It was my fault.

0029

1 David Kengle 29
2 Q Do you have anything more to say?
3 A I assume that he motioned -- the way
4 that he motioned in the video was if to say that's
5 usually the way -- I mean, I know guys, that's a
6 group of guys, you know, motioning, oh, check this
7 girl out, she's attractive. So the fact he's
8 motioning, kind of signaling she's attractive, I
9 would assume that he found her attractive.
10 Q How did you learn about Skydive Long
11 Island?
12 A I think I Googled Skydive Long Island.
13 I wanted to go skydiving on Long Island.
14 Q Did you pay cash or credit?
15 A Cash I'm pretty sure. Yeah, it must
16 have been cash.
17 Q You jump out of the plane and you land
18 on the ground. What happened then?
19 A Well, I landed first because I jumped
20 first. So there was a -- you know, I was waiting
21 for Rosana to land. She finally landed. We, you
22 know, finished up.
23 We were both a little taken aback with
24 the whole thing. We handed in our equipment. We,
25 you know, got our stuff and we left.

0030

1 David Kengle 30
2 When we were driving home, I asked her,
3 you know, what did you think, how was your
4 experience. The experience was mostly for her, it
5 was her birthday, it was something she wanted to
6 do. I mean, I kind of wanted to skydive myself,
7 but it was mostly for her.
8 The first thing she said was, I would
9 have liked it better if I had a different
10 instructor, and I said, I noticed, he made me feel
11 uncomfortable too, and she said, yeah, after we
12 jumped, when he pulled the chute and we were
13 floating down, we were talking about different
14 things, and I was like, what do you mean, and he
15 just kept mentioning his personal life -- I mean,
16 his sex life. I don't think he got graphic.
17 He mentioned -- I think he was
18 apologizing about whatever, because -- he claimed
19 that, you know, I hope I didn't make you feel
20 uncomfortable, you know, like reassuring, and I
21 think he was talking about his boyfriend or
22 ex-boyfriend and like -- I don't know. This is
23 what she said.
24 So then I felt, you know, extra
25 uncomfortable, because it added to what I had

0031

1 David Kengle 31
2 already felt was inappropriate. So now you're
3 talking about extra inappropriate behavior here.
4 We went about the rest of our day.
5 Like I said, it was her birthday. We went out for
6 dinner, we went out for the night, and the more I
7 thought about it -- and especially we paid
8 whatever it was, eight, nine hundred dollars to go
9 skydiving, and I felt it was not -- you know, that
10 that was inappropriate for what we were paying for
11 it. You know, the overall experience I felt was
12 tainted because of the incidents described.
13 So after thinking about it for a day, I
14 decided to make a phone call, and I called Skydive
15 Long Island. I believe I talked to a female
16 worker there that took my story and let me know
17 that she would pass the information along, and she
18 was very upset about what I was telling her.
19 She then, I guess, told the owner,
20 because the owner contacted me by that day -- by
21 the end of the day and, you know, he told me that
22 he was very unhappy to hear -- you know, I told
23 him the story pretty much as I just told you and,
24 you know, he -- I'm trying to remember if he --
25 'cause I answered you before that I only talked to

0032

1 David Kengle 32
2 him once, but I'm trying to remember if we only
3 had the one conversation or if he told me he was
4 going to look into it and get back to me. I'm not
5 a hundred percent. But by that day he had
6 basically let me know, you know, that he was
7 really sorry.
8 At first he said if we are ever
9 interested in coming back for a second jump, he'd
10 make sure we had a better experience. I told him
11 we weren't really interested in -- we just kind of
12 planned it for a special occasion, it's not the
13 type of thing we're going to do every weekend or
14 -- at that point he offered to refund our money
15 because he was so upset with the fact that we had
16 such a horrible experience.
17 Q What did you say?
18 A I told him that, you know, I appreciate
19 that. I mean, I've worked -- I worked in customer
20 services and I've seen that done. I definitely
21 didn't think that was, you know, the wrong
22 decision for him to make. I understand. Did he
23 have to do that, no. I mean, I just -- it said a
24 lot about his character, the fact he was willing
25 to refund our whole money just because of the

0033

1 David Kengle 33
2 experience. I felt that that was appropriate.
3 Q So he refunded your money?
4 A Yes.
5 Q Why did you take it? You felt it was
6 appropriate for you to get your money back?
7 A I felt that it was appropriate, yeah.
8 Like I said, we paid close to a thousand dollars
9 and, I mean, for the experience that we had -- I
10 mean, you know, you're paying for an experience.
11 It's just like you're going to Disney
12 World, going here, there. If you have an
13 experience like that, they're going to say they
14 want you to have that experience. That's what
15 you're paying for, the experience. So if you're
16 not getting the experience -- I'm not paying to
17 meet the people there, I'm paying for the
18 experience.
19 Q Did you ask for a refund?
20 A No, I did not.
21 Q So he just offered it to you?
22 A Yes.
23 Q Did he offer you another free jump?
24 A In other words, he said in order to
25 make up for the, you know, bad experience that we

0034

1 David Kengle 34
2 had, he would, you know, take us up free of charge
3 again to give us the experience the way it was
4 supposed to be. So we'd get one free jump. It
5 wasn't so specific. You know, he was trying to
6 ease the situation.
7 Q But instead he gave you the money back
8 so you --
9 A But we declined.
10 Q So you declined the free jump and he
11 offered you the refund?
12 A Right.
13 Q Did he ask to speak to Rosana?
14 A I don't remember. I mean, I think he
15 told me to apologize on his behalf.
16 Q Did he say what he was gonna do?
17 A What do you mean?
18 Q Did Ray say what he was gonna do?
19 A Like as far as what?
20 Q As far as what he's going to do in
21 response to your complaint.
22 A He refunded our money.
23 Q Did he say he was gonna do anything
24 else?
25 A As far as Mr. Zarda?

0035

1 David Kengle 35
2 Q Yes.
3 A He just said he would handle the
4 situation. I mean, I wasn't really interested, to
5 be honest with you. I mean, I was calling to
6 complain about the instructor, but it wasn't like,
7 you know, I was calling because I was so
8 interested, you know, in him getting punished. I
9 didn't really ask.
10 Q So you had no intention of Don getting
11 fired as a result of this?
12 A No. I mean, I don't want anybody to,
13 you know -- it was -- definitely a complaint was
14 warranted and it needed to be voiced because it
15 was inappropriate. Again, it was something that
16 -- the experience to me is important in that it's
17 a -- it's not an everyday thing that you jump out
18 of a plane, it's something you need to feel very
19 comfortable doing.
20 If that's going to be your career,
21 profession, you can't make people feel
22 uncomfortable when you jump, and the second thing
23 is the cost. You go out for dinner for a hundred
24 dollars and, you know, if the server or whoever --
25 if you don't like the attitude, people find no

0036

1 David Kengle 36
2 problem complaining, or the bartender or somebody
3 who works in a movie theater.
4 So to me this is even more amplified,
5 because it's, as I said, something that's way more
6 expensive and something way more extreme.
7 Q Has a customer ever complained about
8 your service as a server?
9 A I'm sure they have.
10 Q It's never been brought to your
11 attention?
12 A Sure it has. Anyone who has been a
13 server in some way, shape or form has been
14 complained about.
15 Q That includes Rosana?
16 A I don't know. I'm sure. It's almost
17 impossible to interact with that many customers to
18 not get a complaint unless you're just starting
19 the business or something.
20 Q You said something earlier about that
21 you said Don was mentioning something about his
22 sex life.
23 A Well, his sexual preference.
24 Q That's not the same as sex life?
25 A Well, he mentioned his boyfriend. I

0037

1 David Kengle 37
2 don't remember. Yeah, I guess not.
3 Q What if he had mentioned his wife,
4 would that be just as bad?
5 A It's more the way it was -- I think it
6 should not have even come up, first of all, the
7 sentence, I hope you don't feel uncomfortable
8 because, you know, I'm gay. The fact that she had
9 anything to feel uncomfortable in the beginning,
10 the fact that he was aware of that, it's evident
11 that there was something inappropriate. Why else
12 would she feel inappropriate?
13 Q What was it you understood Don was
14 referring to when asking about her feeling of
15 discomfort, was it the statements made or
16 something else?
17 A I don't know what he thought because,
18 first of all, I wasn't the one talking to him.
19 Second of all, I'm not him. But, I mean, I would
20 just -- from my perspective -- I mean, it just
21 seemed like he was covering his bases, it seemed
22 like -- you know, it seemed to me like I can kind
23 of get away with this because I'm gay. That's
24 what he was implying to me.
25 I've had a similar situation another

0038

1 David Kengle 38
2 time with somebody that kind of made the -- a
3 similar statement like somebody that was gay, I
4 witnessed them kind of, you know, being a little
5 -- having a lot of contact with a girl and they
6 were like, oh, I can get away with that kind of
7 thing.
8 Q When was that?
9 A I don't know. At some point in time.
10 I can't remember an exact instance. I've noticed
11 that's kind of -- it's almost like some people
12 feel that is accepted because, you know, there's
13 nothing you have to worry about. It's kind of
14 like I can get away with a little bit of contact
15 because it's not like I would sleep with her or
16 anything like that. I don't agree with that.
17 Q So you've observed that attitude on a
18 number of occasions, haven't you?
19 A I'm not saying that I've experienced
20 it, I said I feel like I've noticed that that is,
21 you know, an idea that exists to some people.
22 Q So there have been a number of people
23 who have expressed this belief, a number of gay
24 people who have expressed this belief to you that
25 they can get away with a little flirting with

0039

1 David Kengle 39
2 women because they're gay?
3 MR. ZABELL: Objection to the form.
4 Q You can answer. You may answer.
5 A I'm not saying that I've had a number
6 of people express to me, I'm saying that I've
7 noticed this idea has been floated around from
8 time to time.
9 Q Well, I just want to know when it's
10 been floated around.
11 A Specifically I don't have an answer for
12 you.
13 Q This is you personally hearing other
14 people, watching T.V., in what circumstance?
15 A No, more, you know, my own experience,
16 you know, social interactions, you know, going
17 out, and it's like you saying, the economy is bad,
18 how do you know the economy is bad, you know, it's
19 just an idea that exists. Like when did you find
20 out, I don't remember a specific answer, but I've
21 encountered that idea.
22 Q Have you ever complained about it
23 before?
24 A No.
25 If I may, I'm not saying that I have

0040

1 David Kengle 40
2 had experience on a personal level with this, I'm
3 just saying I've encountered the idea. This is
4 the first time a situation warranted my reacting
5 to this.
6 Q When you encountered the idea, I want
7 to get as much information as possible how you
8 encountered the idea. It must have been people
9 talking.
10 A Well, I've been -- socially I've been
11 around people. I don't remember who -- you know,
12 I've been around gay people, to be honest with
13 you. I mean, I went to college. I've had gay
14 people interact with me and other people I'm with
15 and, you know, gay associates, acquaintances. I
16 was in an R.A. staff. There were gay people in my
17 R.A. staff. So it's not like I've never been
18 around gay people.
19 Q So somewhere along in these
20 interactions someone has expressed --
21 A I've worked with gay people.
22 Q Have you ever had gay friends?
23 A Like are my best friends gay? I have a
24 handful of people that I call friends, but none of
25 them are gay. But I definitely have had people --

0041

1 David Kengle 41
2 I worked with R.A. staff, and when you're on an
3 R.A., it's a very -- you tend to have people
4 on --
5 Q Does Rosana have any gay friends?
6 MR. ZABELL: You have to let him
7 finish.
8 A You know, I remember her having people
9 that she worked with -- she's a little more --
10 she's worked at her job for a decent number of
11 years, that the people that she works with she's
12 very friendly with.
13 One girl that she's worked with for a
14 number of years, I think she doesn't work there
15 anymore, but did work there for a number of years
16 she's very friendly with, her name was Fran, she
17 was a lesbian. There was another gentleman, Mike,
18 another gentleman she worked with who she was very
19 friendly with who she worked with.
20 Q You used the phrase earlier sexual
21 preference. Do you remember that?
22 A Yes.
23 Q What does that mean?
24 A It means your sexual preference. I
25 mean what does that mean?

0042

1 David Kengle 42
2 Q Yes.
3 A It means what your sexual preference
4 is.
5 Q You're kind of using the phrase to
6 define the phrase.
7 A Because, I mean, what you're asking me
8 -- you're asking me for a textbook definition.
9 Q No, I want you to explain it in your
10 own words what you mean by sexual preference.
11 A In my own words?
12 Q Yes.
13 A It's my basic understanding of the term
14 that it's what or whom you prefer sexually, hence
15 the name.
16 Q Do you believe that being gay is a
17 choice?
18 A I don't have -- I really don't know.
19 You know, that is -- you're asking me something
20 that is, you know, a question that I can't answer
21 because I've never experienced it. I never felt
22 it.
23 Q Who made the joke about being strapped
24 to your girlfriend, was that Don or someone else?
25 MR. ZABELL: Objection to the form of

0043

1 David Kengle 43
2 the multiple questions. You may answer.
3 A It was definitely somebody else because
4 it was -- I remember it being, how do you feel
5 about this guy getting strapped, you know, to your
6 girlfriend. I don't remember exactly which of the
7 other instructors it was, but it was definitely
8 not Don.
9 Q How did that make you feel?
10 A You know, I can take a joke. I would
11 -- as I said, my girlfriend is a very beautiful
12 girl, she gets a lot of attention. It's natural.
13 Like I never had anybody joke around
14 with me before, to be honest. If that was the
15 joke -- there was no complaint if that was the
16 only thing that happened.
17 Q Did you mention that when you called
18 Ray?
19 A I'm sure I did. I'm pretty good at
20 giving a whole sweep of a narrative.
21 Q Did you tell Ray it was somebody other
22 than Don who made that joke initially?
23 A I really don't remember what, you know,
24 -- I don't think he asked. I don't think that it
25 was -- the story just kind of flowed out. I

0044

1 David Kengle 44
2 probably told it that way, but, I mean, do I
3 remember verbatim what I said, I probably just
4 said somebody made a joke. So did he take it that
5 somebody was Don or somebody other than Don, I
6 don't know.
7 Q What else did you say in this
8 conversation with Ray?
9 A Pretty much the exact story that I gave
10 you. Again, you know, that was the story that I
11 gave him. I told him that I thought it was
12 inappropriate what I witnessed and what she told
13 me. I thought it was inappropriate and I used the
14 metaphor again of what you're paying for, the
15 experience, you know, what the experience is, and,
16 you know, there's a certain level of satisfaction
17 you expected, you know, to be had from this kind
18 of experience.
19 It's an exciting thing. It's something
20 that you think is gonna be a special kind of
21 experience and you don't expect it to kind of be
22 deflated with this kind of behavior.
23 Q Did you tell Ray that Rosana's birthday
24 had been ruined?
25 A Well, I mean, it was -- I mean, did I

0045

1 David Kengle 45
2 say it like that -- I mean, did we go home and
3 cry, no. I don't know if I said it that
4 extremely, but I said it was on her birthday, it
5 was the activity we chose, it was definitely --
6 you know, the experience was, you know, ruined to
7 an extent. It was not as good as it should have
8 been.
9 Q The experience was ruined or her
10 birthday was --
11 A I mean, I'm sure that we didn't harp on
12 it indefinitely, but it tainted the day. It did.
13 Q So it tainted the day, but it didn't
14 ruin it?
15 A Ruin? I mean, it wasn't like somebody
16 dying. You know, it wasn't like a plane crash.
17 When you say the word ruined, I'm not gonna use
18 that extreme a word just because -- I feel tainted
19 would be a better word.
20 Q I'm going to show you what we
21 previously marked as Plaintiff's Exhibit 3, and if
22 you don't mind, I'm going to come over to your
23 side.
24 Do you recognize this video?
25 A Yes.

0046

1 David Kengle 46
2 Q Am I standing too close to you?
3 A No.
4 Q Is this the video of jumping out of a
5 plane?
6 A Yes.
7 Q Is this your video or Rosana's?
8 A I really don't know, because the only
9 -- you can't distinguish until before and after.
10 Q Let's go back to the beginning and
11 let's see if you can tell.
12 We've gone to the second marker for
13 you, and it appears the video begins with you and
14 someone talking to you.
15 Is this what you recall being your
16 video as opposed to Rosana's?
17 A I really don't remember, to be honest
18 with you.
19 Q Well, I'm going to have you watch the
20 entire video, it's about a minute and a half or
21 something like that, and I want you to raise your
22 hand when you see something that you think is
23 inappropriate.
24 A Sure.
25 Can I answer your question that you

0047

1 David Kengle 47
2 asked before?
3 Q What's that?
4 A The videos they gave you, there's a lot
5 of footage that overlaps, so you can't give me
6 certain periods of time and me be able to
7 distinguish, because the way to distinguish is
8 when you're dropping out of the plane. There's an
9 inch short -- I don't remember which one -- which
10 one they're -- where the video overlaps. So the
11 way to show me is by showing me who is jumping out
12 of the plane.
13 Q We'll talk about that later, but for
14 now I want you to raise your hand if you see
15 anything inappropriate happening, and we're going
16 to stop right there.
17 All right. We've watched the whole
18 tape and I see you haven't raised your hand at any
19 point, is that correct?
20 A That's right.
21 Q So we didn't see anything
22 inappropriate?
23 A Yeah.
24 Q Would you like to watch it again?
25 A No. She was only in the video ten

0048

1 David Kengle 48
2 seconds, and she was -- we were in the plane ten,
3 fifteen minutes. We were definitely in the plane
4 for longer than two minutes, and when you add the
5 jump time in it, the footage covers less than ten
6 percent of the time we were in the plane, and she
7 was in the video twenty seconds, and I see there's
8 no --
9 MR. ANTOLLINO: Motion to strike.
10 MR. ZABELL: Counsel, to the extent I
11 can, your motion is denied.
12 MR. ANTOLLINO: Thanks, Counsel.
13 Q I'm just looking for an answer. I want
14 to make it clear you didn't see anything
15 inappropriate in that video?
16 A No.
17 Q I see at some point at the very end you
18 were asked how your experience was, and what was
19 your exact words?
20 MR. ZABELL: Objection to form. You
21 can answer.
22 A Awesome.
23 Q Was it really more than that?
24 A I'm sorry?
25 Q Was it something awesome or an

0049

1 David Kengle 49
2 adjective to describe awesome?
3 A Fucking awesome I believe it was.
4 Q Was that true at the time?
5 A Jumping out of the plane, yeah, it was
6 pretty fucking awesome.
7 Q Did they ask you specifically what was
8 awesome or just how it was?
9 A They asked me how it was. To me it was
10 jumping out of the plane. That's the question I was
11 answering.
12 Q At the time you didn't look upset, did
13 you?
14 A No. I probably felt uncomfortable in
15 the plane, but, I mean, you're jumping out of a
16 plane and your mind switches gears kind of
17 quickly. So at that point I'm sure I was just
18 thinking about the adrenaline rush.
19 I don't know if you ever experienced an
20 adrenaline rush, but it kind of takes over what's
21 going on.
22 As I said, what really amplified the
23 situation was -- in my book, was the conversation
24 we had on the way home. So, I mean, maybe I felt
25 uncomfortable on the plane and something I took

0050

1 David Kengle 50
2 notice of and felt a little uncomfortable about,
3 but it was amplified by the fact that even after
4 he jumped out the plane, he was still talking
5 about -- he turned her experience into the Don
6 Zarda experience. You know, it was all about him.
7 I remember my guy's name. When I just
8 heard the guy's name, Duncan, and he had an
9 accent, I asked where he was from. Other than
10 that, we had no conversation. He was giving me
11 instructions, one, two, he was telling me about
12 where we were, pointing out certain things.
13 He was very involved in the experience,
14 that you're here to skydive, and I asked him, just
15 because I noticed he had an accent, because I was
16 curious, because I noticed his accent. That was
17 the only information he gave on himself, and I
18 don't think --
19 Q Do you feel like you're defending
20 yourself in this --
21 A No, I'm being vindicated.
22 Q You said something about you asked
23 Duncan where he was from. At what point was that?
24 A When I noticed his accent.
25 Q When was that?

0051

1 David Kengle 51
2 A In the plane.
3 Q That was while you were jumping or on
4 the way out?
5 A No, as I said, it takes a while for the
6 plane to get up to whatever altitude. So I was
7 making conversation.
8 Q So while you were on the plane?
9 A I was making conversation, just because
10 I was curious.
11 Q And he told you he was from where?
12 A I think it was Switzerland or
13 Australian.
14 Q That's personal information, right?
15 A Yeah, sure.
16 Q But that was appropriate for him to
17 say?
18 A Well, I asked him.
19 Q What if he had just told you I'm from
20 New Zealand, would that have been inappropriate?
21 A No.
22 Q Let's look at what's previously been
23 marked as Exhibit 2, which is Rosana's skydive,
24 and I'll just let you watch this and --
25 MR. ZABELL: I'm going to object,

0052

1 David Kengle 52
2 because I don't think anything was identified
3 or labeled as Exhibit 2.
4 MR. ANTOLLINO: Well, the record will
5 speak for itself.
6 MR. ZABELL: Records don't speak,
7 Counselor.
8 Q I'm just pausing not.
9 Do you recognize Don and Rosana on that
10 video?
11 A Yes.
12 Q Does that refresh your recollection as
13 to this being the video that was taken of Rosana's
14 skydive?
15 A Yes.
16 Q We'll go frame by frame, but I want you
17 to raise your hand when you think that you see
18 something that's inappropriate. We're going to
19 start from the beginning again.
20 A See, that.
21 Q Let's stop.
22 So we stopped at one minute and you
23 actually raised your hand a little bit before that
24 and we're at like fifty-six seconds and Don has
25 his finger in his teeth?

0053

1 David Kengle 53
2 A Right.
3 Q And you think that's inappropriate?
4 A Well, when you play it in motion, the
5 overall --
6 Q Is that picture inappropriate, just
7 that picture right now?
8 A Well, in my opinion, to be completely
9 honest with you, I don't think you should have
10 your fingers in your mouth when you have contact
11 with a human being that you're -- you know, it's
12 your job to kind of interact with them.
13 Is that inappropriate in the way I'm
14 describing? I mean, it adds to it. My opinion is
15 I don't think he should have his fingers in his
16 mouth.
17 Q Is it a sanitary issue or sexual
18 harassment issue or flirting, or all of the above?
19 A This particular frame, I mean, it looks
20 kind of gross that he has his fingers in his
21 mouth. When you play the next three seconds of
22 the clip and you see it in motion, it seems
23 inappropriate in a flirty motion because he's
24 motioning to her right now.
25 Q Let's play it.

0054

1 David Kengle 54
2 A See, there.
3 Q So in that three seconds or actually
4 five seconds between fifty-six seconds and 101, he
5 looked at Rosana, he rolled his eyes and he went
6 with his finger like this and you thought that was
7 being flirtatious?
8 A In the context of the situation, based
9 on what I witnessed and, you know, I know, being
10 that I was there, and I understand the context of
11 the situation, yes, because had I -- if I was a
12 person that was not there and never seen this,
13 would I understand that to be inappropriate, maybe
14 not, because maybe it's something you can pass
15 over. But being I was there and I understand the
16 situation and I understand how that added to
17 everything I was witnessing, yes, I do think it
18 was inappropriate.
19 Q Let's keep going.
20 So you didn't raise your hand for any
21 of the other video. So I take from that you
22 didn't see anything else that you thought was
23 inappropriate?
24 A No.
25 Q There were a few times, though, where

0055

1 David Kengle 55
2 Don had his chin right next to your girlfriend's
3 -- the nape of her neck. Did you see that?
4 MR. ZABELL: Objection to the form of
5 the question and the characterization of the
6 video, and I advise you, Mr. Kengle, that Mr.
7 Antollino's not under oath, so you're under
8 no obligation to believe anything he says.
9 A Okay, I'll --
10 Q The question is --
11 A I'll answer the question.
12 Did I notice his chin being in the
13 vicinity of her neck?
14 Q Yes.
15 A Did I notice him placing his chin on
16 her neck, no, which is what I witnessed on the
17 plane.
18 Q So there's nothing inappropriate about
19 it being near her neck, it's the placing of the
20 chin on the neck that's inappropriate?
21 A It's the context of the contact. You
22 know, there's contact -- I noticed there was
23 contact with people, you know, touching hands and,
24 you know, touching arms. You know, it's the
25 context of the, you know, contact.

0056

1 David Kengle 56
2 I can shake your hand right now or I
3 could grab your thigh right now, and two different
4 forms of contact are not equal, they have
5 different meanings and have different forms of
6 contact. So I don't understand what you're asking
7 me.
8 Q We're talking about the chin being on
9 your girlfriend's neck. Did you see in that video
10 Don's chin next to the nape of her neck, yes or
11 no?
12 MR. ZABELL: Objection. Asked and
13 answered.
14 A I noticed it being in the vicinity of
15 my girlfriend's neck.
16 Q What did she say at the very end of the
17 event when asked how was it?
18 A Verbatim, I kind of put it out of my
19 head.
20 Q So she was asked, pretty intense, ha.
21 Did you hear that?
22 A Yes.
23 Q What was her response?
24 A It was awesome.
25 Q So she didn't ask, how was it, correct?

0057

1 David Kengle 57
2 A She didn't ask, how was it.
3 Q Someone didn't ask her how was it,
4 correct?
5 A Right, they asked her if it was
6 intense.
7 Q And her response was spontaneous, it
8 was awesome?
9 A Yes.
10 Q Did she say anything about the touching
11 there?
12 A No.
13 Q At the very end of the frame she moves
14 her face in close to Mr. Zarda's to take a
15 picture, right?
16 A Yes.
17 Q Did anyone force her to do that?
18 A No.
19 Q You went in and took a picture too?
20 A Sure.
21 Q Do you still have that?
22 A Well, I mean, it's whatever is included
23 with the DVD. I think they're in the -- on the
24 same disk. We don't have anything else other than
25 the DVD.

0058

1 David Kengle 58
2 Q So the DVD came with pictures as well
3 as a video?
4 A Yeah, I think so. I think there's two
5 disks, actually. When you get each case, it has a
6 set of stills and a DVD.
7 Q You still have those?
8 A Correct.
9 Q I'm going to send you a copy of this
10 transcript and I'm also going to send you another
11 subpoena with an empty disk.
12 Would you mind copying those pictures
13 onto the disk, because we never got those
14 pictures?
15 A If I have it, yeah.
16 Q You said you have it.
17 A Yeah, I'm saying --
18 Q You're not going to throw them away
19 when you get home, are you?
20 A No.
21 MR. ANTOLLINO: I just have a few other
22 questions.
23 Q Is Rosana claustrophobic a little?
24 A Well, I mean, are you asking like in a
25 clinical sense or is it like --

0059

1 David Kengle 59
2 Q In any way.
3 A People use terms like that to describe,
4 you know, everyday quirks. So like in a quirky
5 sense, she doesn't like to be boxed in sometimes,
6 but she's not claustrophobic in that we can sleep
7 with the bedroom door closed and she doesn't have
8 breathing -- she doesn't hyperventilate.
9 MR. ANTOLLINO: Let me go over my notes
10 and speak to my client, and I think we're
11 almost done. We'll just take a break now,
12 okay.
13 (Whereupon, a short break was taken.)
14 Q Do you belong to any organizations?
15 A Do I belong to any organizations?
16 Q Yes.
17 A I mean, off the top of my head, you
18 know, I'm a member of Barnes and Noble. I don't
19 know what that means.
20 Q Do you belong to any political
21 organizations?
22 A No.
23 Q Are you a member of a church?
24 A Am I a member, no. My family is a
25 member, but --

0060

1 David Kengle 60
2 Q So you don't practice any religion?
3 A I read religious texts, if that's what
4 you're asking, but I don't pray every Sunday
5 morning, if that's what you mean.
6 Q What religious texts do you read?
7 A I've read Nome (phonetics), ancient
8 literature and that kind -- I don't really do it
9 for a religious perspective, but history.
10 Q Do you have an opinion as to whether
11 homosexuality is a sin?
12 A No, I don't really get into all the
13 sinning and like that. It's not my -- I don't
14 really have an opinion on that. I don't really
15 believe in the doctrine of, you know, the church
16 in that sense that like, you know, what's a sin,
17 what's not a sin.
18 I'm more of a historian when it comes
19 to religion. I just look at the history of it,
20 and that's all that's of importance.
21 Q When Rosana said Don said, you don't
22 have to worry about me because I'm gay, did you
23 interpret that as the possibility that Don was
24 apologizing for the jokes for being strapped to
25 another guy?

0061

1 David Kengle 61
2 A Well, as I said the first time you
3 asked me this, I believe that he was covering his
4 bases in the fact that he thought there was
5 something inappropriate in the plane. It could
6 have been the jokes or the contacts or a
7 combination of two, but he was aware there was
8 something inappropriate and he felt it was
9 justified because he was gay. That's what I get.
10 Q Do you understand what is inappropriate
11 in terms of what an instructor is to do to strap
12 in or in terms of how to maintain proximity?
13 A I understand.
14 Q Do you understand anything about what's
15 appropriate in terms of a tandem instructor in
16 terms of how to strap a person in and how to
17 maintain proximity?
18 A Do I understand how to strap persons in
19 in terms of proximity? I don't have an
20 understanding of the procedures they're trained
21 in, as far as attaching gear or a harnessing or
22 what their physical actions are supposed to be in
23 terms of protocol, no, I don't have an
24 understanding of that.
25 I do have an understanding of proper

0062

1 David Kengle 62
2 behavior in, you know, an ethical sense of any
3 situation as far as -- you know, I mean, if
4 somebody kisses my girlfriend, is it because I
5 don't have an understanding of skydiving protocol
6 that's not inappropriate or grabbed her backside.
7 Like I said before, I have an understanding of
8 what I believe is inappropriate for any situation
9 in terms of that.
10 Q Is there any allegation that my client
11 kissed your girlfriend?
12 A No. I was using a metaphor.
13 Q Is there any allegation that my client
14 touched your girlfriend's backside?
15 A No.
16 Q For all you know, it could be a
17 procedure for instructors to remain attached by
18 the hands to the client's hips, for all you know,
19 correct?
20 A For all I know, but from what I
21 witnessed on the plane, the other instructors,
22 nobody else was doing it except him. So, I mean,
23 am I inclined to believe that he was the only one
24 following the correct procedure or am I inclined
25 to believe everybody else was doing it the right

0063

1 David Kengle 63
2 way and he was not doing it the correct way?
3 Q How many instructors were on the plane?
4 A Off the top of my head, at least five,
5 six, seven.
6 Q You don't know how much experience any
7 of those instructors had, correct?
8 A Well, I remember asking an instructor,
9 I don't think it was my instructor, I think it was
10 while we were waiting outside for our jump and we
11 had time to kill, I believe I was asking somebody
12 that worked there how much experience you had to
13 have in order to be an instructor or even just
14 jump without a tandem. So they gave me the
15 answer. You know, ten jumps before you can jump
16 alone and ten thousand hours to be an instructor.
17 Q So you don't know how many hours any of
18 those instructors had, correct?
19 A No.
20 Q You don't know how many jumps any of
21 those instructors had done, correct?
22 A Right, including your client, no.
23 Q So you don't know if the other
24 instructors you saw other than my client were
25 acting appropriately or not according to

0064

1 David Kengle 64
2 procedures for tandem instructors, correct?
3 A I'm sorry?
4 MR. ANTOLLINO: Could you read it back.
5 (Whereupon, the requested section was
6 read back by this reporter.)
7 A I feel like you're asking me do I know
8 whether or not my instructor not touching me by
9 the hips or the other instructors not instructing
10 him -- not putting their clips on their students
11 -- I feel like you're asking me whether or not
12 that was correct protocol. I don't know if --
13 Q I asked you a question and she read it
14 back.
15 A I don't understand your question.
16 Q Doesn't matter what the meaning is.
17 A I feel its meaning is not -- the
18 question is not clear.
19 Q You don't know if any of those four
20 instructors other than my client followed proper
21 procedure at all?
22 MR. ZABELL: Objection to the question.
23 Q You can answer.
24 A From what I experienced and what I saw,
25 based on the video -- they were moving in sync

0065

1 David Kengle 65
2 with what I saw in the video. They were following
3 the procedures outlined in the video.
4 Did I know anything more than that, no.
5 In the video I watched, I didn't see anything
6 necessarily about it's necessary to hold hands on
7 her hip, and the -- put your chin on the neck and
8 touch your lips and roll it around your tongue. I
9 didn't see any of that on the video.
10 Q We're talking about the chin and hips,
11 and you don't know if that was according to
12 protocol or not, correct?
13 A No.
14 Q And you don't know whether the hands on
15 the hips were according to protocol or not, I
16 correct?
17 A No.
18 MR. ANTOLLINO: No further questions.
19 MR. ZABELL: I have a few questions.
20 EXAMINATION BY SAUL D. ZABELL, ESQ.:
21 Q Did your diving instructor rest his
22 chin on your shoulder?
23 A No.
24 Q Did you happen to observe Mr. Zarda
25 resting his chin on Ms. Orellana's shoulder?

0066

1 David Kengle 66
2 A Yes.
3 Q Did it look as if he was nuzzling her?
4 A I don't know about -- I mean, nuzzling
5 I think implies movement. I don't think that
6 there was movement. I think it was, you know,
7 resting more like I'm kind of doing right now in a
8 more familiar way. It was more than just leaning
9 over to whisper instructions or something like
10 that. I don't even think he was talking. I think
11 it was just a very casual cavalier movement to
12 kind of rest your chin on my girlfriend's
13 shoulder. I don't think I would call it nuzzling,
14 I think I would just call it resting.
15 Q Did you happen to recall any other
16 instructors resting their chin on the shoulder of
17 their jumping partner?
18 A No.
19 Q Did you happen to notice any of the
20 other instructors pulling on their lips and
21 motioning towards their dive partners?
22 A No.
23 Q Did your instructor rub his lips and
24 then motion to you?
25 A Not that I recall, no.

0067

1 David Kengle 67
2 Q I think you were trying to say it
3 before, before you were rudely interrupted, that
4 the video only showed a fraction of the actual
5 time that you were on the plane.
6 Is that correct?
7 A Correct.
8 Q And it only showed a fraction of the
9 time that you were descending from the plane, is
10 that correct?
11 A Correct.
12 Q Were there acts that you observed that
13 were inappropriate that were not on the video?
14 A Yes.
15 Q So there was much more contact than
16 just the brief part of the video that you were
17 shown, is that correct?
18 A Yes.
19 Q Did you complain about Mr. Zarda's
20 behavior?
21 A Yes.
22 Q What exactly did you complain about?
23 A I complained that -- I mean, it's like
24 I said, the experience that, you know, we had
25 planned, that we had thought about doing, it was

0068

1 David Kengle 68
2 supposed to be a special kind of experience. It's
3 not something you do everyday. I haven't gone
4 skydiving since, I'd never gone before.
5 This was -- we considered this to be a
6 special kind of thing and a thing we expected to
7 be an expense, so we expected a certain level of
8 quality with the experience, and I think
9 inappropriate behavior affected the quality of the
10 experience.
11 I also understand that, you know, it's
12 not to say that, you know, if the experience was
13 an hour and, you know, fifty-eight minutes of it
14 are -- there's nothing inappropriate, the two
15 minutes that are inappropriate are important, and
16 I feel like me getting subpoenaed here and me
17 having to go through all this when I'm being asked
18 to defend myself, I feel like the fact that I have
19 to explain all this, it seems very common sense to
20 me this is an inappropriate thing, and this is
21 something I wouldn't think twice about complaining
22 about a second time.
23 Q Did you complain because of Mr. Zarda's
24 sexual orientation?
25 A No.

0069

1 David Kengle 69
 2 Q Did Mr. Zarda's sexual orientation have
 3 anything to do with your complaint?
 4 A No, because -- to be honest, I don't
 5 know his sexual orientation. I don't anything
 6 about him. I know what he said, but how do I
 7 know? People can say whatever they want.
 8 The fact of the matter is what I
 9 witnessed didn't seem like -- I didn't think he
 10 was gay, homosexual, whatever term you want to
 11 use. I didn't think that from the acts I saw and
 12 the fact that he had to re-enforce it almost like
 13 a defense on his way going down just shows this is
 14 something that shouldn't have been a topic of
 15 conversation. It's something that shouldn't have
 16 been referenced. There should have been no call
 17 for it, in my opinion, when you're jumping out of
 18 a plane for nine hundred dollars and trying to
 19 feel as comfortable as possible.
 20 Q What do you mean when you say the
 21 behavior he was exhibiting did not seem like --
 22 A Again, I thought he was being very
 23 flirty, and usually people that are flirty are
 24 interested in the person they're flirting with.
 25 Q Did you get a sense from your

0070

1 David Kengle 70
 2 observations that he was interested in Ms.
 3 Orellana?
 4 A Yeah, whether for -- I mean, yes. I
 5 mean, I don't know that he was interested in the
 6 extent of like, you know, I want to try to get her
 7 number, you know, when her boyfriend -- when he's
 8 not looking, but I think he was interested in
 9 engaging in flirtatious behavior, yes.
 10 MR. ZABELL: Thank you. I have no
 11 further questions.
 12 MR. ANTOLLINO: I have at least one
 13 further question.
 14 Part of your complaint about Mr. Zarda
 15 was that he told Ms. Orellana that he was
 16 gay, correct?
 17 THE WITNESS: Say it again?
 18 (Whereupon, the requested section was
 19 read back.)
 20 THE WITNESS: Part of my complaint is
 21 that you're talking to my girlfriend about
 22 your sexual preference, sex life, your -- the
 23 fact that sex is a topic of conversation when
 24 you're talking to another person's girlfriend
 25 or significant other is an issue, yes.

0071

1 David Kengle 71
 2 MR. ANTOLLINO: No further questions.
 3 I'll be sending you a copy of your
 4 transcript with the exhibits and a subpoena
 5 for the pictures. So just get those for me.
 6 Thank you.
 7 (Whereupon, the examination of
 8 this witness was concluded at 4:55 P.M.)
 9 * * * *
 10 STATE OF NEW YORK
 11)ss.:
 12 COUNTY OF)
 13 I have read the foregoing record of my
 14 testimony taken at the time and place noted in the
 15 heading hereof and I do hereby acknowledge it to
 16 be a true and correct transcript of same.
 17
 18 _____
 19 DAVID KENGLE
 20 Subscribed and sworn to
 21 before me on this ____ day
 22 of _____, 2011.
 23
 24 _____
 25 NOTARY PUBLIC

0072

1 72
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1 1
2 UNITED STATES DISTRICT COURT
EASTERN DISTRICT
3 -----X
4 DONALD ZARDA,
5 Plaintiff,
6 - against - INDEX NO.:
CV-10- 7 ALTITUDE EXPRESS, INC., d/b/a
SKYDIVE LONG ISLAND AND RAY MAYNARD,
8 Defendants,
9 -----X
10 Bee Reporting Agency, Inc.
11 800 Veterans Memorial Highway
12 Hauppauge, New York
November 9, 13 1:30 P.M.
14
15
16 EXAMINATION BEFORE TRIAL OF ROSANA
17 ORELLANA, a non-party witness, taken by the
18 attorney for the Plaintiff, pursuant to Subpoena,
19 and held before Deborah Thier, a Notary Public of
20 the State of New York at the above-stated time and
21 place.
22
23 * * * *
24
25

1 2
2 APPEARANCES:
3
4 GREGORY ANTOLLINO, ESQ.
Attorney for the Plaintiff
5 18-20 West 21st Street - Suite 802
New York, New York 1 6
7
8 ZABELL & ASSOCIATES, P.C.
Attorneys for the Defendants
4875 Sunrise Highway - Suite 300
9 Bohemia, New York 110 BY: SAUL D. ZABELL, ESQ.
11
12 ALSO PRESENT:
13 JOHN SANCHEZ, ESQ.
DONALD ZARDA
14
15
16
17
18
19
20
21
22
23
24
25

pages 3-11 of colloquy intentionally omitted

12
13 ROSANA ORELLANA,
14 The witness herein, having first been duly
15 sworn by Deborah Thier, a Notary Public in and
16 for the State of New York, was examined and
17 testified as follows:
18 DIRECT EXAMINATION BY GREGORY ANTOLLINO, ESQ.:
19 Q Please state your name.
20 A Rosana Orellana.
21 Q What is your address?
22 A 9 Garfield Place, East Northport, New
23 York, 11731.
24 MR. ZABELL: I have been advised by Ms.
25 Orellana that she is sitting for this
deposition subject to being supplied with a
copy of this transcript for her review and
signature.
Mr. Antollino, by your silence, I
assume you are consenting to that?
MR. ANTOLLINO: I'll send her a copy,
sure.
Q Good afternoon, Ms. Orellana. I'm Greg
Antollino. You've gotten some communications from
me in the mail and I represent Mr. Zarda.

1 Rosana Orellana 13
2 A Okay.
3 Q Have you ever been deposed before?
4 A No.
5 Q Have you ever testified under oath?
6 A No.
7 Q Well, this is a judicial proceeding,
8 even though we're here in the basement someplace
9 in Hauppauge, that's being transcribed, and we're
10 going to seek information about some things that
11 happened on June 18th of 2010, I believe, and you
12 have to listen to my question before you give an
13 answer.
14 A Okay.
15 Q So when you said okay, you kind of
16 spoke over me just a little. It's kind of not
17 like a conversation that way.
18 You've gotta wait for the question to
19 be asked entirely before you give an answer,
20 because she's writing down my information and then
21 she's gonna write down your information.
22 When you start speaking, you have to
23 say a yes or a no. A nod of the head or uh-uh
24 will not answer the question appropriately,
25 because we don't know what that means in the

1 Rosana Orellana 14
2 transcript. You have to say yes or no or I don't
3 know.
4 If you don't understand one of my
5 questions, will you agree to tell me to rephrase
6 it?
7 A Yes.
8 MR. ZABELL: I object to the form of
9 the lecture. There's no reason why we
10 shouldn't continue.
11 Q Are you presently employed?
12 A Yes.
13 Q Who are you employed by?
14 A Besito, B-E-S-I-T-O. It's a
15 restaurant.
16 Q And you are a server there?
17 A That's correct.
18 Q What is your highest level of
19 education?
20 A High school.
21 Q Did you receive a subpoena to testify
22 here today?
23 A Yes.
24 Q Did you bring any documents in response
25 to that subpoena?

1 Rosana Orellana 16
2 Q Let's go down the list.
3 You have no written documents that
4 you've received from Mr. Saul Zabell?
5 A No.
6 Q You have no written documents you've
7 received from Altitude Express?
8 A No.
9 Q You have no written documents from Ray
10 Maynard?
11 A No.
12 Q Do you know who Ray Maynard is?
13 A Yes.
14 Q And you have no written documents from
15 any employees at Zabell and Associates?
16 A No.
17 Q Do you have any e-mails from any of
18 those entities?
19 A No.
20 Q Have you ever had any conversations
21 with Mr. Zabell?
22 A Yes.
23 Q When was the first conversation you had
24 with Mr. Zabell?
25 A I don't exactly remember the date, but

1 Rosana Orellana 15
2 A No.
3 Q Were there any documents that were
4 responsive to that subpoena?
5 A No.
6 Q I believe that in that subpoena I asked
7 you for any communications, any written
8 communications that you had had with Mr. Saul
9 Zabell or anyone at Altitude Express; is that
10 correct?
11 A I don't know -- Can you rephrase your
12 question? I don't understand what you're asking.
13 Q The subpoena asked you to bring in any
14 written communications --
15 A Okay.
16 Q -- among a bunch of people.
17 One of them was Saul Zabell and another
18 one was Altitude Express, and another one was any
19 employees of Altitude Express, in other words, any
20 employees of Zabell and Associates.
21 Do you remember that request?
22 A No.
23 Q Do you have any documents that are
24 responsive to that request?
25 A No.

1 Rosana Orellana 17
2 we did discuss the issue, he let us know what was
3 going on, and that was it.
4 Q Approximately, when was that?
5 A Five, six months ago. I really don't
6 -- It's not accurate. I don't remember the time
7 honestly. I don't remember the month. I remember
8 it was summertime, though.
9 Q It was summertime?
10 A Yes, it was warm outside.
11 Q It was warm outside?
12 A Yes.
13 Q It was in 2011?
14 A Yes.
15 Q You received a call?
16 A From who?
17 Q From Mr. Zabell?
18 A I didn't receive a call, my boyfriend
19 received a call.
20 Q Did you ever speak to Mr. Zabell
21 yourself?
22 A When he went to my apartment.
23 Q When was that?
24 A The same day.
25 Q Who was he with when he showed up at

1 Rosana Orellana 18
2 your apartment?
3 A By himself.
4 Q How long did he stay at the apartment?
5 A Twenty-five minutes, approximately.
6 Q What did you talk about with Mr.
7 Zabell?
8 A Just the whole issue. You know, he
9 asked me to explain the story to him and we
10 explained the story to him.
11 Q Are you sure that was this last summer
12 of 2011 or maybe that was 2010?
13 MR. ZABELL: Object to the form of the
14 question.
15 Q When he objects to the form, he's just
16 preserving the record so he can go to the judge
17 later and say the way I asked the question was
18 lousy, but if you want to answer the question, you
19 can go ahead and answer it.
20 A Well, the incident was about a year and
21 a half --
22 Q The incident I believe happened about a
23 year and a half ago.
24 A A year and a half ago. So, I mean, I
25 don't really -- don't remember the exact time, I'm

1 Rosana Orellana 20
2 A Where?
3 Q At this meeting with Mr. Zabell.
4 A It was my boyfriend.
5 Q So just the three of you?
6 A Yes.
7 Q This was at your home in North Babylon?
8 A No, East Northport.
9 Q That is where you lived with Mr.
10 Kengle?
11 A Yes.
12 Q How long have you lived there?
13 A A year and a couple of months.
14 Q When did you learn about a subpoena in
15 this lawsuit?
16 A When did I learn about it?
17 Q Yes.
18 A I guess whenever my boyfriend received
19 the phone call, he let me know -- I mean,
20 everything went through my boyfriend, I didn't
21 really do too much of the -- I didn't really get a
22 phone call. So that was a couple of months ago,
23 like three months ago, two months ago.
24 Q It was a couple of months ago that you
25 heard about the subpoena?

1 Rosana Orellana 19
2 sorry.
3 Q So you're not sure if it was the summer
4 of 2010 or 2011?
5 A No.
6 Q So he met with you, and what did he say
7 in that conversation?
8 A He just wanted to know what happened.
9 I mean, we did most of the talking. We explained
10 what happened and he just listened.
11 Q Did he offer to represent you in any
12 way?
13 A No.
14 Q Did he say that you might be a witness
15 in this case?
16 A He said there was a possibility.
17 Q What was your response to that?
18 A I really didn't want to deal with it.
19 I really had put it behind me. It happened, you
20 know, a long time ago.
21 To me, it wasn't something that I
22 wanted to think about it. So I didn't respond in
23 a positive way. I guess I just didn't want to go
24 through it.
25 Q Who else was there?

1 Rosana Orellana 21
2 A I mean, he said there was a possibility
3 that there would be a subpoena, so I was kind of
4 expecting it, but I didn't know about the exact
5 date until a couple of -- maybe a week or two ago
6 when he gave us the letter. Somebody sent us a
7 letter.
8 Q I think that was me who sent you a
9 letter.
10 A Yes. So that was the first time.
11 Q So that was the first time you learned
12 about a subpoena?
13 A Yes.
14 Q Did you ever tell Mr. Zabell that you
15 would allow him to accept a subpoena for you?
16 A Did I ever tell him?
17 Q Yes.
18 A I didn't think I had a choice. I think
19 when you're subpoenaed, it's a mandatory thing.
20 Q Well, that's true, but what I'm asking
21 is this.
22 Did you sell Mr. Zabell, I want you to
23 accept subpoenas for me in this case?
24 A No, I didn't want to -- I didn't want
25 the subpoena.

1 Rosana Orellana 22
2 Q I know you didn't want the subpoena.
3 Most people don't.
4 Did you ever say to Mr. Zabell, if
5 there is going to be a subpoena, they can send it
6 to you?
7 A No, I never said that.
8 Q How did you learn about this lawsuit?
9 A Through Mr. Zabell.
10 Q That was the day --
11 A That was the day.
12 Q -- when he came --
13 A Yeah.
14 Q Again, you have to let me finish.
15 That was either 2010 or 2011?
16 A Yes.
17 MR. ZABELL: Objection to the form.
18 A Yes, I believe it's 2011.
19 Q Last summer?
20 A Yeah, last summer. That's when it
21 happened.
22 Q When Mr. Zabell came to your home?
23 A Yes.
24 Q Do you remember what day of the week it
25 was?

1 Rosana Orellana 24
2 Q Who paid?
3 A Mr. Zabell.
4 Q How long were you there for?
5 A An hour.
6 Q What did you order?
7 A I had scallops in a seafood bisque.
8 Q What did Mr. Kengle order?
9 A He ordered steak.
10 Q Where is Paces Steakhouse?
11 A I don't know the exact -- I mean, it's
12 around the corner somewhere close.
13 Q Somewhere nearby?
14 A Yeah, somewhere nearby.
15 Q Did he call me at some point during
16 that lunch?
17 A He excused himself. I don't know if he
18 was calling you or --
19 Q Was there any alcohol served at this
20 lunch?
21 A No.
22 Q So you didn't see how much the check
23 was?
24 A No.
25 Q What did Mr. Zabell talk about at this

1 Rosana Orellana 23
2 A No.
3 Q Was it a weekday?
4 A I don't remember.
5 Q Was it a day that you had off of work?
6 A Yes.
7 Q What are your usual work days?
8 A I work in a restaurant business, so it
9 changes all the time. There is no set schedule.
10 Q Was Mr. Kengle working at the time?
11 A I don't know if he was unemployed or if
12 he was employed at the time.
13 Q Did you read anything about this
14 lawsuit in the media?
15 A No.
16 Q So you met Mr. Zabell for the first
17 time you believe in the summer of 2011, --
18 A Yes.
19 Q -- correct?
20 A Yes.
21 Q When was the next time you met with Mr.
22 Zabell?
23 A We had lunch before we got here.
24 Q Where did you go for lunch?
25 A Paces Steakhouse.

1 Rosana Orellana 25
2 lunch?
3 A Well, we were just talking about -- you
4 know, he was just asking us about the incident and
5 we just spoke about it again.
6 Q Did he say anything about the lawsuit?
7 A Well, I mean, we know the lawsuit is
8 going on, so, I mean, that's what we were
9 discussing.
10 Q So what did he say about the lawsuit?
11 A To be honest.
12 Q Did he say anything about the lawsuit?
13 A Itself, no.
14 Q Yes.
15 A I mean, even if he did, I don't really
16 know about lawsuits, so he said to be honest.
17 Q Did he say anything about Mr. Zarda?
18 A Mr. Zarda?
19 Q Yes.
20 A He just asked us if I knew who he was,
21 and I know who he is.
22 Q And you see him sitting across from me
23 today?
24 A Yes.
25 Q Did he say anything at all? Did he

1 Rosana Orellana 26
2 give you information about Mr. Zarda?
3 A No.
4 Q What about Mr. Zarda's attorney?
5 A No.
6 Q Did he say anything about the judge in
7 the case?
8 A No.
9 Q Did he say anything about Mr. Maynard?
10 A Who's Mr. Maynard?
11 Q Ray Maynard.
12 A Oh, yes.
13 Q Do you know Mr. Ray Maynard?
14 A I know who he is. I don't know him
15 personally.
16 Q And you met Ray Maynard before?
17 A I don't know. I don't know if we met
18 him at the skydive. I wouldn't remember,
19 honestly.
20 Q Let me ask you this.
21 Did you talk about before you came here
22 whether Mr. Kengle would be able to accompany you
23 in the deposition room?
24 MR. ZABELL: Objection to the form.
25 Q You can answer.

1 Rosana Orellana 28
2 Zabell?
3 A I personally didn't. I did not, did
4 not.
5 Q Did Mr. Kengle?
6 A I don't know.
7 Q Did Mr. Kengle talk to you about any
8 phone calls he had with Mr. Zabell?
9 A I don't know. I mean, he didn't speak
10 to me, and if he did, I didn't really think about
11 it, so....
12 Q I want you to think back to June 18th
13 of 2010.
14 A Okay.
15 Q Did you go skydiving on that day?
16 A Yes.
17 Q Why did you go skydiving?
18 A Something I always wanted to do. I'm
19 really into extreme stuff, so just, you know, one
20 of those things you do in a lifetime, I guess.
21 Q What do you mean you're really into
22 extreme stuff?
23 A You know, like I like -- I'd always
24 wanted to go bungee-jumping. It's one of those
25 things that I'd always wanted to do.

1 Rosana Orellana 27
2 A Yes.
3 Q What did he say?
4 A What?
5 Q What did Mr. Zabell say?
6 A He didn't really have an opinion on it.
7 He just asked me if I would be more comfortable.
8 You know, I don't deal well with stressful
9 situations, so it would make me more comfortable
10 for my boyfriend to be here. So it's not a big
11 deal. He didn't really have an opinion on it.
12 Q Did you feel it was a big deal to have
13 your boyfriend here?
14 A I would feel more comfortable if I had
15 my boyfriend.
16 Q Why?
17 A Just more comfortable.
18 Q Did you feel threatened in any way?
19 A No.
20 Q Other than that lunch that you had
21 today and that meeting with Mr. Zabell in the
22 summer of 2011, did you have any other meetings
23 with Mr. Zabell?
24 A No.
25 Q Did you have any phone calls with Mr.

1 Rosana Orellana 29
2 Q Had you been bungee-jumping before?
3 A No.
4 Q What other extreme things have you
5 done?
6 A Not too much, because I'm still young.
7 It's one of the things on my list.
8 Q How old are you?
9 A I am twenty.
10 Q In 2010 you were how old?
11 A In 2010 I was probably nineteen, just
12 turned nineteen.
13 Q So you haven't done any extreme things
14 other than skydiving?
15 A No.
16 Q So you want to go bungee-jumping?
17 A Yes.
18 Q Any other extreme things that you can
19 think of that you'd like to do?
20 A I don't know.
21 Q Have you been back to skydiving --
22 A No.
23 Q -- since?
24 A No.
25 Q Do you want to do it again?

1 Rosana Orellana 30
2 A Not -- not really. It's just one of
3 those things that I wanted to do once. I mean, if
4 it happens again, it happens. If it doesn't, it's
5 not important.
6 Q Have you seen any of the documents in
7 this case?
8 A No.
9 Q Have you listened to any videos or
10 audio tapes?
11 A Of what?
12 Q Involving this lawsuit.
13 A No.
14 Q Have you seen the video of you jumping
15 out of the plane?
16 A Yes.
17 Q When did you see that?
18 A When did I see the video?
19 Q Yes.
20 A The last time I saw it was like over
21 the summer when I was showing my boyfriend's
22 grandma.
23 Q Why were you showing your boyfriend's
24 grandma?
25 A Because she didn't know we'd skydived,

1 Rosana Orellana 32
2 Q So you've always had it in your
3 possession since 6-18 of 2010?
4 A Yes.
5 Q So how long at that point had you
6 wanted to go skydiving?
7 A I don't know. I mean, --
8 Q Who made the decision to go skydiving
9 on that day?
10 A I did.
11 Q How long had you planned it in advance?
12 A I don't know. I mean, it's not
13 something -- I don't know, like a few months or --
14 I really don't know.
15 Q Did you make an appointment or did you
16 go on that day?
17 A My boyfriend wanted to surprise me, so
18 he made the appointment.
19 Q When did you learn that you would be
20 going?
21 A I don't remember.
22 Q Why did you go to Skydive Long Island?
23 MR. ZABELL: Objection to the form.
24 You may answer.
25 A It was the closest location on Long

1 Rosana Orellana 31
2 so....
3 Q Were you showing off to her that you
4 had done it?
5 MR. ZABELL: Objection to the form.
6 You may answer.
7 Q You can answer.
8 A No, we were just showing her the
9 skydiving video.
10 Q Were you proud that you had done it?
11 A It's a big deal to jump out of a plane.
12 So, I mean, I wasn't proud that I had done it. It
13 was just something that I did.
14 Q So you were bragging to her in a way?
15 MR. ZABELL: Objection to form.
16 Q You may answer.
17 MR. ZABELL: You may answer.
18 A I wasn't bragging, no.
19 Q What did she think of it?
20 A She almost had a heart attack. She
21 thought it was crazy that we did it.
22 Q So the last time you saw it was this
23 summer.
24 Did you buy the videotape?
25 A Yes.

1 Rosana Orellana 33
2 Island, I believe.
3 Q Where did you learn about Skydive Long
4 Island?
5 A What did I learn?
6 Q No, where did you learn about it.
7 A My boyfriend learned about it, so he
8 told me about it.
9 Q So you were excited to go on that day?
10 A Yes.
11 Q What's the first thing you remember
12 when you got to Skydive Long Island?
13 A The first thing I remember, being very
14 excited, it was a very hot day outside, and a lot
15 of people walking around.
16 Q Do you remember how much it cost?
17 A Altogether with the videos, I'd say
18 almost a thousand, about. I don't know the exact
19 price. My boyfriend paid for it.
20 Q Explain to me when you arrived on the
21 grounds of Skydive Long Island, you drove up, you
22 parked your car. Tell me what happened next.
23 MR. ZABELL: Objection to the form.
24 You may answer.
25 A We walked over to the bench --

1 Rosana Orellana 34
2 actually, no, we had to watch a video, I think.
3 Just like a video just to let us know what we were
4 doing, and then -- we watched the video and then
5 after that we just sat outside until, you know, it
6 was our turn to go up, and I don't remember if we
7 were harnessed at that point or not, like we had
8 the harness on. I really don't remember.
9 Q Let's talk about the video. Was this a
10 video with an instruction on it, was it a video
11 with a lawyer warning you? What was on that
12 video?
13 MR. ZABELL: Objection to the form.
14 You may answer the question.
15 A The video was just, you know, an --
16 yeah, you know, an instruction video on how you
17 should jump out of the plane. I guess just
18 getting you excited. I don't remember what was on
19 the video really, but I feel like it was an
20 instruction video.
21 Q Was there a lawyer on that video? Do
22 you remember there being a lawyer?
23 A I don't remember.
24 Q Do you remember someone telling you
25 that there's risk of death?

1 Rosana Orellana 36
2 Q What about on the second through last
3 pages, there are a bunch of initials and there's a
4 signature on the last page. Are those all of your
5 handwritings?
6 MR. ZABELL: Objection to the form.
7 You may answer.
8 A Yes.
9 Q It looks like each paragraph starting
10 on page two or the unnumbered page two has
11 initials next to it.
12 Do you see that?
13 A Yes.
14 Q Did someone tell you that you needed to
15 do that?
16 A Yes, it's a requirement.
17 Q Did you read this document?
18 A Probably not.
19 Q Why not?
20 A I don't know. I mean, you think
21 skydiving -- you know, I'm not -- I didn't sit
22 there and read the whole packet.
23 Q Did you read any of it?
24 A I probably read the first page, but I
25 probably didn't read the whole thing.

1 Rosana Orellana 35
2 A Yes.
3 Q Did you sign any documents?
4 A I believe so, yes.
5 Q So I'm going to hand you what I'll have
6 the court reporter mark as Plaintiff's 1.
7 (Whereupon, the release was marked as
8 Plaintiff's Exhibit 1 for identification, as
9 of this date.)
10 MR. ZABELL: Just make sure you look
11 through all the pages so you know exactly
12 what the document is.
13 Q Do you recognize this, and take your
14 time?
15 A Yes.
16 Q What is it?
17 A An agreement for when you go skydiving.
18 Q I want you to look at the first page
19 only and tell me if that's your handwriting?
20 A Yes.
21 Q Is it all your handwriting or is some
22 of it someone else's handwriting?
23 A It looks like all of my handwriting,
24 except for this number over here. I didn't write
25 that, but everything on the line is my writing.

1 Rosana Orellana 37
2 Q Why not?
3 A I'm not gonna read a packet when I go
4 skydiving.
5 Q As best you can recall, you read the
6 first page, but not the rest?
7 A Yes.
8 Q After you signed this document and saw
9 the video, what's the next thing that happened?
10 What's is the in the accident thing you remember?
11 A After the video we sat outside for a
12 while. I don't remember how long we sat out
13 there. Then we met our instructors and they kind
14 of explained everything to us, and then we went on
15 the plane.
16 Q Was one of those instructors Don?
17 A I don't remember my boyfriend's
18 instructor.
19 Is this Don?
20 Q Yes.
21 A Okay. I'm sorry.
22 Then, yes.
23 Q So one of the instructors was Don?
24 MR. ZABELL: Let the record reflect
25 that the plaintiff raised his hand and waved.

1 Rosana Orellana 38
2 Counselor, do you agree with that
3 characterization of the physical events of
4 this deposition?
5 Q So one of those instructors was Don?
6 MR. ZABELL: By your silence I'll take
7 it as a yes.
8 MR. ANTOLLINO: I'm not engaging in --
9 MR. ZABELL: I'm not asking you to. I
10 would just like the record to reflect certain
11 physical things at this deposition that are
12 not necessarily verbal, and if you are
13 refusing to acknowledge them, then I'll go
14 ahead and place my observations on the
15 record, where I believe it's appropriate.
16 MR. ANTOLLINO: Are you finished?
17 MR. ZABELL: Now I am, yes.
18 Q One of the instructors was Don and you
19 don't remember the other instructor's name?
20 A No.
21 Q Do you remember what he looked like?
22 A Medium-sized. I remember dark hair, I
23 think, and skinnier gentleman.
24 Q When you say skinnier, you mean
25 skinnier than John?

1 Rosana Orellana 40
2 Q What did they instruct you? How did
3 they instruct you?
4 MR. ZABELL: Objection to the form.
5 You may answer.
6 A They just told us about the harness and
7 just let us know where we were supposed to place
8 our, you know, arms and our legs whenever we
9 jumped out of the plane, you know, so we wouldn't
10 get hurt.
11 Q Do you remember specifically how they
12 said you should place your arms and legs when you
13 jumped out of the plane?
14 A No.
15 Q Do you remember anything in particular
16 that Don said to you at that point?
17 A Before we entered the plane, no.
18 Q When you entered the plane, were you
19 fastened to Don?
20 A No.
21 MR. ZABELL: Objection to the form.
22 You may answer.
23 Q At some point did you get fastened?
24 A At some point I did, yes.
25 Q Do you remember whether that was in the

1 Rosana Orellana 39
2 A Yes.
3 Q Was that person's name Duncan, do you
4 recall?
5 A I don't remember.
6 Q Did they both give you instructions?
7 MR. ZABELL: I object to the form of
8 the question. You may answer.
9 A Yes. I remember meeting the other
10 gentleman first, but -- yes, I believe they both
11 gave us instructions.
12 Q When you say the other gentleman, you
13 mean the person who was not Don Zarda, correct?
14 A Yes.
15 Q So you met the other instructor first
16 and then you met John, correct?
17 A Yes.
18 Q At some point they both gave you
19 instructions?
20 A Yes.
21 Q Were they both friendly?
22 A Yes.
23 Q Do you feel that you were instructed
24 adequately?
25 A Yes. At that point, yes.

1 Rosana Orellana 41
2 plane, outside of the plane?
3 A In the plane.
4 Q How was it that you got fastened to --
5 Well, Don was your instructor, correct?
6 MR. ZABELL: Objection to form.
7 A Yes.
8 MR. ZABELL: Just slow down and give me
9 an opportunity to object.
10 THE WITNESS: Sorry.
11 MR. ZABELL: That's all right.
12 Q How was it that you were attached to
13 Don?
14 A I really couldn't see behind me, but I
15 think there were hooks or clasps or -- I don't
16 know, but we had a harness, so...
17 Q So you had a harness and Don did
18 something to attach your harness to his, is that
19 what you recall?
20 A Yes.
21 Q But you don't remember exactly what it
22 was?
23 A No.
24 Q Did you expect that he knew how to
25 attach the harness to you?

1 Rosana Orellana 42
2 A Yes.
3 Q So what happened next?
4 How were you feeling at that point?
5 MR. ZABELL: Objection to the form of
6 the multiple questions asked.
7 MR. ANTOLLINO: Withdrawn.
8 Q What happened next and -- Withdrawn.
9 How were you feeling at that point?
10 MR. ZABELL: Objection to the form.
11 You may answer.
12 A At that point I was feeling excited
13 that I was about to jump out of a plane.
14 Q Could you feel that you were on top of
15 someone?
16 A No, I didn't feel like I was on top of
17 someone.
18 Q How were you attached to Don?
19 A With the harness.
20 Q Well, just describe it. When you say
21 the harness, I mean, what do you mean by that?
22 MR. ZABELL: Objection to the form.
23 Q You can answer.
24 MR. ZABELL: You may answer either of
25 the two questions that are before you.

1 Rosana Orellana 44
2 A It was like a chair, almost like a
3 bench, and we had to sit with our legs, you know,
4 open, I guess. I don't really remember, but we
5 were sitting.
6 Q Was your back touching his chest in any
7 way?
8 A I don't remember.
9 Q What happened next?
10 A We were on the plane and the guys were
11 joking around, the other instructors were joking
12 around. I guess, you know, they made a joke like,
13 you know, to my boyfriend. They were like, you
14 know, how does it feel to have your girlfriend
15 strapped onto another man, and he laughed about it
16 because, you know, it was funny, and just jokes
17 like that were occurring at the moment.
18 Q Can you remember any other jokes?
19 A I can't remember any other jokes, no,
20 but there were some jokes.
21 Q Did you laugh at that?
22 A Yes.
23 Q Did that loosen the tension?
24 MR. ZABELL: Objection to the form.
25 You may answer.

1 Rosana Orellana 43
2 A I had a harness, I believe he had the
3 harness and parachute, and then we were attached
4 by a hook or a clip or something. I don't know.
5 Q Were you sitting on him?
6 A No.
7 Q How were you attached to him? Were you
8 standing?
9 MR. ZABELL: Objection to the form of
10 the multiple questions pending before you.
11 Q You can answer.
12 MR. ZABELL: Either one.
13 A We were sitting, but I wasn't on top of
14 him. We were sitting very close together, but I
15 was not on top of him.
16 Q Were you sitting side by side?
17 A Yes. I was sitting in front and he was
18 sitting behind me.
19 Q But you were not on top of him?
20 MR. ZABELL: Objection. Asked and
21 answered. You may answer.
22 A When we were sitting, I was not on top
23 of him, no.
24 Q So you were both on, what was it, a
25 chair?

1 Rosana Orellana 45
2 A It didn't loosen the tension, but we're
3 not -- but me and my boyfriend aren't -- we can
4 take a joke.
5 Q Did you both laugh at that?
6 A Yes.
7 Q Did you have a response or did you just
8 laugh?
9 A I probably just laughed, yes.
10 Q Did your boyfriend laugh?
11 A Yes, he laughed.
12 Q So who went out of the plane first, was
13 it your boyfriend and his instructor or was it you
14 and --
15 A My boyfriend and his instructor.
16 Q So you saw him descend from the plane,
17 and how soon after did you descend from the plane?
18 A I don't remember.
19 Q Was it more than a minute?
20 A Roughly a minute. You know, we have to
21 give them some time, you know, I guess to fall,
22 so....
23 Q Certainly no more than five minutes?
24 A I'd say no.
25 Q So at some point you descended from the

1 Rosana Orellana 46
2 open plane, correct?
3 A Yes.
4 Q How did that feel?
5 MR. ZABELL: Objection to the form.
6 You may answer.
7 A How did it feel?
8 Q Yes.
9 A As far as my feelings or on my body
10 or --
11 Q Let's start with physical feelings.
12 How did it feel physically?
13 A Physically, couldn't breathe. I mean,
14 there is a lot of air up there.
15 Q Was that something that you thought
16 that Don was doing wrong or you just thought
17 that it was the way that worked?
18 A It's probably the way that it worked.
19 Q Emotionally how did you feel?
20 A Emotionally -- well, at that point we
21 had -- I'd felt -- we had an incident on the
22 plane, so, I mean, I didn't really think about it,
23 you know, emotionally.
24 Q Wait a minute. You had an incident on
25 the plane?

1 Rosana Orellana 48
2 Q And you didn't say anything, but you
3 felt uncomfortable?
4 A Yes.
5 Q Was there anything else that made you
6 feel uncomfortable?
7 A That was it that made me feel
8 uncomfortable.
9 Q When you said he was being flirtatious,
10 what do you mean by that?
11 A He was kind of putting his finger on
12 his lip, you know, just the way -- I'm sure you
13 know what flirtatious is. He was kind of like
14 being flirtatious.
15 What really bothered me was just really
16 the hand on my hip, which I felt he shouldn't put
17 -- rest put his hand on my hip, and resting his
18 chin on my shoulder.
19 Q So really it was the hand on the hip
20 and the chin on the shoulder?
21 A Yes.
22 Q And you said he was touching his lips?
23 A Yes.
24 Q And you felt that --
25 A He was -- you know, I feel like you

1 Rosana Orellana 47
2 A Yes.
3 Q What was the incident on the
4 plane?
5 A He had his hand on my hip, I remember
6 that, and I remember him resting his chin on my
7 shoulder, and he was being a little flirtatious.
8 Q Don was being flirtatious?
9 A Yes.
10 Q In what way?
11 A Like I said, he had his hand on my hip,
12 and I felt a little uncomfortable, and he was
13 resting his chin on my shoulder.
14 Q Anything else?
15 A That's all I remember.
16 Q Did you tell him that you felt
17 uncomfortable?
18 A No.
19 Q Why not?
20 A Because I'm about to throw myself out
21 of a plane, so I don't think it's the appropriate
22 time.
23 Q So he had his hand on your hip and his
24 chin on your shoulder?
25 A Yes.

1 Rosana Orellana 49
2 should maintain some sort of professionalism when
3 you're -- I didn't mind the jokes, I just felt
4 like he should have been a little more
5 professional.
6 Q In what way was touching his lips
7 unprofessional?
8 A His face is very close to mine, so, I
9 mean, if he's doing that, it just makes me feel a
10 little awkward when I'm strapped to him.
11 Q I thought you had some distance between
12 you.
13 A I was sitting in front of him, he was
14 sitting right behind me. I wasn't sitting on him,
15 but there was very little distance. But if he
16 could reach and rest his chin on my shoulder, he
17 must have been close enough.
18 Q Out of the corner of your eye you
19 remember seeing him touch his lips?
20 A Yes. And he was resting his chin on my
21 shoulder. If he was resting his chin on my
22 shoulder, he was close.
23 Q Did you mention anything to him about
24 touching his lips and that you thought that was
25 unprofessional?

1 Rosana Orellana 50
2 A No.
3 Q Why not?
4 A Because I am about to throw myself out
5 of a plane. I don't think it's the appropriate
6 time.
7 Q Was there anything else that Don did
8 that made you feel uncomfortable?
9 A Yes, when we were free falling.
10 Q Yes?
11 A There's a point where when you let the
12 chute go out, you have time to talk and, you know,
13 he -- I remember him telling me two things.
14 I remember him telling me, I hope I
15 didn't make you uncomfortable on the plane, I'm
16 gay, and I remember him telling me that he had
17 recently broken up with his boyfriend, and that's
18 all I remember from that conversation.
19 Q Let me just get a picture of this in my
20 mind.
21 This is before he pulled the parachute
22 to go up or after?
23 A After.
24 Q So he pulled the parachute, it went up,
25 and you remember him saying, one, I hope I didn't

1 Rosana Orellana 52
2 A It made me uncomfortable because -- the
3 statement itself didn't -- it made me feel
4 uncomfortable because I wanted to learn about the
5 scenery, I wanted him to speak about what was
6 going on around us. I didn't want to hear about
7 his personal life.
8 Q How long were you up for when the
9 parachute went up?
10 A How long?
11 Q Yes.
12 A I mean, it's a couple of minutes -- I
13 mean, we're falling for a long time. I don't
14 remember how long it was.
15 Q And you expected him to point out
16 certain sceneries to you?
17 A Absolutely.
18 Q Did he point anything out at all?
19 A No.
20 Q So you felt uncomfortable because --
21 not because -- So are --
22 MR. ZABELL: Are you going to finish
23 that question or are you abandoning it?
24 MR. ANTOLLINO: Don't interrupt.
25 MR. ZABELL: I'm going to object to the

1 Rosana Orellana 51
2 make you feel uncomfortable on the plane, and I
3 just broke up with my boyfriend, something like
4 that?
5 A Yes.
6 Q Why is it you remember that?
7 A Because I felt uncomfortable when he
8 said it, so it just stuck to my -- you know, just
9 stuck with me.
10 Q There's basically three things he said.
11 He said first, I hope I didn't make you feel
12 uncomfortable, second, I'm gay, and third, I
13 recently broke up with my boyfriend.
14 Would you agree with that?
15 A Yes.
16 Q The first thing he said, I hope I
17 didn't --
18 A That was one line, I hope I didn't make
19 you feel uncomfortable, because I'm gay. It was
20 all in one sentence.
21 Q So it was kind of pushed together?
22 A Yes.
23 Q Did that make you feel uncomfortable, I
24 hope I didn't make you feel uncomfortable, I'm
25 gay?

1 Rosana Orellana 53
2 half-ass question. I'm assuming he doesn't
3 want you to respond to it if he's not
4 finished.
5 MR. ANTOLLINO: I withdraw the question
6 I hadn't finished and will ask it again.
7 Q So the only thing that made you feel
8 uncomfortable is, I hope I didn't make you feel
9 uncomfortable, I'm gay, is because he wasn't
10 talking about the scenery?
11 A Yeah, and because I didn't want to hear
12 about his personal life. I did not care.
13 Q His recently breaking up with his
14 boyfriend, is that something that made you feel
15 uncomfortable?
16 A I just didn't care.
17 Q Is there a difference between not
18 caring and making you feel uncomfortable?
19 MR. ZABELL: Objection to the form of
20 the multiple questions.
21 Q You can answer.
22 MR. ZABELL: You can pick a question
23 and answer it.
24 MR. ANTOLLINO: Listen, don't give
25 instructions to the witness and don't make

1 Rosana Orellana 54
2 speaking objections.
3 MR. ZABELL: I'm doing neither.
4 Q You can answer.
5 MR. ZABELL: Can you repeat the
6 question, please.
7 (Whereupon, the requested section was
8 read back.)
9 Q You can answer.
10 A It has to do with -- yes, there's a
11 difference, but I'm not -- I paid money, I'm not
12 enjoying what I'm doing because he is telling me
13 about his like. You know, I don't care. I do not
14 care. I think it was inappropriate for him to --
15 you know, we don't know each other, it's something
16 I didn't want to hear.
17 So I felt like it was inappropriate and
18 I felt like I didn't care to hear what he said,
19 and that's why I felt uncomfortable.
20 Q Did this ruin the whole jump for you?
21 A Yes.
22 Q The fact he gave you this personal
23 information or the fact that he didn't point out
24 the scenery?
25 A Both.

1 Rosana Orellana 56
2 A I'm sure it's not part of his job
3 description to tell me about his personal life.
4 Q Well, I'm just asking about the
5 scenery.
6 MR. ZABELL: There's no question.
7 A I would imagine, I would imagine it was
8 part of the job.
9 Q What scenery did you see? What did you
10 remember seeing up there?
11 A Trees, water, people landing.
12 Q Did you recognize any geographic
13 characteristics from where you were?
14 A I don't remember.
15 Q How long was it that you were going up?
16 A I don't remember.
17 Q How long was that that you were going
18 down?
19 A Couple of minutes.
20 Q Going up was between zero and five
21 minutes?
22 A I don't remember a time. It definitely
23 took longer to fall with the parachute. When you
24 go up with the parachute, it didn't take that
25 long, but you fall for a couple of minutes.

1 Rosana Orellana 55
2 Q Did the fact that -- If he had told
3 you, I'm a German, if he had said something like
4 that, would that have been just the same, just as
5 bad?
6 A Yeah, because I don't care. I'm here
7 to skydive. I want to know about what's going on.
8 I don't care who you are, where you're -- I mean,
9 it just wasn't my problem.
10 Q Did you have any conversation with him?
11 A Did I have any conversation with him?
12 Q Yes.
13 A I don't remember.
14 Q You don't remember if you said anything
15 to him at all?
16 A About me myself, I don't remember. I
17 probably didn't.
18 Q Did you ask him to point out any
19 scenery or anything like that?
20 A No. I think that's his job, or it is
21 his job to point out scenery.
22 Q How do you know?
23 A I'm imagining, right.
24 Q So you're not sure if that's part of
25 his job description, to point out scenery?

1 Rosana Orellana 57
2 Q So when you got up, when you say --
3 when you fell out of the plane, that was about how
4 long?
5 A When I'm falling?
6 Q Yes, falling.
7 A Very short.
8 Q When you went up after he pulled the
9 cord, how long was that?
10 A It was a short moment too, and then you
11 just fall. I just remember falling for a long
12 time.
13 Q Did he make you feel uncomfortable in
14 any way other than when he said these things about
15 how I hope you didn't feel uncomfortable on the
16 plane, I'm gay?
17 A Did he do anything?
18 Q Yes.
19 A The touching on the plane, and then the
20 phrases that I let you know.
21 Q What did you think he was referring to
22 when he said, I hope I didn't make you feel
23 uncomfortable?
24 A What did I think?
25 Q Yes.

1 Rosana Orellana 58
2 A Probably the jokes and probably the way
3 he was acting.
4 Q So the joke was something, according to
5 what you believe -- Withdrawn.
6 You believed that --
7 MR. ZABELL: Are you taking down --
8 MR. ANTOLLINO: Withdrawn.
9 Counsel, stop interrupting.
10 MR. ZABELL: You don't have a right to
11 withdraw things that are in the deposition.
12 You can say, I would like to withdraw that
13 question, but it still gets written in the
14 record that you're withdrawing that. But I'm
15 just confirming that in the record.
16 Q You said the jokes were something you
17 might be --
18 A I wasn't personally upset about the
19 jokes, I was upset about the touching and my free
20 fall.
21 Q Why didn't you get upset about the
22 jokes?
23 A Because I can take a joke.
24 Q But wasn't that about your personal
25 life?

1 Rosana Orellana 60
2 Q And the crossing of the line was
3 mentioning that he was gay?
4 A The crossing of the line was when he
5 put his hand on my hip and his chin on my
6 shoulder, and then talking about his personal
7 life. Not necessarily that he was gay, it was
8 just talking about his life.
9 Q Talking about his life was not okay,
10 but talking about your life was okay?
11 A I wasn't talking about my life, they
12 were talking about my life.
13 Q But that was okay?
14 A It wasn't that it was okay, it's just
15 that I can take a joke.
16 Q I don't understand what's the
17 difference between it not being okay and being
18 able to take a joke.
19 A Because I am not working there.
20 Q But they are the ones who are making
21 the jokes, right?
22 A What could I do?
23 Q So was it okay or not okay for them
24 making jokes about your personal life?
25 A It was --

1 Rosana Orellana 59
2 A No, not really. It was -- all of them
3 were joking, and we can take jokes. You know,
4 we're young people too, I can take a joke.
5 Q Well then, why, can't you take
6 information about his personal life when you're
7 free falling?
8 A Because that doesn't concern me.
9 Q Well, does your relationship with your
10 boyfriend concern him?
11 A Probably not.
12 Q So what's the difference between the
13 two?
14 A I wasn't -- he is on the job, he is
15 working, he is customer service. He has to make
16 people happy, and I'm sure people don't want to
17 hear about his personal life.
18 Q But they were joking about your
19 personal life. Isn't there a chance that that
20 made you unhappy?
21 A I'm not working, they are working.
22 Q But it was them joking about your
23 personal life up in the plane, isn't that correct?
24 A Everyone was joking, it was funny, and
25 then they crossed the line.

1 Rosana Orellana 61
2 MR. ZABELL: Objection. Asked and
3 answered.
4 Q You can answer.
5 MR. ZABELL: Now the answers to the
6 questions are going a little quick, and I'm
7 having a hard time and I'm sure the court
8 reporter is.
9 MR. ANTOLLINO: The court reporter
10 shook her head no.
11 MR. ZABELL: I'm going to ask Ms.
12 Orellana to slow down. It's okay. It's not
13 a conversation, it's a formal deposition, and
14 I just want to make sure that the record is
15 accurate and complete.
16 MR. ANTOLLINO: Could you read it back.
17 (Whereupon, the requested section was
18 read back by this reporter.)
19 Q Can you answer the question?
20 A Is it appropriate?
21 Q No, is it okay.
22 A Is it okay?
23 Q Right.
24 A It's not okay.
25 Q Who was making jokes about your

1 Rosana Orellana 62
2 personal life in the plane?
3 A It was the instructors on the plane.
4 Q It was Don and the other instructor,
5 right?
6 A Yes.
7 Q Did you ever have a -- You're a server,
8 right?
9 A Yes.
10 Q Do you ever joke with your clients?
11 A Do I joke with my clients?
12 Q With your customers, I should say.
13 A Yes.
14 Q You ever joke about your personal life?
15 A No.
16 Q Do you ever joke about their personal
17 life?
18 A No.
19 Q What kind of things do you joke about?
20 A Food related jokes, drink related
21 jokes, and that's it.
22 Q Anything else?
23 A No.
24 Q Did you ever joke about, you know, when
25 I go home to my boyfriend, blah, blah, blah,

1 Rosana Orellana 64
2 A I really can't say. A couple, though.
3 Q Were they friends of yours?
4 A Yes.
5 Q Are they still your friends?
6 A Yes.
7 Q Do you agree with their lifestyle?
8 A Absolutely.
9 Q Do you believe that being gay is a
10 choice?
11 A Yes, it's a choice -- I'm sorry, is it
12 a choice for them or -- I didn't understand that
13 question.
14 Q Is it a choice for them?
15 A They have a choice -- yeah, they have a
16 choice if they want to....
17 Q Be gay or not?
18 A I believe that's the way they're born.
19 It's the way they're born. It's, you know, being
20 straight, it's what you are, who you are.
21 Q So it's not a choice?
22 A It's not a choice, no.
23 Q Do you believe that gay people should
24 be protected from discrimination?
25 A Sure.

1 Rosana Orellana 63
2 anything like that?
3 A No.
4 Q Have you ever mentioned your boyfriend
5 to any customers you've ever served?
6 A Not unless they've known my boyfriend
7 or I know the people that I'm serving. But
8 otherwise, no.
9 Q So in some cases you have mentioned
10 your boyfriend to people you're serving?
11 A If I know them.
12 Q But in that instance you've been
13 serving them and they were your customers,
14 correct?
15 A Right, and I knew them.
16 Q And you knew them?
17 A Yes.
18 Q In that case, was it appropriate?
19 A Because I knew them, yes.
20 Q Have you known many gay people in your
21 life?
22 A Yes.
23 Q How many?
24 A In my life?
25 Q Yes.

1 Rosana Orellana 65
2 Q What's your opinion on gay marriage?
3 A Love is love, you know.
4 Q So you agree with gay marriage?
5 A I agree with it.
6 MR. ZABELL: That's sweet.
7 THE WITNESS: Thank you.
8 Q So what happened after you landed?
9 A After I landed?
10 Q Yes.
11 A We unharnessed each other and I went
12 home.
13 Q Was there anything else that happened?
14 A No. After that it's very -- you know,
15 you're kind of frazzled at the moment, because,
16 you know, you just landed and the whole experience
17 was crazy and exhilarating. But after that you
18 don't really stick around, you just pretty much go
19 home.
20 Q Did you --
21 A I believe they give you the videos, the
22 DVDs.
23 Q When was the first time you watched the
24 DVD?
25 A Probably as soon as I got home.

1 Rosana Orellana 66
2 Q Did you notice posing for a picture
3 with Don?
4 A Yes.
5 Q Do you remember when you went up with
6 the parachute, was there any improper touching at
7 that point that you believed happened?
8 A No.
9 Q So you went home and you watched the
10 video.
11 At some point did you mention to your
12 boyfriend why you were upset on the plane?
13 A Yes.
14 Q When was that?
15 A As soon as we got -- on the car ride
16 home, actually.
17 Q What did you say to him?
18 A Well, he mentioned to me that he wasn't
19 too happy with the plane. He said that he felt
20 like my instructor was inappropriate and he wasn't
21 happy.
22 Then I -- he was -- you know, he
23 wouldn't have been too upset after that, but then
24 I told him I was really unhappy when I was free
25 falling and he was telling me about his personal

1 Rosana Orellana 68
2 A What did he say specifically?
3 Q Yes.
4 A I don't remember at that point.
5 Q What did he say specifically about the
6 chin?
7 A He just told me that he thought
8 everything was inappropriate. He thought that his
9 instructor didn't have his hand on his hip and,
10 you know, his instructor didn't have his chin on
11 his shoulder, and he thought that was
12 inappropriate.
13 Q Was there anything about his instructor
14 that he thought was inappropriate?
15 A No.
16 Q What about the joking?
17 A He can take a joke. He thought it was
18 funny.
19 Q So he thought that was okay?
20 A He didn't -- he can take a joke. We're
21 young people, like I said, and he can take a joke.
22 Q So when you told your boyfriend, Dave
23 is his name, right?
24 A David.
25 Q When you told David about what Don had

1 Rosana Orellana 67
2 life instead of the scenery, and then he was
3 telling me what his instructor was telling him,
4 you know, his instructor was pointing out scenery,
5 letting him know where people are landing, having
6 a, you know, different conversation than I was
7 having.
8 Q So what did your boyfriend say he felt
9 was inappropriate about your instructor, that
10 being Don?
11 A He felt the way he was acting on the
12 plane.
13 Q Was what?
14 A The hand and chin.
15 Q Are you saying that he noticed that the
16 hand was on your hip and the chin was on your
17 shoulder?
18 A Yes.
19 Q Was there anything else that he noticed
20 that he felt was inappropriate?
21 A Well, he was on the plane, so that's
22 all he saw, and then I told him afterwards, but he
23 only saw what was on the plane.
24 Q Okay. So what did he say specifically
25 about the hand?

1 Rosana Orellana 69
2 said to you when you were free falling, what did
3 he say?
4 A He was angry.
5 Q How did he express his anger?
6 A He just told me he thought that was
7 inappropriate.
8 Q Did he raise his voice?
9 A No.
10 Q What happened next?
11 A Couple of days went by, and then -- I
12 had no idea that he had made the phone call to --
13 I can't remember his name -- Ray.
14 Q So you didn't call Ray?
15 A I did not call Ray.
16 Q Did you have any intention to call
17 Ray?
18 A I personally did not.
19 Q Why not?
20 A Because I don't like confrontations.
21 Q So in between the time that you spoke
22 about what Don said to you falling and the time
23 that your boyfriend said that he had called Ray,
24 did your boyfriend talk about the jump at all?
25 A Yes. He told me that he was upset. He

1 Rosana Orellana 70
2 thought that our experience was ruined and we
3 didn't really -- you know, it was my birthday, I
4 was excited, and it kind of ruined the experience
5 for me a little.
6 Q It ruined the experience for you a
7 little or entirely?
8 A Entirely.
9 Q So how long did you continue to talk
10 about it?
11 A Not that long.
12 Q So it's just in the car?
13 A In the car, when we got home, after the
14 video, and then he made the phone call. I don't
15 remember when exactly he made the phone call.
16 Q What did he say about the phone call?
17 A I wasn't there. I don't know.
18 Q Well, what did David say to you about
19 the phone call?
20 A He told me he was upset, so he called
21 Skydive and complained.
22 Q What did he tell you he said to
23 Skydive?
24 A He didn't tell me.
25 Q He didn't tell you who he spoke to?

1 Rosana Orellana 72
2 Now, you said earlier that you only
3 read the first page of this document, correct?
4 A Okay.
5 Q Is that correct?
6 A Yes.
7 Q So it would appear that you hadn't read
8 the page that includes paragraph thirteen,
9 correct?
10 A Yes.
11 Q Yes, you did not read it, correct?
12 A Yes.
13 Q Just to clear it up for the record.
14 A I did not read it.
15 Q This was a tandem jump, yes?
16 A Yes.
17 Q When your boyfriend called, what did
18 you think Ray was gonna do in response to this?
19 MR. ZABELL: Objection. You may
20 answer, if you can.
21 A I don't know. I didn't think about it.
22 Q Did you have any expectations as to
23 what might happen?
24 A No.
25 Q Did you think that maybe, you know, you

1 Rosana Orellana 71
2 A He told me he spoke to Ray, but that
3 was it.
4 Q Did he tell you what Ray said?
5 A No.
6 Q Did Ray call you shortly thereafter?
7 A No.
8 Q Did you call Ray?
9 A No.
10 Q Have you ever spoken to Ray?
11 A No.
12 Q I want you to take a look at Exhibit 1
13 and turn to the second to last page.
14 Do you see paragraph thirteen there?
15 A Yes.
16 Q I'm going to read that aloud.
17 If I'm making a student jump, I
18 understand that I will be wearing a harness which
19 would need to be adjusted by the jump master and
20 my jump is a tandem jump. I understand that the
21 tandem master will attach my harness to his and
22 that this will put my body in close proximity to
23 tandem master. I specifically agree to this
24 physical conduct between the tandem master and
25 myself.

1 Rosana Orellana 73
2 could get another jump?
3 A No.
4 Q Did you expect that Ray would get --
5 that Don would get fired?
6 A No.
7 Q Did you think that it was what you
8 wanted to happen?
9 A No.
10 Q Let's take a look at the video of your
11 jump.
12 MR. ZABELL: Are you planning on
13 introducing the video as an exhibit?
14 MR. ANTOLLINO: You know, I don't have
15 a disk, and we're just going to have to deem
16 this thing as an exhibit.
17 MR. ZABELL: I can't deem it as an
18 exhibit unless I have an exact copy of
19 what --
20 MR. ANTOLLINO: All right. I'll mail
21 it to you then.
22 (Whereupon, the DVD was deemed marked
23 as Plaintiff's Exhibit 2 for identification,
24 as of this date.)
25 MR. ANTOLLINO: For the record, I'm

1 Rosana Orellana 74
2 looking at a file called Skydive AVLAVI, and
3 this is -- I'm trying to get more information
4 on it -- this is on my laptop right now, and
5 I'll burn a disk or send an e-mail to Mr.
6 Zabell and I'll attach this to the transcript
7 that I send to Ms. Orellana.
8 Q All right. I'm going to show you what
9 we're watching on the computer, Skydive AVLAVI.
10 So we're watching this. Right now we're just
11 seeing a shadow. Just tell me when you recognize
12 this.
13 Is that you?
14 A Yes.
15 Q In that scene you were right next to
16 Don. This is at or about .08 of the video.
17 Did Don do anything inappropriate at
18 that moment?
19 A No.
20 MR. ZABELL: Why don't you make it
21 larger, Counsel.
22 MR. ANTOLLINO: I'm sorry?
23 MR. ZABELL: Why don't you make it
24 larger.
25 MR. ANTOLLINO: I don't think so.

1 Rosana Orellana 76
2 Q We've moved to here. We're at marker
3 number fifty. Let's start this again.
4 MR. ZABELL: It's just skipping, the
5 disk. It's twenty-six, right?
6 MR. ANTOLLINO: Yes, I'm sorry.
7 MR. ZABELL: You're just skipping the
8 footage?
9 MR. ANTOLLINO: Yes. That was just
10 footage of the airplane.
11 MR. ZABELL: I don't necessarily agree
12 with that.
13 MR. ANTOLLINO: We can go back and look
14 at it frame by frame if you want, but I don't
15 think there was anything --
16 MR. ZABELL: If you have no interest in
17 going through frame by frame, that's fine.
18 Q We're looking at frame fifty-three. Is
19 Don doing anything inappropriate here?
20 A No.
21 Q What is it that you're seeing right
22 now?
23 Let me just go back a second.
24 I saw that Don was putting his hand in
25 his mouth and smiling. Was that inappropriate?

1 Rosana Orellana 75
2 It'll lose -- All right, that's better.
3 Q All right. I just showed a picture of
4 you. There's a screen shot at timer number
5 twenty-five.
6 Is there anything in here that Don is
7 doing that's inappropriate?
8 A No.
9 Q Let's go back. I'm at screen
10 twenty-five and there's nothing at twenty-five
11 that's inappropriate.
12 What about twenty-six?
13 A No.
14 Q It appears that his chin is very close
15 to your shoulder, is that right?
16 A Fairly close.
17 Q Was his hand on your hip at this time?
18 A I don't remember, but I don't think so,
19 because I see his hand on the side.
20 Q It appears that everyone is having a
21 good time in this video, right?
22 A Yes.
23 Q So is this before or after you felt
24 uncomfortable?
25 A Probably before.

1 Rosana Orellana 77
2 A No.
3 Q At that point you said that it's great,
4 you can't wait to jump, correct?
5 A Yes.
6 Q So was there anything inappropriate up
7 to that point?
8 A Up to that point, no.
9 Q So here at frame 107, and Don is
10 attached to you it appears, and is that an
11 inappropriate use of his proximity to you?
12 A I can't really see from here, I'm
13 sorry. It's fairly blurry.
14 Q We're just at 107. What can you see?
15 A It's blurry.
16 Q Do you see yourself and Don in
17 here?
18 A I can see myself and Don.
19 Q Do you see his chin in there?
20 A I can't. It's blurry.
21 Q All right. Let's start again.
22 All right. You see that we're at 107
23 again. Can you see that?
24 You can't?
25 A It's blurry. I can see him, I can see

1 Rosana Orellana 78
2 myself. I can't tell where his chin is. It's
3 dark, I have a harness.
4 Q You see you're smiling in there?
5 A Yes.
6 Q Is that a fake smile?
7 A No.
8 MR. ZABELL: This must be a good
9 looking record.
10 Q Describe how you go out of the
11 airplane.
12 A Like he's going out -- I go first. I
13 don't remember. I think I went first.
14 Q We're at 119 now. It appears that the
15 instructor is on the bottom and he has the student
16 on his lap basically, is that correct?
17 A I was never on his lap, no. Only on
18 his lap when he harnessed me. I wasn't on his
19 lap, I was sitting right in front of him.
20 Q Do you see those two people there?
21 A Yes.
22 Q And they're going out of an airplane?
23 A Yes.
24 Q Is that your boyfriend right there?
25 A Yes, it is.

1 Rosana Orellana 80
2 Q It appears that you're smiling there?
3 A Yes.
4 Q It appears that his chin is very close
5 to yours, doesn't it?
6 A Yes.
7 Q Do you want him to be as close as
8 possible to protect you in that circumstance?
9 MR. ZABELL: Objection to the form.
10 You may answer.
11 A I said -- I didn't finish my sentence.
12 Q Go ahead.
13 A Did I want him to be as close to me so
14 he could protect me? We are strapped together, so
15 I didn't necessarily want him to be as close to me
16 so he can protect me, but we are strapped
17 together.
18 Q You wanted him to do whatever needed to
19 be done in order to protect you, correct?
20 A Yes.
21 Q You're falling out of the plane now.
22 We're at marker number 135.
23 Is Don doing anything inappropriate
24 here?
25 A No.

1 Rosana Orellana 79
2 Q You're saying you did it differently
3 than your boyfriend?
4 A No, I did it the same.
5 Q Does it appear to you that -- Well,
6 let's go back a little.
7 A It's very blurry. I'm sorry, I can't
8 see.
9 Q Do you wear glasses?
10 A No.
11 Q What is your vision?
12 A Twenty/twenty.
13 Q Hold on one second.
14 You see that right there? Does that
15 not appear to you as if David is on the lap of the
16 other instructor?
17 A No.
18 Q So you're saying they're front to
19 front?
20 A Yes. As it appears.
21 Q All right. Here's a picture at second
22 marker 133.
23 Is Don doing anything inappropriate
24 here?
25 A No.

1 Rosana Orellana 81
2 Q We've just watched 135 to 143.
3 Did you see all that?
4 A Yes.
5 Q Did Don do anything inappropriate
6 during that section?
7 A No.
8 Q We're now at 146 and you watched 9 to 146 and Don
9 touched your arms.
10 Was that inappropriate?
11 A No.
12 Q You just grabbed someone's hands.
13 We're now at 150.
14 Do you know whose hands those were?
15 A No.
16 Q You just watched from whatever the last
17 marker was to 211 -- I'm sorry, to 221, and Don
18 just pulled the ripcord.
19 Was there anything we watched in that
20 last section where Don was inappropriate?
21 A No.
22 Q We've gone from the last marker number
23 to 241.
24 Is that you landing with Don?
25 A Yes.

1 Rosana Orellana 82
2 Q Did he land you safely?
3 A Yes.
4 Q Did you suffer any injury?
5 A No.
6 Q Was there any physical pain that you
7 suffered as a result of the jump?
8 A No.
9 Q Was there any stomach upset or anything
10 like that?
11 A No.
12 Q That is you landing with Don right now
13 at 241, correct?
14 A Yes.
15 Q I just stopped at 245. Someone said,
16 nice. Do you know who that was?
17 A No.
18 Q So I just stopped it at 249 and someone
19 said -- you're taking off your goggles and someone
20 said, you feeling all right, and what was your
21 response?
22 MR. ZABELL: Objection to the form of
23 the question. You may answer.
24 Q You can answer.
25 A Nice.

1 Rosana Orellana 84
2 You may answer.
3 A Yes.
4 Q It appears that you walked close to him
5 and put your face close to him to take a picture
6 with him, is that correct?
7 MR. ZABELL: Objection to form. You
8 may answer.
9 A It was an instruction.
10 Q Who instructed you?
11 A One of the instructors there.
12 Q So did you feel that you had to follow
13 that instruction to pose with someone?
14 A Absolutely.
15 Q So you did it involuntarily?
16 A I didn't do it involuntarily, but they
17 said, pose, and I posed.
18 Q So you voluntarily posed with Don,
19 correct?
20 A Yes.
21 Q And you put your face close to his,
22 right?
23 A Yes.
24 Q And you're smiling in that picture,
25 correct?

1 Rosana Orellana 83
2 Q How were you feeling at that time?
3 A Probably nice.
4 Q Don just said, I think she's doing
5 better than you, man.
6 Do you know who he was talking to?
7 A No.
8 Q Was there anything inappropriate in
9 that conversation?
10 A No.
11 Q What did you just say it was?
12 A It was awesome.
13 Q Were you lying?
14 A The falling out of the plane was
15 awesome. The free fall wasn't awesome.
16 Q So wait a minute. You just said it was
17 awesome and you gave a high five.
18 A Yes.
19 Q When you said it was awesome, you were
20 just referring to part of the experience?
21 A Yes.
22 Q Oh, wait, that's you posing right
23 there, that's at the three minute marker, is that
24 correct?
25 MR. ZABELL: Objection to the form.

1 Rosana Orellana 85
2 A Yes.
3 Q And you just put up your hand.
4 What did that mean when you put up your
5 hand?
6 A I don't know.
7 Q Let's go back and look at that again.
8 Is that Mr. Kengle there?
9 A Yes.
10 Q You put up your hand. Did you see
11 that, again, --
12 A Yes.
13 Q -- that little hand signal?
14 A Yes.
15 Q What does that mean?
16 A I don't know.
17 MR. ZABELL: If I may make an
18 observation, I always termed that the surf
19 naked sign.
20 MR. ANTOLLINO: I believe it's hang
21 loose.
22 Q Do you know if that -- Have you ever
23 heard of hang loose?
24 A No.
25 Q Is it an expression of happiness, or

1 Rosana Orellana 86
2 what kind of expression is it?
3 A I don't know. It's something I did. I
4 don't think it had any meaning behind it.
5 Q Let me ask you this. If you give
6 someone the middle finger, does that have a
7 meaning behind it?
8 A Yes.
9 Q But if you give someone the hang loose
10 signal we'll call it, does that have a meaning
11 behind it?
12 A I'm sure it does.
13 Q What would you say is the difference
14 between the middle finger and the hang loose sign?
15 A Middle finger has a bad meaning and
16 hang loose can have a -- many feelings, you're
17 happy, something you did because you felt like
18 doing it. To me it doesn't have a meaning.
19 Q Did Don tell you anything about his
20 personal escapades while you were in the airplane
21 or falling out of the airplane?
22 MR. ZABELL: Objection to the form.
23 You may answer.
24 A By escapades, what do you mean?
25 Q Do you understand what the word

1 Rosana Orellana 88
2 counter to approved or a conventional
3 conduct.
4 MR. ZABELL: Ms. Orellana, I'm advising
5 you that Mr. Antollino is not under oath, so
6 you have no obligation to believe anything he
7 says.
8 MR. ANTOLLINO: She asked for a
9 definition. I'm giving it to her.
10 MR. ZABELL: No, I don't believe she
11 did.
12 MR. ANTOLLINO: Can you read back where
13 she said, what does escapade means.
14 MR. ZABELL: Please.
15 (Whereupon, the requested section was
16 read back by this reporter.)
17 Q So the court reporter just read back
18 when you had asked, what do you mean by escapade,
19 correct?
20 A Yes.
21 Q So we're going to define escapade as an
22 adventurous action that runs counter to approved
23 conduct.
24 Did using --
25 MR. ZABELL: I repeat my direction.

1 Rosana Orellana 87
2 escapades to mean?
3 A I don't know. I don't know the word.
4 Q You never heard the word escapade?
5 A No.
6 Q Have you ever used that word before?
7 A No.
8 Q Let's see if I can find a definition of
9 escapade.
10 Have you ever heard the word before?
11 MR. ZABELL: Objection. Just asked and
12 just answered.
13 Q You've never heard the word escapade
14 before?
15 MR. ZABELL: Objection. Just asked and
16 just answered.
17 A No.
18 Q You understand you're under oath?
19 A Yes.
20 MR. ZARDA: Dictionary.com.
21 MR. ZABELL: Let the record reflect
22 that we're waiting while counsel plays with
23 his phone for the definition of escapade.
24 MR. ANTOLLINO: The definition of
25 escapade is an adventurous action that runs

1 Rosana Orellana 89
2 Q Using that definition, did Don tell you
3 anything about his personal escapades that you can
4 recall? Did Don tell you about any action that
5 runs counter to approved conduct?
6 A No. The only thing he told me was that
7 he had recently broken up with his boyfriend and
8 he said he hoped he didn't offend me on the plane.
9 Q When you said that Don was flirting
10 with you, did you think he was trying to come on
11 to you?
12 A No.
13 Q Was he sexually harassing you?
14 A It's a form of sexual harassing. Yes.
15 Q In what way?
16 A He has his hip on my -- his chin on my
17 shoulder and his hand on my hip.
18 Q That was sexual harassment in what way?
19 A I didn't give him permission to do
20 that.
21 Q Well, you signed this agreement, didn't
22 you? You signed this agreement, correct?
23 A That says we are going to be in close
24 proximity, but it doesn't mean that somebody is
25 going to rest their chin on my shoulder.

1 Rosana Orellana 90
2 Q Were you aware that close proximity of
3 the harness has a hip attachment point that
4 required him to attach his harness to yours at the
5 hip?
6 A At the hip?
7 Q Yes.
8 A Yes.
9 Q In fact, the briefing video that you
10 saw before you went on the jump showed you that
11 you would be attached at the hip, correct?
12 A Yes.
13 MR. ZARDA: Can I ask you a question?
14 MR. ANTOLLINO: No. Shut up.
15 MR. ZABELL: You can excuse yourself if
16 you like.
17 MR. ANTOLLINO: We will in a second.
18 MR. ZABELL: You don't have to tell
19 your client to shut up.
20 MR. ANTOLLINO: I know him well enough
21 that I can say that.
22 Q Did Don say anything to you regarding,
23 don't worry about how close I am because I'm gay?
24 Did he say something like that?
25 A I don't remember.

1 Rosana Orellana 92
2 is I tried it with this, but I have the
3 transferred file.
4 MR. ZABELL: Just as long as you send
5 me a copy of the transferred file so we all
6 know we're looking at the same thing.
7 MR. ANTOLLINO: I'm looking at this
8 file and making it bigger. I tried several
9 times to make it bigger. I can't make it
10 bigger.
11 I'm going to go on the other side to
12 look at the video with you.
13 MR. ZABELL: Counsel, you have to make
14 sure you don't lean over the deponent.
15 If he makes you feel uncomfortable,
16 just move closer to me.
17 Q Is that Mr. Kengle you see?
18 A Yes.
19 Q It appears that he is at Skydive Long
20 Island?
21 A Yes.
22 Q Am I making you uncomfortable?
23 A A little bit.
24 Q How far would you like me to get from
25 you?

1 Rosana Orellana 91
2 MR. ANTOLLINO: Let me just go outside
3 with Don and we'll go over some things, and
4 we're almost done.
5 (Whereupon, a short break was taken.)
6 MR. ANTOLLINO: So I'm going to deem
7 marked file VTS_01_1 -- Are you on the phone,
8 Counsel?
9 MR. ZABELL: No.
10 MR. ANTOLLINO: I can hear your
11 phone --
12 MR. ZABELL: I'm not on the phone,
13 Counselor.
14 MR. ANTOLLINO: Are you done?
15 MR. ZABELL: Go ahead.
16 MR. ANTOLLINO: I'm deeming marked
17 VTS_01_1.VOB dated February 19th, 2011, 171.1
18 megabytes, as Plaintiff's Exhibit 3.
19 (Whereupon, the DVD was deemed marked
20 as Plaintiff's Exhibit 3 for identification,
21 as of this date.)
22 MR. ZABELL: I just ask that you
23 prepare a copy for me of what is being
24 admitted into evidence here.
25 MR. ANTOLLINO: The problem with that

1 Rosana Orellana 93
2 A Just a little bit.
3 MR. ANTOLLINO: So let the record
4 reflect we're about twelve inches away from
5 each other and you've moved another foot
6 away.
7 Q Is that correct?
8 A Yes.
9 Q And the reason we're this close is
10 we're trying to look at the video.
11 You're three inches from Mr. Zabell.
12 A Yes.
13 Q Do you feel I'm going to harm you in
14 some way?
15 A No.
16 Q Why is it that you feel uncomfortable?
17 A Because you're reaching over and I'm
18 claustrophobic, I need my own space.
19 Q But you're very close to Mr. Zabell,
20 though.
21 A Facing away from him.
22 Q That's you. Is that the same jump
23 we're at?
24 A Yes.
25 Q We're just going to watch it the whole

1 Rosana Orellana 94
2 way through, and I want you to just raise your
3 hand if you see something inappropriate that's
4 happening, okay, and if so, I'll stop it and we'll
5 make a record of it.
6 All right. So we've watched the whole
7 tape and you didn't raise your hand.
8 Do you want to watch it again?
9 A No.
10 Q Did you feel that there was anything
11 there that was inappropriate?
12 A No.
13 Q So the answer is, just to make sure we
14 don't have any double negatives, --
15 MR. ZABELL: Counsel, you can sit down.
16 MR. ANTOLLINO: Counsel, no, I'm going
17 to use this again. You don't tell me what to
18 do.
19 MR. ZABELL: I didn't.
20 MR. ANTOLLINO: You don't own the
21 place.
22 MR. ZABELL: I didn't say I owned the
23 place. I don't think there's anything in the
24 place that says I own it.
25 MR. ANTOLLINO: Quit acting like you

1 Rosana Orellana 96
2 Q Do you know why you smiled?
3 A Because I was excited.
4 Q There was another expression. What was
5 that?
6 MR. ZABELL: Objection to the form of
7 the question. You may answer.
8 A I smiled.
9 Q Was that more like a kiss?
10 MR. ZABELL: Objection to the form of
11 the question.
12 A A smile.
13 Q Well, you pursed your lips, right?
14 A Yes.
15 Q Someone might have interpreted that as
16 a kiss.
17 A Someone might have.
18 Q We're at or just before 118.
19 All right, I just have a few more
20 questions.
21 It was pretty loud up in the airplane,
22 wasn't it?
23 A Yes.
24 Q Were there instructions that you were
25 supposed to follow when you were doing this jump?

1 Rosana Orellana 95
2 own --
3 MR. ZABELL: I'm saying so you don't
4 question the deponent in an intimidating
5 manner, you sit down.
6 MR. ANTOLLINO: I'm going to use the
7 video again.
8 MR. ZABELL: Okay. Go ahead.
9 Q Do you remember there was a point when
10 the video was right on you? Do you remember that
11 point?
12 A In the previous video?
13 Q No, in this video.
14 Let's see if we can fast forward to
15 that point.
16 I'm trying to fast forward, but it's
17 not working.
18 MR. ZABELL: You just started it over
19 again.
20 MR. ANTOLLINO: I'm trying to fast
21 forward. Thanks.
22 Q Did you just see that?
23 A Yes.
24 Q What was your expression there?
25 A I smiled.

1 Rosana Orellana 97
2 A Certain instructions?
3 Q Yes.
4 A Yes.
5 Q Did you want those instructions to be
6 clearly understood by you?
7 A Yes.
8 Q Did you want Don to make sure that you
9 clearly heard the instructions?
10 A Yes.
11 Q Did you want him to yell the
12 instructions at you?
13 A Loud enough so I could hear them.
14 Q Did you show anyone your video?
15 A Anyone else?
16 Q Yes. Other than your boyfriend's
17 grandmother.
18 A His parents. I believe I showed his
19 parents.
20 Q When was that?
21 A I don't remember the exact date.
22 Q Did you show anyone else?
23 A I believe that's it. I'm not sure if I
24 showed anybody else.
25 Q Do you know if Mr. Kengle asked for his

1 Rosana Orellana 98
2 money back from Mr. Maynard?
3 A No.
4 Q Did Mr. Maynard offer him a free jump?
5 A I -- No, he didn't.
6 Q How do you know that?
7 A He didn't tell me about it, so I'm
8 assuming.
9 Q If Don had yelled at you in the
10 airplane, do you think that would have been
11 professional?
12 A If it's loud and it's for my safety,
13 yes.
14 Q Would you want him to use his judgment
15 as to how you can best understand his
16 instructions?
17 A Yes.
18 Q Did you get all of the instructions
19 that you needed to get in order to complete the
20 dive safely?
21 A Yes.
22 Q Were there any times that Mr. Zarda
23 moved closer to you to whisper into your ear or to
24 speak clearly into your ear in giving those
25 instructions?

1 Rosana Orellana 100
2 you?
3 A No.
4 Q Did you have an issue with the fact
5 that he disclosed it to you?
6 A Yes.
7 Q Why is that?
8 A Because I didn't care. You know, I
9 didn't care if he was straight or gay or -- I
10 didn't care about his personal life.
11 Q Now, you were shown a video of your
12 jump, is that correct?
13 A Yes.
14 Q Did that video contain every minute
15 that you were strapped to Mr. Zarda?
16 A No.
17 Q Did you care that you were strapped to
18 Mr. Zarda?
19 A No.
20 Q Did you care that you were close to Mr.
21 Zarda?
22 A No.
23 Q Well, what was it about contact with
24 Mr. Zarda that bothered you?
25 A His hand on my hip, it was resting on

1 Rosana Orellana 99
2 A I don't remember.
3 Q You talked earlier about being
4 claustrophobic. Have you ever been diagnosed with
5 claustrophobia?
6 A No.
7 Q When you say you are, is it just -- I
8 mean, when did you learn that you were
9 claustrophobic?
10 A I'm not -- I haven't been diagnosed
11 that I'm claustrophobic, I just don't like being
12 in small spaces, you know.
13 Q This airplane was a very small space,
14 correct?
15 A Yes.
16 Q And you were strapped very tightly to
17 someone you had never met before, correct?
18 A Yes.
19 MR. ANTOLLINO: Nothing further.
20 MR. ZABELL: I have a few questions.
21 EXAMINATION BY SAUL D. ZABELL, ESQ.:
22 Q How are you, Ms. Orellana?
23 A Very good.
24 Q Ms. Orellana, did you have any issue
25 with Don Zarda's sexuality once he disclosed it to

1 Rosana Orellana 101
2 my hip, and he put his chin on my shoulder.
3 Q Could you describe how he put his chin
4 on your shoulder?
5 A Yes. It was resting on my shoulder.
6 MR. ZABELL: Let the record reflect Ms.
7 Orellana moved in about six to eight inches
8 with her chin indicating that it was his chin
9 moved forward.
10 Q Did you find anything inappropriate
11 about him resting his chin on your shoulder?
12 A Yes.
13 Q What was that?
14 A It was unnecessary.
15 Q Did you find anything inappropriate
16 with Mr. Zarda putting his hand on your hip?
17 A Yes.
18 Q What was that?
19 A It was unnecessary. I mean, he didn't
20 have to rest his hand on my hip. Once you're
21 fastened, you're fastened and you can put your
22 hands on your side.
23 Q Did there come a time that it appears
24 that Mr. Zarda had crossed the line to you?
25 A No.

1 Rosana Orellana 102
 2 Q Did there come a time where he
 3 apologized for his conduct?
 4 A Yes.
 5 Q When was that?
 6 A When we were free falling.
 7 Q What did he say to you?
 8 A He apologized for -- he said, don't
 9 worry, I hope you didn't get offended, because I'm
 10 gay, what happened on the plane.
 11 Q Before he disclosed to you his
 12 sexuality, did you know what his sexuality was?
 13 A No.
 14 Q Did you care what his sexuality was?
 15 A No.
 16 MR. ZABELL: Thank you. I have no
 17 further questions.
 18 MR. ANTOLLINO: When you say he
 19 apologized for his conduct, do you know if he
 20 was referring to the comments that were made
 21 or these allegations that you've made about
 22 the chin and the hips?
 23 THE WITNESS: I don't know.
 24 MR. ANTOLLINO: Nothing further.
 25 MR. ZABELL: Would you like to conclude

1 Rosana Orellana 103
 2 today's deposition?
 3 MR. ANTOLLINO: Yes.
 4 MR. ZABELL: Just put so we're assured
 5 a plain simple statement on the record
 6 concluding today's deposition.
 7 MR. ANTOLLINO: I have no further
 8 questions. I said that already.
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(Continued on following page to
 allow for signature and jurat.)

1 Rosana Orellana 104
 2 MR. ZABELL: Very well. Then it
 3 appears as if the deposition of Ms. Orellana
 4 is concluded.
 5 (Whereupon, the examination of
 6 this witness was concluded at 3:35 P.M.)
 7
 8 * * * *
 9
 10 STATE OF NEW YORK)
 11)ss.:
 12 COUNTY OF)
 13 I have read the foregoing record of my
 14 testimony taken at the time and place noted in the
 15 heading hereof and I do hereby acknowledge it to
 16 be a true and correct transcript of same.
 17
 18 _____
 19 ROSANA ORELLANA
 20 Subscribed and sworn to
 21 before me on this ____ day
 22 of _____, 2011.
 23
 24 _____
 25 NOTARY PUBLIC

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CERTIFICATION

I, Deborah Thier, a Notary Public of the State of New York do hereby certify:

That the testimony in the within proceeding was held before me at the aforesaid time and place. That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of November, 2011.

DEBORAH THIER

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

Plaintiff makes the following statement under local rule 56.1 a in support of his motion for partial summary judgment, under Rule 56.1(a), and in further opposition to defendants' motion under Rule 56.1(b).

1. Skydiving is an inherently dangerous activity. Maynard deposition (hereinafter MD at 65).
2. Skydiving is not for everyone. Maynard deposition (hereinafter MD at 11-12). Maynard's opinion is that you have to be a little bit crazy to do it. Id. at 31-32
3. A person who doesn't like to be touched should not skydive. MD 17; Callanan dep. at 99. The aircraft is a fairly small aircraft area, filled with many people. Id. 13-16.
4. Not only because of the cramped aircraft, but also because they instructor and passenger are strapped together, tandem skydiving, by the nature of the activity, is a sport where the instructor by

necessity violates the passenger's personal space. Winstock deposition at 82-83.

5. If a person chose to go skydiving and complained about being touched inappropriately, Maynard testified at his deposition that would investigate further. MD at 20.
6. However, in plaintiff's case, Maynard's "investigation," if you could call it that, before he fired plaintiff, consisted solely of watching the video of Orellana's (the complainant's) jump, which shows no inappropriate touching. See defendants' 56.1 statement (hereinafter "D56" at ¶ 77 (investigation limited to reviewing exculpatory video) attached to Antollino Dec., (hereinafter "AD") at Exhibit B.
7. Ray did not call Rosanna and say what it was about the hips that made her feel uncomfortable. Id.; MD at 249.
8. Rosana, who found the experience "crazy and exhilarating," did not want to complain. Orellana dep. at 65, 69.
9. What Rosanna felt might well have been something like he was adjusting the straps as required. MD at 249-50.
10. And if what she felt was simply Don's adjusting the straps, that would not be a legitimate complaint. Id. at 250.
11. Maynard did not look at the photographs of the jump at the time, but they show nothing inappropriate either. Id.; MD at 323-25.
12. Maynard did not even speak to Orellana; he credited entirely the allegations of her boyfriend, David Kengle. MD at 185, 199.

13. According to Ray, Kengle said he didn't want his money back, but Maynard refunded it anyway, and Kengle cashed the check. Id. at 186-87; Kengle dep. at 31.
14. Kengle, who is depicted at page 30 of the Sanchez declaration Exhibit A, was at the time of the jump an unemployed waiter. He rents a \$150,000 home and leases a decade-old car, an upgrade from a 1988 car he drove as recently as a few years ago. See AD at Exhibit Q (TLO Asset Report).
15. This is not to denigrate the lower middle class, or the poor, but to demonstrate that that Kengle had a motive to complain. And he noted that the cost of the jump was \$900, thus it "is even more amplified, because it's . . . something that's way more expensive and [therefore] something way more extreme. Id. at 31, 35.
16. A complaint is a common thing for Kengle; if you don't like someone's attitude, a complaint is appropriate. Id. at 35-36.
17. But the contemporary photo and video evidence shows Don with a perfectly cheerful attitude. AD at Exhibit B.
18. Kengle admits that he does not "have an understanding of the procedures they're training in, as far as attaching gear or a harnessing or what their physical actions are suppose to be in terms of protocol[.]" Kengle dep. at 62.
19. Kengle admitted that he does not know that putting hands on hips and chins on shoulder was according to protocol. Kengle dep. at 31.

20. For Don, it was his normal way of protecting the safety and comfort of every single passenger. Zarda Dec. at ¶ 24.
21. Don, who has some 20 years of experience in the sport and has done some 5800 jumps, is a creature of habit and procedure because to experiment could lead to injury or fatality. Id. and id. ¶ 1 and at Exhibit C (warning from United Parachute Technologies about safe use of equipment).
22. Although once Don injured himself for reasons that were not the result of any negligence on his part, he has never had as much as one passenger injury in an inherently dangerous activity. MD at 152; Zarda Dec. at ¶ 24.
23. Kengle considers his girlfriend Rosanna "beautiful," and is upset with the way that men hit on her, especially gay men, who think they can get away with it. Kengle dep. at 24 and 38.
24. It is undisputed that this was a gift for Orellana's birthday. Kengle Dep. at 45.
25. Being an unemployed server, and relatively poor, however, a \$900 jump probably made that a little bit hard financially on Kengle. See Antollino dec. at Exhibit Q; Kengle Dep. at 6.
26. Despite Maynard's saying that ruining Rosana's birthday was the reason for his suspension, MD at 229 "You were suspended for completely ruining somebody's birthday because of you talking about your personal life to them." Kengle did not think that anything Don did "ruined" the day; he characterized it as a "taint." Kengle dep. at 45.

27. Rosana did not believe the day was ruined, but defined it as "crazy and exhilarating." Orellana Dep. at 65.
28. "Exhilarate" is defined as "to make cheerful and excited : to enliven, to elate." See Webster's Online at <http://www.merriam-webster.com/dictionary/exhilarate>.
29. According to Ray, craziness goes hand in hand with skydiving: You don't have to be crazy to do it, but it helps. MD at 31.
30. Because skydiving is an inherently dangerous activity, and among other reasons, Skydive Long Island requires all passengers to sign a detailed waiver setting forth what they will experience in the skydive including, for example, that they will go as high as 13,500 feet. AD at Exhibit 1.
31. If a passenger did happen to go as high as 12,000 feet, and later complained that would not be a legitimate complaint. MD at 31
32. Lots of complaints that people can make are illegitimate.
33. If a person dies while skydiving, and his estate later complains, that is not a legitimate complaint, even if the instructor is negligent. See AD at Exhibit 1. MD deposition at 22.
34. The waiver in paragraph 13 specifically states, "if I am making a student jump, I understand that I will be wearing a harness which will need to be adjusted by the jump master. Is 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.
Antollino declaration, exhibit A, paragraph 13. Rosanna
initialed that release, but did not bother to read the waiver.
Orellana Dep. at 72.

35. Rosana did not read past the first page of the waiver, therefore she did not get to ¶ 13. Orellana Dep. at 36-37. Kengle read the waiver for her, because, according to him, he is the "brains of the operation." Kengle deposition at 16.
36. But, according to Ray, that was wrong because every passenger should carefully read the waiver him or herself. MD at 53-54.
37. There are several points of attachment they did the tandem instructor has to be attached to the passenger. MD at 19-20. Two of the attachments are approximately at the hips. Id. at 27. Exhibit 4 to the MD, attached to AD at Exhibit T depicts the apparatus to which the passenger is strapped to the instructor. MD at 26-27.
38. Ray presumably used the waiver to defend himself in a lawsuit where a passenger died, because the lawsuit was dismissed. MD at 22.
39. Ray did not refund the money to the family of the passenger who died, and his family's complaint was illegitimate. MD at 22.
40. Thus Ray used the waiver to defend himself against a lawsuit for someone who died, but was unwilling to use it to protect the integrity of Don Zarda, whom he characterized as a good, safe instructor and good guy. MD at 134, 149.

41. When in the air, all the points of attachment need to be adjusted for the safety and comfort of the passenger. MD at 27–28.
42. Maynard agrees that safety is more important than comfort. MD 28.
43. Rosanna agrees that she would rather be safe than comfortable on a skydive. Orellana deposition at 98.
44. She does not remember Don whispering in her ear. Id. at 99.
45. She does not believe that plaintiff crossed the line by touching her in a sexual manner. Orellana dep. at 101.
46. Even jealous Kengle would want Zarda to touch her breast “if it meant saving her life.” Kengle Dep. at 25.
47. There have been lots of complaints about skydive Long Island for example on yelp.com, one reviewer said” customer service does not exist here!!!!!! What ever you do DO NOT go to this place... I repeat DO NOT waste your money on these people... Skydive Long Island sucks. Stay away.” AD at Exhibit F.
48. Another yelp.com customer had five complaints including misrepresentations about the prices on the website; the low production values of their videos; frame by frame shots that don't show anything interesting; the interminable wait; the rude “ladies” in the office. AD at exhibit F.
49. There have been complaints about Sky Dive Long Island, complaints having nothing to do with plaintiff. See MD at 55, referring a website called wegoplaces.com. MD at 60.

50. All of these complaints, in Maynard's opinion, are illegitimate. MD at 62-63.
51. According to Maynard, the person who complained about the "ladies in the office" being rude is only telling one side of the story, so how does he know that it's true? MD at 64.
52. Yet Maynard would not let plaintiff see the video of the person who made a complaint against him, so that plaintiff could tell his side of the story. MD at 184. Zarda dec. at ¶¶ 4, 28, 29, 35, 42.
53. An irritating complaint to Maynard was one made on the "Ripoff Report" AD at exhibit K. This complaint is dated October 2009, at a time when plaintiff was contemplating coming back to skydive Long Island and therefore had no incentive to say anything bad about the place. Zarda declaration at ¶ 19.
54. The complainant in the Ripoff Report alleged that "once in the plane the tandem instructor was feeling up my girlfriend and her friends as well." AD exhibit K, page 1. The complainant also goes on to say that SDLI is unsafe, and, like a complainant on yelp.com, that the customer service is very poor. Id.
55. The complainant also noted that one of the passengers this summer had broken his ankle. Id.
56. Maynard finally at the second day of his deposition had to admit that he wrote the response on the Ripoff Report, which starts at page 2 of AD exhibit K. He identifies himself as the owner and defends his operation.

57. Ray admits that indeed a passenger did break his ankle, but he blamed the passenger for not picking up his feet as instructed. Id.
58. Thus, no matter the merit of the complaints, defendant's 56.1 statement, ¶ 78, wherein it indicates the only complaint was against Don, is a lie.
59. Presumably, unlike plaintiff's situation, Maynard did something of an investigation pertaining to the passenger broke his leg, and Maynard came to the conclusion that his employee was not at fault. Page 2 of AD exhibit K.
60. But Ray did no investigation whatsoever for plaintiff other than to review the exculpatory video, which is no investigation at all, since Orellana's and Kengle's recollection of the incident differ in material respects. Additionally, Ray had every reason to believe plaintiff was simply being safe and had no interest in Rosana given that he is gay. Zarda Dep. at 254-55. The video shows nothing inappropriate. AD Exhibit B.
61. Plaintiff was not even allowed to see the video, to defend himself and answer the allegations that he had touched a passenger inappropriately. Zarda dec. at ¶¶ 4, 28, 29, 35, 42.
62. Plaintiff has more experience in terms of actual jumps than Maynard. MD at 249.
63. Maynard saw the jump video and rated it eight or nine out of 10; Richard Winstock, the chief instructor, gave it a 97 out of 100. Winstock thought that the landing was superb. MD at 280-81; Winstock dep. at 75.

64. Although one criticism that Ray had was that Ray wasn't touching Rosana enough during the pre-jump. Md. at 280.
65. Yet despite the evidence that the jump was excellent if not close to perfect, plaintiff was not given an opportunity to know who complained against him; Maynard did not speak to the actual complainant, only her unemployed boyfriend. Maynard did not speak to anyone in the plane. See citations to the evidence, *supra*.
66. Rosanna, for her part, did not want to file a complaint; only her unemployed boyfriend, who skillfully got a complete refund without seeming to ask for one. Orellana Dep. at 69; MD at 186-87.
67. In response to the complaint in the ripoff report Maynard noted quite obviously," personally if someone was feeling up my girlfriend, I would do something on the spot to defend her dignity-unless of course I am [a] fourth-grader." AD Exh. K, p.3.
68. Ray noted that "it is a shame in today's world something like this can actually be put out there for all to see with no proof, and I have to respond to these lies and accusations." Id.
69. Yet he credited the secondhand story of the unemployed boyfriend of Rosanna without so much as an investigation.
70. At his deposition he was shown the photographs taken at Rosana's jump, and had to admit that he did not see anything inappropriate. MD 323-25.

71. Lauren Callanan, the former office manager Skydive Long Island said that she'd responded to the complaints on the ripoff report. Callanan deposition at 40.
72. Donald Zarda is 100% gay. Zarda Dec. ¶ 10.
73. He has never been with a woman and is repulsed by the thought of being with a woman. Id.
74. Rosanna didn't read passed the first page the waiver, see dep. at 13, at so she didn't know she probably didn't know she was consenting to being in very close proximity to the instructor.
75. Yet for safety purposes she needs to be touched at various points on her body, and two of these points are at the hips. MD at 28.
76. There are straps at the hips that need to be manipulated. MD at 27-28.
77. That is why a person doesn't like to be touched should not skydive. MD 17.
78. If a person goes out in the sky dive and makes the complaint that your instructor was adjusting straps around her body and she felt uncomfortable about it that would not be a legitimate complaint. MD at 20.
79. Since the overwhelming majority of tandem instructors are men, when heterosexual couples stop at the drop zone, a tired joke is often made to the effect of, "I bet you didn't think year girlfriend was going to get strapped up two another guy." Maynard Dep. At 39, 40.
80. Maynard has never fired someone for making a statement like that. MD at 40-41.

81. He has never fired an instructor where a passenger has had an injury.
MD at 41.
82. On June 21, 2010, plaintiff was called in to meet with Maynard who suspended plaintiff on the spot as a result of the complaint made by Kengle. Zarda Dec. at 28.
83. Maynard also took out of plaintiff's paycheck to reimburse himself for the refund that he gave to Kengle. MD at 188.
84. Although he gave it back, it's no different than stealing something then giving it back and therefore wrong. MD at 190.
85. Logically, Zarda lost the beneficial use of that money during the week it was taken away from him.
86. Maynard told plaintiff two things had come up in Kengle's complaint:
(1) that plaintiff had said to a female passenger words to the effect that, "don't worry about how close we are because I'm gay." The woman also made the allegation that plaintiff said he just broke up with his boyfriend. MD at 182
87. In fact that's not factually true, but plaintiff may have said "and I have the ex-husband to prove it." Zarda Dec. at 23.
88. Zarda tried to get Richard Winstock to speak to Ray and let him come back to the drop zone, Zarda dec. at ¶ 36, and Winstock believed that plaintiff was an excellent instructor and should return. See Winstock Dep. at 24-25, 83.
89. Richard didn't know what the complaint was about but in order to stave off plaintiff's termination, he strongly recommended that plaintiff be given a letter of reprimand for whatever happened. Winstock deposition at 83.

90. Later Winstock would quit SDLI to Maynard's dissatisfaction. MD at 347. But unbeknownst to Maynard, id., Winstock could no longer stand working with Ray and quit. He sent plaintiff an email telling him that his termination had been wrong. Zarda Dec. at Exhibit E, p.2.
91. Winstock had been unsuccessful in convincing Maynard not to fire Ray, and when Zarda returned on June 28, an enraged Maynard terminated him. Antollino Dec. Exhibit B.
92. The tone of his voice, in parts, is of anger, perhaps rage. Id.
93. He stated words to the effect that plaintiff was not being fired because it was "a gay issue." MD at 226. He noted that the offense was the sharing of personal information, and that if Rich Winstock was talking about his "chicks" to passengers, he too would be fired. Id.
94. But in fact at his deposition Winstock testified that it is on rare occasion appropriate to describe his sexuality in order to allay the fears of a passenger, particularly an older female passenger. Winstock dep. at 109-110.
95. Maynard assumed this to be true at his deposition, and contrary to what he told Zarda, he said there was nothing wrong with it, and did not fire Winstock; rather, he was very unhappy when Winstock left him. MD at 220, 347.
96. Plaintiff believed that it was appropriate to announce to Rosanna his sexual orientation for two reasons. First, he believed that the joke to the effect "hey I bet you didn't think your girlfriend was get a get strapped to another guy" had made her feel uncomfortable, and he

wanted her to know that he had no inappropriate ideas about being so close to her. Zarda Dec. at ¶ 23.

97. Zarda's experience with women is that they are cool about homosexuality. Id. at ¶¶ 8, 23.
98. Further, Zarda wanted to remove himself from the insinuation that he was heterosexual or was being strapped to the woman for his gratification. Id. Even Maynard thought that might be an appropriate thing to do under the circumstances. MD at 161-62.
99. Don tired of the boy-girl joke about "being strapped to another guy," and does not believe that just because he is a man he must acquiesce into the assumption that he is heterosexual, despite that he appears very athletic and masculine. Defendant's 56.1 statement at § 31 and Zarda Dec at ¶¶ 8, 23.
100. Don used his judgment to make the passenger more comfortable in that one situation just as Rich Winstock uses his judgment to make the passenger more comfortable in certain situations. Id.
101. Nevertheless, Don's judgment call, just like the strategy that Winstock uses in a heterosexual context, backfired. Even though Rosana didn't want to complain, her boyfriend a waiter was unemployed at the time and complained. Ray credited his second-hand account so immediately and was so offended he jumped on the allegation without even conducting an investigation except to review a video that contain only exculpatory information, or at least information that did not lead to the conclusion that plaintiff was doing anything inappropriate. MD at 203.

102. Additionally, Maynard brought up the second-hand allegation that Rosanna, who didn't read the waiver, and whom he didn't talk to, felt uncomfortable at the hips. MD at 247.
103. Maynard, though his sister was gay, has never been to a gay establishment and knows no other gay people than his sister's widow. MD at 100, 114.
104. Ray believes that being gay is an "after hours" affair, consisting of "escapades" that Zarda was "notorious for. MD at 139, 226, Defendants' 56.1 statement at ¶ 38.
105. Plaintiff never gave Maynard that inclination of an idea that he was sexually gratified by women, and in fact repeated at the suspension interview that he was gay. Zarda Dec. at ¶ 33.
106. Maynard hired Zarda in 2009 and 2010 knowing he was gay.¹
107. Don's being gay was acceptable up to a point - as long as he didn't "flaunt" his after-hours, notorious escapades. 139, 226, Defendants' 56.1 statement at ¶ 38.
108. Obviously, Ray has an old fashioned notion of what it means to be gay, and didn't want to offend Kengle's bigotry. See, e.g., Kengle dep. at 24 and 38.
109. On several occasions when plaintiff did anything that was beyond the norm of masculinity, Maynard would make a derisive comment. First, when plaintiff returned from an injury in 2009 with a pink cast, he

¹ Plaintiff denies that he ever told Ray he was gay, and certainly not in 2001 when he was first hired. Zarda Dec. at ¶ 6. Nevertheless, this dispute is irrelevant insofar as homosexuals had no legal protections in 2001 and that statute of limitations to any other cause of action would have long ago expired.

demanded that plaintiff paint the cast black in order to remain at the drop zone. Zarda Dec. at ¶ 17.

110. Defendants allege that plaintiff was asked not to paint the cast black, but to put a sock over it so as not to scare customers that injury could occur. Defendants' rule 56.1 statement at ¶ 25.
111. But the Ray safety video, Antollino Dec. at Exhibit B, talks about the possibility of injury and death from skydiving. So does the waiver. Id. at Exhibit A. So the possibility of injury is affirmatively mentioned to all passengers.
112. Furthermore, the cast Don wore is large, Zarda Dec. at Exhibit A, and it is probably not feasible to find a sock that would fit over it.
113. Furthermore, assuming plaintiff had placed a huge sock on the cast, he still would have been on crutches, and it would have looked like he had a cast with a sock on it, fooling no customers. Zarda Dec. at Exhibit A and ¶ 17.
114. Pink is the color of gay liberation, and that is why plaintiff chose that color for his cast. Zarda Dec. at 15. Ray wanted him to paint it black and erase the color of the pink triangle. Id. at 111.
115. Sometime later after the cast was taken off, plaintiff was at the drop zone in a boot. Zarda Dec. at 18. He took the boot off near the Coke machines, and exposed his pink painted toenails. Ray's reaction was to say, "That's Gay!" in a derisive tone. Id.
116. During the termination discussion, Ray describes plaintiff's homosexuality as an "escapade." Termination audio at Exhibit B.

117. In fact, escapade is a derisive term to describe one's sexuality. Webster's defines escapade as "a usually adventurous action that runs counter to approved or conventional conduct." It offers the following synonyms: "antic, caper, capriccio, dido, prank, frolic, gag, jest, knavery, monkeyshine(s), practical joke, roguery, trick, waggery." See Webster's Online <http://www.merriam-webster.com/dictionary/escapade?show=0&t=1365475292>. This is disrespectful way of discussing a person's being.
118. In their 56.1 statement, defendants describe plaintiff's acknowledgment of his sexuality as "notorious." See Defendant's 56.1 statement at ¶ 38.
119. In fact, the word notorious is another derisive term used to describe a person's identity. Notorious is defined by Webster's as "widely and unfavorably known" and describes as synonyms as "discreditable, disgraceful, dishonorable, ignominious, infamous, louche, disreputable, opprobrious, shady, shameful, shoddy, shy, unrespectable." See <http://www.merriam-webster.com/dictionary/notorious>.
120. Ray discredited plaintiff for discussing "personal issues" as one of the alleged reasons for firing him. MD at 226; termination audio, AD at Exh. B.
121. While admittedly being gay is a personal issue, there are numerous personal issues that Ray would not fire an employee for discussing at work. 256-57. The only personal issue that Ray testified he admonish or discipline in employee is for discussing homosexuality. MD at 256-57. Although he said at the termination meeting that he would fire

Rich Winstock for talk about heterosexuality, when he learned it happened – or assumed it did – he did not fire Rich. See ¶ 97, supra.

122. The Human Rights Campaign (HRC) is the largest gay rights organization in the country and has an annual dinner where the president speaks. See <http://www.whitehouse.gov/the-press-office/remarks-president-human-rights-campaign-dinner>.
123. The HRC has a famous T-shirt called “Legalize Gay.” See Antollino Dec. at Exhibit X. Ray would not allow an employee to wear such a T-shirt at his drop zone because it is not a platform for any political issues, yet on his Facebook page he made a tribute to the veterans. Id. at Y. This is not to denigrate veterans, but one's veteran status is personal information as well, and political to some extent; an employee can discuss veteran's status at the drop zone, along with a host of other things. Id. and MD at 256-57.
124. Yet mentioning one's sexual orientation to a customer is a no no, because it might be offensive to customers. MD at 252-53.
125. Defendants push hard in their 56.1 statement to suggest that the allegation that plaintiff groped Rosanna for his personal gratification is true. See generally defendant's 56.1 statement and e.g. at ¶ 94.
126. However, they have no proof whatsoever that plaintiff is not 100% gay, has never been with a woman, and only did some pretend to date of women before he came out of the closet. Zarda Dec. at ¶ 10.
127. Ray had every reason to disbelieve that plaintiff had in any way sexually harassed a woman. First, he is openly and, according to defendants. “notoriously” gay; second, touching Rosana at the thighs

was professionally justified to protect her safety; and, third, the contemporaneous evidence overwhelmingly shows no impropriety on plaintiff's part. See AD Exhibit B.

128. As to the allegation that plaintiff "whispered" into Rosana's ear, Maynard knows that this is normal, because otherwise the instructors mouth or teeth might hit the back of the passengers and crack his teeth. Winstock dep. at 50; Zarda Dec. at 25; MD at 259.
129. Finally, where Maynard had the financial incentive to allege that plaintiff sexually harassed a customer-unemployment-he backed off the stronger allegation that might save his premiums from being increased. Antollino Dec. at Exhibit O; Maynard Dep. at 343.
130. Maynard immediately credited Kengle's harassment allegation without interviewing the alleged victim of harassment by immediately suspending plaintiff and taking away from him \$660 *that he had earned*. MD at 188.
131. However, by the time a couple of months had gone by Maynard couldn't bring himself to mention this allegation even though it was in his financial incentive to do so. Antollino Dec. at Exhibit O; Maynard Dep. at 343.
132. Likely by then, Maynard realized how ridiculous the allegation was.

A few points about wages:

¶¶ 133-144 intentionally omitted as irrelevant to the appeal

Dated: New York, New York
April 9, 2013

 /s/
Gregory Antollino, Esq.

**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)

**DEFENDANTS' COUNTER 56.1
STATEMENT OF MATERIAL
FACTS**

Pursuant to Rule 56.1 of the Local Civil Rules of this Court, Defendants Altitude Express, Inc. d/b/a Skydive Long Island and Ray Maynard (collectively "Defendants") submit herewith their counter statement of material facts:

1. Defendants admit the statement contained within paragraph 1 of Plaintiff's 56.1 Statement. Defendants aver that safety is not an issue in Plaintiff's termination. (See Maynard Dep. pg. 187, 196)
2. Defendants admit the statement of fact contained within paragraph 2 of Plaintiff's 56.1 Statement. Maynard opined that skydiving is not for everyone. (Maynard Dep. pg. 11-12). Defendants dispute that Maynard testified that you have to be a little bit crazy to skydive. Maynard testified that his opinion was "you don't have to be crazy, though it helps." (Maynard Dep. pg. 31).
3. Defendants admit the statement of fact contained within paragraph 3 of Plaintiff's 56.1 Statement. Maynard testified that he would not recommend a person who expresses a fear of being touched to skydive. (Maynard Dep. pg. 17).

4. Defendants admit the statement contained within paragraph 4 of Plaintiff's 56.1 Statement. Defendants aver that inappropriate touching is not part of the activity. (Zarda Dep. pg. 173).
5. Defendants dispute the alleged statement of fact contained within paragraph 5 of Plaintiff's 56.1 Statement. Maynard testified that, if a customer complained that "I went up in the skydive and I was touched" he "would ask them to give [him] more detail." (Maynard Dep. pg. 19).
6. Defendants dispute the alleged statement of fact contained within paragraph 6 of Plaintiff's 56.1 Statement. Maynard investigated the complaint in several ways, including speaking to Kengle (Maynard Dep. pg. 181-182), reviewing the video . (Maynard Dep. pg. 199), and speaking with Zarda (Zarda Dep. pg. 36-37, 39; Maynard Dep. pg. 183).
7. Defendants admit the statement contained within paragraph 7 of Plaintiff's 56.1 Statement. Maynard did not speak with Orellana regarding her complaint of Zarda's behavior. (Maynard Dep. pg. 249). Maynard spoke with Kengle regarding Kengle and Orellana's complaint about the skydive with Zarda. (Zarda Dep. pg. 156; Orellana Dep. pg. 69; Maynard Dep. pg. 181-182). Maynard additionally spoke with Zarda to determine Zarda's position and what he recalled. (Zarda Dep. pg. 36-37, 39; Maynard Dep. pg. 183).
8. Defendants admit that Orellana described the skydive as "crazy and exhilarating." However, Orellana testified that during the car ride home she complained to her boyfriend, Kengle, about her dissatisfaction with the behavior of her instructor. (Orellana Dep. pg. 66-67). Defendants dispute that Orellana did not want to

complain. Orellana testified that she had no personal intention to call Ray to complaint, because she does not like confrontations. (Orellana Dep. pg. 69).

9. Defendants admit the statement contained within paragraph 9 of Plaintiff's 56.1 Statement, that Maynard testified that what could have made Orellana uncomfortable was Zarda adjusting the harness straps. However, most of the adjustments should be performed prior to entering the airplane and very little adjustments are performed on the passenger harness in the airplane. (Maynard Dep. pg. 250). Additionally, 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). She felt that "he should have been more professional" in his interactions with her. (Orellana Dep. pg. 49). Orellana felt uncomfortable after Zarda disclosed information about his personal life to her. (Orellana Dep. pg. 52, 54, 55). 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, 54, 55). She wanted information about her tandem jump instead. (Orellana Dep. pg. 52, 100). Additionally, Orellana's complaint was not limited to the inappropriate touching, she also complained that Zarda discussed his personal life with her. (Orellana Dep. pg. 52, 54-55, 100; Maynard Dep. pg. 182, 289; Zarda Dep. pg. 40, 176).

10. Defendants admit the statement contained within paragraph 10 of Plaintiff's 56.1 Statement, Maynard testified that a complaint regarding an instructor adjusting the harness straps would not be legitimate. However, Maynard additionally

testified that most of the adjustments to the harness are performed prior to entering the airplane. (Maynard Dep. pg. 250). Very little adjustments are required once the passenger is inside the airplane. Maynard Dep. pg. 250). Additionally, Orellana's complaint was not limited to the inappropriate touching, she also complained that Zarda discussed his personal life with her. (Orellana Dep. pg. 52, 54-55, 100; Maynard Dep. pg. 182, 289; Zarda Dep. pg. 40, 176).

11. Defendants dispute the purported statement of fact contained within paragraph 11 of Plaintiff's 56.1 Statement; the factual record cited does not support the statement that Maynard did not look at the photographs of the jump at the time. Defendants admit that Maynard's review of the photographs revealed a "normal skydive." (Maynard Dep. pg. 325). However, the photographs and video from the skydive do not depict the entirety of the skydive – the video is only approximately two (2) minutes in length, whereas the skydive takes 15-20 minutes in total. (Kengle Dep. pg. 100; Zarda Dep. 318; Ex. B to Decl. of Antollino).
12. Defendants admit the statement contained in paragraph 12 of Plaintiff's 56.1 Statement, Maynard did not speak with Orellana regarding the complaint. Maynard testified that there was no incentive for Kengle to lie about what occurred during the skydive; he "didn't want anything but to express his disappointment of what happened to his . . . girlfriend." (Maynard Dep. pg. 185).
13. Defendants admit the statement contained within paragraph 13 of Plaintiff's 56.1 Statement. Kengle did not request his money be refunded, Maynard refunded it anyway. (Maynard Dep. pg. 186). Kengle cashed the check. (Kengle Dep. pg. 32-33).

14. The alleged statement of fact contained within paragraph 14, that Kengle was an unemployed waiter, is unsupported by any citation to the factual record, and thus should be disregarded. Contradictorily, Kengle testified that at the time of his deposition he was currently unemployed. (Kengle Dep. pg. 7). However, he testified he had been employed by Four Food Studio until June; his deposition took place on November 9, 2011. (Kengle Dep. pg. 1, 7). Defendants have no knowledge of the alleged statement of fact regarding Kengle's home and car and cannot verify the accuracy of Plaintiff's exhibit, which was not produced in discovery in this case and not identified in Plaintiff's initial disclosure. Additionally, Zarda's actions, inappropriately touching Orellana and disclosing personal information, during the skydive provide sufficient motive for a customer to complain. (Orellana Dep. pg. 49, 52, 54-55, 60, 100; Maynard Dep. pg. 182, 289; Zarda Dep. pg. 40, 176).
15. The alleged statement of fact contained within paragraph 15 regarding Kengle's "motive" is argument, unsupported by any citation to the factual record, and thus should be disregarded. Defendants admit that Kengle noted the cost of the jump in his deposition. (Kengle Dep. pg. 35). However, he noted the cost in a comparison to a customer complaining about service at a restaurant, and the justification of complaints when service is poor. (Kengle Dep. pg. 35-36).
16. Defendants dispute the purported statement of fact contained within paragraph 16 of Plaintiff's 56.1 Statement. Plaintiff mischaracterizes the testimony. Kengle testified in a general context, that when "[y]ou go out for dinner for a hundred dollars and, you know, if the server or whoever – if you don't like the attitude,

people find no problem complaining. . .” (Kengle Dep. pg. 35-36). Kengle has received complaints about his own performance. (Kengle Dep. pg. 36). Kengle expressed no personal affinity for making complaints. (Kengle Dep. pg. 35-36).

17. Defendants admit the statement contained within paragraph 17 of Plaintiff’s 56.1 Statement, Zarda appears cheerful in Exhibit B to the Declaration of Antollino. Defendants aver that the photo and video evidence do not depict the entirety of the skydive with Orellana. (Kengle Dep. pg. 100; Zarda Dep. 318; Ex. B to Decl. of Antollino; Ex. B to Decl. of Antollino). Also, the statement presupposes that Zarda must have had a non-cheerful attitude in order to inappropriately touch Orellana.

18. Defendants admit Kengle testified to that statement, although not at the page indicated in Plaintiff’s 56.1 Statement. (See Kengle Dep. pg. 61). Kengle additionally testified that he has an understanding of proper behavior in any situation. (Kengle Dep. pg. 62). Kengle testified that while on the plane, none of the other instructors were behaving in the manner Zarda was behaving, indicating that Zarda’s behavior was indeed improper in that situation. (Kengle Dep. pg. 62-63).

19. Defendants dispute that the cited deposition testimony supports the alleged statement of fact contained within paragraph 19 of Plaintiff’s 56.1 Statement. Kengle testified that for all he knows, it could be procedure for instructors to remain attached at the hands and hips, but that none of the other instructors were behaving as Zarda was behaving, indicating that Zarda’s behavior was improper. (Kengle Dep. pg. 62-63). Kengle additionally testified that he did not know

whether “the chin and hips” was according to protocol, but that the safety video and other instructors did not have to put their chin on the passenger’s neck or rest their hands on the passenger’s hips. (Kengle Dep. pg. 64-65).

20. Paragraph 20 of Plaintiff’s 56.1 Statement does not contain a statement of fact, bears a citation to an inadmissible form of evidence; i.e., an improper self-serving declaration, and should be disregarded. Defendants do not possess knowledge sufficient to admit or dispute Zarda’s “normal way” nor is any such information in the record.

21. Paragraph 21 of Plaintiff’s 56.1 Statement does not contain a statement of fact, contains a citation to an inadmissible form of evidence; i.e., an improper self-serving declaration, and should be disregarded. Paragraph 21 of Plaintiff’s 56.1 Statement also contains an impermissible citation to a secondary source which is not part of the factual record in this litigation, and should therefore be disregarded.

22. Defendants admit that Plaintiff was once injured. (Maynard Dep. pg. 150; Zarda Dep. pg. 73, 75). The remainder of paragraph 22 contains a citation to an inadmissible form of evidence; i.e., an improper self-serving declaration, which should be disregarded. Plaintiff’s purported fact that Zarda has “never had as much as an injury in an inherently dangerous activity” is contradicted by the undisputed fact that Zarda once injured himself. (Zarda Dep. pg. 73, 75).

23. Defendants dispute the characterization of the testimony stated in paragraph 23 of Plaintiff’s 56.1 Statement. Kengle testified that his girlfriend, Orellana, is very beautiful and that he is used to her getting attention. (Kengle Dep. pg. 23). Kengle

did not testify that he is “upset with the way men hit on her.” Kengle merely testified that he has observed an attitude with gay men, that they have more contact with a women and it is nothing to worry about because they don’t want to “sleep with her or anything like that.” (Kengle Dep. pg. 37-38). Kengle testified that he does not agree with that attitude. (Kengle Dep. pg. 38).

24. Defendants admit the statement of fact contained within paragraph 24 of Plaintiff’s 56.1 Statement.

25. Defendants dispute the alleged statement of fact contained within paragraph 25 of Plaintiff’s 56.1 Statement. Kengle testified that at the time of his deposition, November 9, 2011, he was unemployed. (Kengle Dep. pg. 7). However, Kengle testified that up until June, he had been employed by Four Food Studio as a waiter. (Kengle Dep. pg. 7). The events which are the basis of this litigation occurred in June of 2010, a year prior to Kengle’s unemployment. (Zarda Dep. pg. 36-37, 201-202, 218; Kengle Dep. pg. 7). The remainder of the purported statement of fact contained within paragraph 24 of Plaintiff’s 56.1 Statement, namely characterizing Kengle as “relatively poor” and supposing \$900 is financially difficult for him, constitutes an improper argument from Plaintiff’s counsel, without citation to factual evidence, and should be disregarded.

26. Defendants admit that, in suspending and terminating Zarda, Maynard stated Zarda ruined Orellana’s birthday. (Maynard Dep. pg. 229, 247). Defendants dispute that Kengle “did not think that anything Don did ‘ruined’ the day.” While Kengle testified he believed “ruined” to be too strong of terminology, deeming “taint” more appropriate, Kengle also testified that “the experience was . . . ruined

- to an extent.” (Kengle Dep. pg. 44-45). Additionally, Orellana testified that Zarda’s behavior ruined the entire jump for her. (Orellana Dep. pg. 54).
27. Defendants dispute the alleged statement of fact contained within paragraph 27 of Plaintiff’s 56.1 Statement. Orellana testified that the skydive experience was “crazy and exhilarating” (Orellana Dep. pg. 65), but also testified that Zarda’s behavior ruined the entire jump for her. (Orellana Dep. pg. 54).
28. Defendants admit that Webster’s Online dictionary defines “exhilarate” as “to make cheerful and excited: enliven, elate,” though denies the relevance of such.
29. Defendants admit Maynard testified that he has previously said “you don’t have to be crazy, though it helps,” referring to skydiving. (Maynard Dep. pg. 31). Defendants dispute the characterization of Maynard’s testimony that craziness goes hand-in-hand with skydiving. (See Maynard Dep. pg. 31).
30. Defendants admit that Skydive Long Island requires all passengers to sign a waiver prior to skydiving. (Maynard Dep. pg. 41-42). The purported reasons for Skydive Long Island’s requirement that passengers sign a waiver is denied, it contains no citation to admissible factual evidence to support the statement, and should be disregarded.
31. Defendants admit the statement contained within paragraph 31 of Plaintiff’s 56.1 Statement. Maynard testified that a complaint that the plane went up to an altitude of 12,000 feet would not be a legitimate complaint. (Maynard Dep. pg. 31).
32. The purported statement of fact contained within paragraph 32 of Plaintiff’s 56.1 Statement constitutes argument and/or a legal conclusion, is not accompanied by a citation to admissible evidence, and should be disregarded.

33. Defendants dispute the purported statement of fact contained within paragraph 33 of Plaintiff's 56.1 Statement. Maynard testified that he did not believe the complaint from the estate of a student who committed suicide at Skydive Long Island was legitimate. (Maynard Dep. pg. 21-22). Maynard did not testify that no complaint from the estate of a customer who dies while skydiving (even if the instructor is negligent) could be legitimate. (Maynard Dep. pg. 21-22). The waiver provides that Skydive Long Island is not liable for the death of any person, even if the instructor is negligent, during a skydive. (Ex. A to Antollino Decl., ¶ 7, 10).

34. Defendants admit that paragraph 13 of the waiver presented to Orellana specifically provides: "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." (Ex. A. to Antollino Decl. ¶ 13). Defendants admit that Orellana initialed the waiver. (Ex. A to Antollino Decl. ¶ 13; Orellana Dep. pg.35-36). Defendants dispute that Orellana did not read the waiver. Orellana testified that she probably did not the read the entire waiver, but probably read the first page. (Orellana Dep. pg. 36-37). Orellana additionally testified that Zarda and another instructor provided her and Kengle with instructions after reviewing the release. (Orellana Dep. pg. 38-39). These instructions included information about the harness and the proper positioning of arms and legs. (Orellana Dep. pg. 40). Orellana

additionally testified that she was aware, prior to jumping, that close proximity to the instructor was required. (Orellana Dep. pg. 90). Orellana further testified that close proximity does not “mean somebody is going to rest their chin on [her] shoulder.” (Orellana Dep. pg. 89). Orellana also testified that it was not the close proximity to Zarda that upset her, it was his hand on her hip and his chin on her shoulder which upset her. (Orellana Dep. pg. 100-101). Orellana was also uncomfortable with Zarda discussing his personal life with her during the jump. (Orellana Dep. pg. 52, 54-55, Maynard Dep. pg. 182-183, 289). The disclosure of personal information is not covered by the waiver. (See Ex. A to Decl. of Antollino).

35. Defendants admit that Orellana testified she probably did not read more than the first page of the waiver. (Orellana Dep. pg. 36-37). However, Orellana testified she was aware of the close proximity, namely that she would be strapped to Zarda at the hip, prior to the jump. (Orellana Dep. pg. 89). Orellana also testified that it was not the close proximity to Zarda that upset her, it was his hand on her hip and his chin on her shoulder which upset her. (Orellana Dep. pg. 100-101). Defendants admit Kengle testified that he believed Orellana “probably left it for [him]. She trusts [his] judgment” and he’s “the brains of the operation.” (Kengle Dep. pg. 16).

36. Defendants admit that Maynard testified that he believes every customer should read the waiver very carefully. (Maynard Dep. pg. 54). Defendants dispute the purported statement of fact that “according to Ray this [Orellana not reading he waiver] was wrong.” Maynard did not testify that failing to read the waiver was

“wrong,” he merely testified that reading the waiver was important in his opinion. (Maynard Dep. pg. 54). The characterization that Orellana’s behavior (not reading the waiver) as wrong is not supported a citation to the factual record, is argument by counsel, and should be disregarded. Defendants further aver that the contents of the waiver are unrelated to Zarda’s complained of behavior, as Orellana and Kengle complained he touched her inappropriately and discussed his personal life with Orellana. (Kengle Dep. pg. 19-20, 22-23, 27; Orellana Dep. pg. 47-48, 50, 89, 100; Maynard Dep. pg. 182, 196, 289; Zarda Dep. pg. 40, 43-44). These complained of behaviors are not covered by the waiver. (Ex. A to Decl. of Antollino).

37. Defendants admit there are several points of attachment from the passenger to the tandem instructor, two at the hips. (Maynard Dep. pg. 19-20). Defendants admit that Exhibit T to the Declaration of Antollino depicts the apparatus which straps the passenger to the tandem master. (Ex. T to Decl. of Antollino). Defendants aver that the complained of behavior is unrelated to the attachment and adjustment of the tandem harness. Orellana and Kengle complained he touched her inappropriately and discussed his personal life with Orellana. (Kengle Dep. pg. 19-20, 22-23, 27; Orellana Dep. pg. 47-48, 50, 89, 100; Maynard Dep. pg. 182, 196, 289; Zarda Dep. pg. 40, 43-44).

38. Defendants admit that a lawsuit, commenced due to the death of a Skydive Long Island passenger, was dismissed. (Maynard Dep. pg. 21-22). The remainder of the purported statement of fact contained within paragraph 38 is rank supposition and

argument by counsel, not accompanied by a citation to the factual record, and should be disregarded.

39. Defendants dispute the purported statement of fact contained within paragraph 39 of Plaintiff's 56.1 Statement. Maynard testified that he did not refund the money of the student who died "because [he] didn't." (Maynard Dep. pg. 22). Maynard further testified that the family did not request a refund. (Maynard Dep. pg. 22). Defendants admit Maynard did not believe the complaint to be legitimate. (Maynard Dep. pg. 22). No testimony was provided indicating the legitimacy of the complaint was related to Maynard's refusal to provide a refund. (See Maynard Dep. pg. 22).

40. Defendants admit that Maynard testified that Zarda was a good instructor, a safe instructor, and a good guy. (Maynard Dep. pg. 149). Plaintiff's citation to Maynard deposition at page 34 does not support his statement of fact. The remainder of Plaintiff's purported statement of fact is argument from counsel, unsupported by citation an admissible factual evidence, which is inappropriate and should be disregarded.

41. Defendants dispute the purported statement of fact contained within paragraph 41 of Plaintiff's 56.1 Statement. Maynard testified that the straps of the tandem harness need to be adjusted for the safety and comfort of the passenger. (Maynard Dep. pg. 27-28). Maynard did not testify that such adjustments must be done in the air. (See Maynard Dep. pg. 27-28). Maynard additionally testified that most of the adjustments to the harness are performed prior to entering the airplane.

(Maynard Dep. pg. 250). Very little adjustments are required once the passenger is inside the airplane. (Maynard Dep. pg. 250).

42. Defendants admit the statement contained within paragraph 42 of Plaintiff's 56.1 Statement. Maynard testified that safety is the number one concern, comfort is number two. (Maynard Dep. pg. 28). Winstock testified that the secondary concern is ensuring the passenger has an enjoyable experience. (Winstock Dep. pg. 91).

43. Defendants dispute the purported statement of fact contained with paragraph 43 of Plaintiff's 56.1 Statement. Orellana did not testify that she "agrees that she would rather be safe than comfortable on a skydive." (Orellana Dep. pg. 98). Orellana testified only that she would have thought it professional for Zarda to have yelled instructions in her ear if it was "loud and it's for [her] safety." (Orellana Dep. pg. 98).

44. Defendants admit that at her deposition, Orellana could not recall if Zarda had moved close to whisper in her ear. (Orellana Dep. pg. 98-99). However, Orellana does recall Zarda resting his chin on her shoulder, an action she deemed inappropriate. (Orellana Dep. pg. 101).

45. Defendants dispute the purported statement of fact contained within paragraph 45 of Plaintiff's 56.1 Statement. Orellana specifically testified that Zarda crossed the line by putting his hand on her hip, resting his chin on her shoulder, and talking about his personal life. (Orellana Dep. pg. 60).

46. Defendants dispute the improper characterization of Kengle as "jealous." Such assertion is unsupported by any citation to a fact in evidence and should be

disregarded. Defendants admit Kengle testified that, if it meant saving Orellana's life, he would want Zarda to hold her breast. (Kengle Dep. pg. 25). However, Kengle additionally testified that, despite the requirement of close contact between instructor and passenger, not all contact is appropriate. (Kengle Dep. pg. 25). Kengle also testified that Zarda was resting his hands on Orellana's hips, holding her hips for the entire time, an action the other instructors, including his own, were not performing. (Kengle Dep. pg. 23-24, 62-63, 66). Kengle testified that he has an understanding of what is proper behavior, and judged Zarda was behaving inappropriately because the other instructors were not behaving in the same manner Zarda was. (Kengle Dep. pg. 62-63).

47. Defendants admit that the review attached to the Declaration of Antollino as Exhibit F, page 2, states, in pertinent part, "Costomer [*sic*] Service Does Not Exist Here!!!! Whatever you do DO NOT go to this place . . . I repeat DO NOT waste your money on these people. . . Skydive long island sucks. Stay away." (Ex. F, pg. 2, to Decl. of Antollino). Defendants dispute the characterization that "[t]here have been lots of complaints about skydive [*sic*] Long Island" contained within paragraph 47 of Plaintiff's 56.1 Statement. The cited exhibit contains two (2) complaints regarding Skydive Long Island, neither of which cannot be verified as accurate, or from the source claimed by Plaintiff. The statement that there have been "lots of complaints" constitutes a conclusory statement, unsupported by a citation to admissible evidence, and should be disregarded. Moreover, the document attached at Exhibit F constitutes inadmissible hearsay, has no probative value to the causes of action, and should be disregarded.

48. Defendants admit that the other review contained within Exhibit F of the Declaration of Antollino contains five (5) listed complaints, covering (1) the cost of video/pictures; (2) quality of video; (3) quality of pictures; (4) wait time; and (5) frustrated office staff. (Ex. F to Decl. of Antollino). Defendants dispute the characterization of the “ladies” in the office as “rude,” the review contains no language supporting the statement that the women in the office were “rude.” (See Ex. F to Decl. of Antollino). However, this review also includes a four (4) (out of five) star ranking and includes the following statement: “Aside from those little annoyances, I still had a great time here! . . . THAT was a blast!!!!!” (Ex. F to Decl. of Antollino). Defendants dispute that the review attached to the Declaration of Antollino is from a “yelp.com customer,” as the documents bears no indication of its origin, bears no indication it is from “yelp.com,” and cannot be verified as to its source or authenticity. Moreover, the document attached at Exhibit F constitutes inadmissible hearsay, has no probative value to the causes of action, and should be disregarded.

49. Defendants admit that complaints exist regarding Skydive Long Island. (Maynard Dep. pg. 55). However, Maynard testified that these complaints were not made to him personally, rather they are on the internet. (Maynard Dep. pg. 55). Maynard has never personally received a complaint about an instructor, other than the complaints about Zarda. (Maynard Dep. pg. 66, 69, 297). Defendants admit Maynard testified about reviews, represented to him as being from “wegoplaces.com.” (Maynard Dep. pg. 59-60). Moreover, the alleged internet

complaints constitute inadmissible hearsay, have no probative value to the causes of action, and should be disregarded.

50. Defendants dispute the alleged statement of fact contained within paragraph 50 of Plaintiff's 56.1 Statement. Maynard did not testify, with regard to the review, represented by Plaintiff's counsel as from "wegoplaces.com," that the complaints were illegitimate, and the testimony cited does not state that. (Maynard Dep. pg. 62-62). The cited deposition testimony reflects Maynard's belief that the complaint regarding wait time was "unfair." (Maynard Dep. pg. 62). The remainder of the cited testimony does not indicate Maynard's beliefs regarding the legitimacy of the complaint. In fact, Maynard does not express an opinion as to whether the complaint regarding the "ladies" in the office, and merely notes that his review is not the whole story. (Maynard Dep. pg. 63-64). Additionally, with regards to the complaint about the photography, Maynard testified that he did not agree that the photography was "average." (Maynard Dep. pg. 61). Maynard even acknowledged that the complaint regarding the website prices may have legitimacy, as "[t]here were times that they had to be fixed." (Maynard Dep. pg. 61). Moreover, the alleged internet complaints constitute inadmissible hearsay, have no probative value to the causes of action, and should be disregarded.

51. Defendants admit Maynard testified that the complaint about the office staff was only one side. (Maynard Dep. pg. 64). Defendants dispute the purported statement of fact contained within paragraph 51 of Plaintiff's 56.1 Statement that Maynard does not know the subject of the complaint is true because it was only one side of

the story. Maynard's testimony merely notes that the complaint is only one side of the story. (Maynard Dep. pg. 64). The cited testimony does not support that purported assertion of fact and it should thus be disregarded. Moreover, the alleged internet complaints constitute inadmissible hearsay, have no probative value to the causes of action, and should be disregarded.

52. Defendants admit Maynard would not allow Zarda to review the video of the jump with Orellana. (Maynard Dep. pg. 184). Defendants dispute the purported statement of fact contained within paragraph 52 of Plaintiff's 56.1 Statement that Maynard did not allow Zarda to view the video in an effort to prevent Zarda from telling his "side of the story." Maynard did not testify that this was the reason he did not allow Zarda to view the video. Contradictorily, Maynard had a conversation with Zarda regarding the jump, providing Zarda with an opportunity to provide his side of the story. (Zarda Dep. pg. 36, 37, 39; Maynard Dep. pg. 183). However, Zarda could not recall the jump with Orellana, even when Maynard provided him with the circumstances. (Zarda Dep. pg. 37, 38, 362; Maynard Dep. pg. 187, 196). Plaintiff's citation to the Zarda Declaration as purported facts to support this alleged statement should be disregarded, as the Zarda Declaration is self-serving, is pure, inadmissible hearsay, does not rely on any facts produced during the previous three (3) years of this litigation, and attempts to introduce new facts into evidence through conclusory and unsubstantiated assertions. Such "evidence" may not be relied on as facts in a 56.1 Statement and must be disregarded.

53. Defendants admit that a complaint about Skydive Long Island exists on the website "Ripoff Report" which was submitted in October 2009. (Ex. K to Decl. of Antollino). Defendants dispute the remaining purported statement of fact contained with paragraph 53 of Plaintiff's 56.1 Statement. There is no factual basis to support the characterization of this complaint as "irritating" for Maynard, nor did he testify that this complaint was "irritating." (See Maynard Dep. pg. 336, 360). Moreover, the alleged internet complaints constitute inadmissible hearsay, have no probative value to the causes of action, and should be disregarded. Plaintiff's citation to the Zarda Declaration as purported facts to support this alleged statement should be disregarded, as the Zarda Declaration is self-serving, is pure, inadmissible hearsay, does not rely on any facts produced during the previous three (3) years of this litigation, and attempts to introduce new facts into evidence through conclusory and unsubstantiated assertions. Such "evidence" may not be relied on as facts in a 56.1 Statement and must be disregarded. Moreover, the cited paragraph of the Zarda Declaration does not support Plaintiff's assertion that this complaint was made at "a time when plaintiff was contemplating coming back to skydive [*sic*] Long Island and therefore had no incentive to say anything bad about the place." Plaintiff's purported statement of fact should therefore be disregarded.

54. Defendants admit the complaint from "Ripoff Report" contains complaints regarding safety, instructor conduct, and customer service. (Ex. K to Decl. of Antollino). However, Maynard testified that the complaint on "Ripoff Report" was a skydiver trying to damage the reputation of Skydive Long Island. (Maynard

Dep. pg. 336-337). Maynard further testified that this complaint was discussed at length amongst the staff at Skydive Long Island and it was agreed that this complaint was an attempt to discredit Skydive Long Island. (Maynard Dep. pg. 360). The comments following the complaint state that its content is both unfounded and baseless. (See Ex. K to Decl. of Antollino, pg. 2-6). Moreover, the alleged internet complaints constitute inadmissible hearsay, have no probative value to the causes of action, and should be disregarded.

55. Defendants admit the statement contained within paragraph 55 of Plaintiff's 56.1 Statement. Defendants aver this has no bearing on the underlying dispute. (See Amended Complaint).

56. Defendants dispute the purported statement of fact contained within paragraph 56 of Plaintiff's 56.1 Statement. Plaintiff's alleged statement of fact that "Maynard finally at the second day of his deposition had to admit that he wrote the response on the Ripoff Report" is not supported by any citation to the factual record and is conclusory. Plaintiff's unsupported assertion should be disregarded. Defendants admit that the comment, beginning on page two (2) of Ex. K to the Decl. of Antollino identifies its author as the owner of Skydive Long Island. (Ex. K to Decl. of Antollino).

57. Defendants admit the comment, identified as being written by the owner of Skydive Long Island, indicates a customer broke his ankle on a skydive because he did not pick up his feet when so instructed. (Ex. K to Decl. of Antollino, pg. 3). Defendants dispute the purported fact that Ray Maynard admits that a passenger broke his ankle, as the cited evidence does not support that fact. The purported

author of the comment identifies as the owner of Skydive Long Island, but Plaintiff cites no evidence establishing Maynard actually authored the comment. (See Ex. K to Decl. of Antollino).

58. Defendants dispute the purported statement of fact contained within paragraph 58 of Plaintiff's 56.1 Statement. This alleged statement of fact contains no citation to admissible facts, is conclusory, and constitutes improper argument by counsel and should therefore be disregarded.

59. Defendants dispute the purported statement of fact contained within paragraph 59 of Plaintiff's 56.1 Statement. This alleged statement of fact contains no citation to admissible facts, is conclusory, and constitutes improper argument by counsel and should be disregarded. Defendants admit the comment contained on page 3 of Ex. K to the Decl. of Antollino indicates the passenger was at fault for breaking his ankle for not picking up his feet as instructed. (Ex. K to Decl. of Antollino). Defendants dispute Maynard specifically authored this conclusion, Plaintiff cites no facts in evidence to establish Maynard authored this comment, as such, this conclusion should be disregarded. (See Ex. K to Decl. of Antollino).

60. Defendants dispute the purported statement of fact contained within paragraph 60 of Plaintiff's 56.1 Statement. The alleged statement of fact consists of conclusory statements and argument by counsel, all of which are inappropriate in a 56.1 Statement and must be disregarded. Defendants dispute the purported statement of fact that "Ray had every reason to believe plaintiff was simply being safe and had no interest in Rosana given that he is gay," it is conclusory in nature, unsupported by the factual record, and should be disregarded. Zarda testified that it was his

belief that Maynard knows better than to believe that Zarda could have touched a woman inappropriately. (Zarda Dep. pg. 254-255) (emphasis added). Zarda's testimony does not cite to his sexual orientation as a reason he believed Maynard knew Zarda did not act as Kengle said. (Zarda Dep. pg. 254-255). Defendants dispute the purported statement of fact that the "video shows nothing inappropriate" to the extent it implies nothing inappropriate occurred. The video attached to the Declaration of Antollino as Ex. B is only represents a fraction of what occurred during the entirety of the skydive, as a jump typically takes anywhere from 15 to 20 minutes. (Ex. B to Decl. of Antollino; Kengle Dep. pg. 67; Zarda Dep. pg. 318).

61. Defendants dispute the purported statement of fact contained within paragraph 61 of Plaintiff's 56.1 Statement. The alleged statement of fact consists of conclusory statements and argument by counsel, all of which are inappropriate in a 56.1 Statement and must be disregarded. Additionally, Plaintiff's citation to the Zarda Declaration as purported facts to support this alleged statement should be disregarded, as the Zarda Declaration is self-serving, is pure, inadmissible hearsay, does not rely on any facts produced during the previous three (3) years of this litigation, and attempts to introduce new facts into evidence through conclusory and unsubstantiated assertions. Such "evidence" may not be relied on as facts in a 56.1 Statement. Defendants admit Zarda was not permitted to view the video of his jump with Orellana, but dispute the characterization that Zarda was not allowed to defend himself. (Maynard Dep. pg. 184). Maynard approached

Zarda after the complaint to discuss the complaint and obtain Zarda's version of the events. (Zarda Dep. pg. 36, 37, 39, 362; Maynard Dep. pg. 183, 187).

62. Defendants admit the statement contained within paragraph 62 of Plaintiff's 56.1 Statement. Maynard testified that Zarda has more jumps than Maynard. (Maynard Dep. pg. 249). Defendants aver that jumping experience is not at issue in this litigation, but Plaintiff's inappropriate touching and disclosure of personal information which is the issue. (Kengle Dep. pg. 19-20, 22-23, 27; Orellana Dep. pg. 47-48, 50, 89, 100; Maynard Dep. pg. 182, 196, 289; Zarda Dep. pg. 40, 43-44).

63. Defendants dispute the alleged statement of fact contained within paragraph 63 of Plaintiff's 56.1 Statement to the extent it purports that Maynard and Winstock graded Zarda's performance outside the context of the actual skydive. Maynard graded Zarda's performance an eight or a nine, specifically referring to the actual skydive. (Maynard Dep. pg. 280). Winstock's evaluation of the jump as a 97 out of 100 also specifically referred to the actual skydive. (Winstock Dep. pg. 73-75). Defendants aver that Plaintiff's skydive performance is not at issue in this litigation, but Plaintiff's inappropriate touching and disclosure of personal information which is the issue. (Kengle Dep. pg. 19-20, 22-23, 27; Orellana Dep. pg. 47-48, 50, 89, 100; Maynard Dep. pg. 182, 196, 289; Zarda Dep. pg. 40, 43-44).

64. Defendants dispute the alleged statement of fact contained within paragraph 64 of Plaintiff's 56.1 Statement. Maynard's criticism of Zarda's jump was not, as Plaintiff states, that "Ray [*sic*] wasn't touching Rosana enough during the pre-

jump.” (See Maynard Dep. pg. 280). In fact, Maynard’s criticism was that he “didn’t see any handle checks” performed by Zarda during the jump. (Maynard Dep. pg. 280).

65. Defendants dispute the purported statement of fact contained within paragraph 65 of Plaintiff’s 56.1 Statement as it is conclusory, constitutes argument, and is unsupported by citation to any facts, and should thus be disregarded. Plaintiff’s purported citation to “the evidence, supra” is insufficient to support his alleged factual assertion, violates the Fed. R. Civ. P. 56 and Local Rule of Practice in the Eastern District of New York 56.1. Additionally, Maynard investigated the complaint in several ways, including speaking to Kengle (Maynard Dep. pg. 181-182), reviewing the video . (Maynard Dep. pg. 199), and speaking with Zarda (Zarda Dep. pg. 36, 37, 39; Maynard Dep. pg. 183). Zarda was indeed told who lodged a complaint against him, Maynard discussed Kengle’s complaint with Zarda and questioned him on his recollection of the events. (Zarda Dep. pg. 36, 37, 39, 362; Maynard Dep. pg. 183, 184, 187).

66. Defendants dispute the purported statement of fact contained within paragraph 66 of Plaintiff’s 56.1 Statement. Orellana did not testify that she “did not want to file a complaint,” rather, Orellana stated she personally had no intention to call Maynard, as she does not like confrontations. (Orellana Dep. pg. 69). Defendants dispute Plaintiff’s improper characterization of Kengle as being “unemployed.” Kengle did not testify that he was unemployed at the time of the skydive, he merely testified that he had been unemployed since June of 2011. (Kengle Dep. pg. 7). Defendants admit Kengle, not Orellana, called Maynard to voice their

complaint. (Kengle Dep. pg. 31; Maynard Dep. pg. 179-180). Defendants admit that Kengle received a refund of his jump from Maynard, despite not requesting a refund. (Kengle Dep. pg. 32, 33). Defendants dispute the assertion that Kengle “skillfully” obtained a refund, as it is unsupported by citation to the factual record, is a conclusion, constitutes argument by counsel, and is therefore properly disregarded.

67. Defendants admit Exhibit K annexed to the Antollino Declaration states “personally if someone was feeling up my girlfriend, I would do something on the spot to defend her dignity – unless of course I am fourth-grader.” (Ex. K to Decl. of Antollino). Defendants dispute the purported fact that Maynard wrote this comment, as it is unsupported by the factual evidence cited by Plaintiff. The comment states it is authored by the owner of Skydive Long Island, but no evidence cited by Plaintiff demonstrates Maynard actually authored this comment. (See Ex. K to Decl. of Antollino). Moreover, Exhibit K constitute inadmissible hearsay, has no probative value to the causes of action, and should be disregarded.

68. Defendants admit Exhibit K to the Antollino Declaration states “it is a shame in today’s world something like this can actually be put out there for all to see with no proof, and I have to respond to these lies and accusations.” (Ex. K to Decl. of Antollino). Defendants dispute the purported fact that Maynard wrote this comment, as it is unsupported by the factual evidence cited by Plaintiff. The comment states it is authored by the owner of Skydive Long Island, but no evidence cited by Plaintiff demonstrates Maynard actually authored this comment.

(See Ex. K to Decl. of Antollino). Moreover, Exhibit K constitute inadmissible hearsay, has no probative value to the causes of action, and should be disregarded.

69. Defendants dispute the purported statement of fact contained within paragraph 69 of Plaintiff's 56.1 Statement. The alleged fact bears no citation to admissible facts, is conclusory, and constitutes impermissible argument by Plaintiff's counsel. Paragraph 69 should be disregarded in its entirety.

70. Defendants dispute the purported statement of fact contained within paragraph 70 of Plaintiff's 56.1 Statement to the extent the cited deposition testimony does not support the statement of fact asserted by Plaintiff. (See Maynard Dep. pg. 323-325). Maynard testified that he did not see evidence of Orellana and Kengle having an unsatisfactory experience, and that he observed a normal skydive. (Maynard Dep. pg. 323-325).

71. Defendants admit the statement contained within paragraph 71 of Plaintiff's 56.1 Statement.

72. Defendants deny possession knowledge or information sufficient to form a belief as to the truth or veracity of the alleged statement of fact contained within paragraph 72 of Plaintiff's 56.1 Statement. Plaintiff's assertion relies upon the Declaration of Zarda, a document comprised of inadmissible hearsay, conclusory and unsubstantiated assertions not based on admissible evidence, and should be disregarded.

73. Defendants dispute the purported statement of fact contained within paragraph 73 of Plaintiff's 56.1 Statement. Zarda testified that he was involved in relationships with people of the opposite sex, which were "friendly in nature." (Zarda Dep. pg.

54-55). Defendants deny having knowledge or information sufficient to form a belief regarding the alleged statement that Zarda is repulsed by the thought of being with a woman. Plaintiff's assertion relies upon the Declaration of Zarda, a document comprised of inadmissible hearsay, conclusory and unsubstantiated assertions not based on admissible evidence, and should be disregarded.

74. Defendants dispute the statement inasmuch as the citation to the deposition testimony does not the statement of fact asserted by Plaintiff. However, Defendants admit Orellana testified she probably did not read more than the first page of the waiver prior to her skydive. (Orellana Dep. pg. 36). The remainder of Plaintiff's purported statement of fact is conclusory, unsupported by factual evidence, impermissible argument, and should be disregarded. In fact, Orellana testified that she was aware that close proximity was required, as the safety video she viewed prior to the jump demonstrated that she would be attached to her tandem instructor at the hip. (Orellana Dep. pg. 89-90).

75. Defendants dispute the statement contained within paragraph 75 of Plaintiff's 56.1 Statement. Maynard testified that there are two attachments at the hips on the skydiving harness. (Maynard Dep. pg. 27-28). Maynard did not testify that for "safety purposes" Orellana would need "to be touched at various points on her body." (See Maynard Dep. pg. 27-28). Winstock testified that the harness has straps around the passenger's legs, which generally requires the passenger to just step into the harness and the straps are then tightened around their thigh. (Winstock Dep. pg. 14-15). The attachments at the hips, attaching the passenger to the instructor, generally do not need adjustment after being connected.

(Winstock Dep. pg. 77-78). Additionally, the hip attachments are attached while the airplane is on the ground, prior to take-off, not during the ascent. (Winstock Dep. pg. 78).

76. Defendants dispute the alleged statement of fact contained within paragraph 76 of Plaintiff's 56.1 Statement. When presented with what is now Ex. S to the Declaration of Antollino, Maynard testified that it points out several straps and points of attachment. (Maynard Dep. pg. 27). Maynard testified that the straps need to be adjusted. (Maynard Dep. pg. 27). Maynard did not testify that the attachment located at the hips needed to be adjusted. (See Maynard Dep. pg. 27). The attachments at the hips, attaching the passenger to the instructor, generally do not need adjustment after being connected. (Winstock Dep. pg. 77-78). Additionally, the hip attachments are attached while the airplane is on the ground, prior to take-off, not during ascent. (Winstock Dep. pg. 78). Kengle and Orellana's complaint was not that Zarda was adjusting the straps on the harness, it was that Zarda was holding Orellana's hips and resting his chin on her shoulder. (Kengle Dep. pg. 19, 22, 23, 27; Orellana Dep. pg. 60; Maynard Dep. pg. 182).

77. Defendants dispute the purported statement of fact contained within paragraph 77 of Plaintiff's 56.1 Statement. Plaintiff's statement is unsupported by the factual record. Maynard testified that if a customer expressed that he did not like to be touched, Maynard would explain the close contact and that touching would occur, and leave the decision to the customer as to whether he should skydive. (Maynard Dep. pg. 17-18). Plaintiff's assertion is an inferential leap, which should be disregarded.

78. Defendants dispute the statement contained within paragraph 78 of Plaintiff's 56.1 Statement to the extent the cited deposition testimony does not support Plaintiff's assertion. Defendants admit Maynard testified a complaint about the instructor adjusting the harness straps during the skydive was not legitimate. (Maynard Dep. pg. 19). However, Kengle and Orellana's complaint was not that Zarda was adjusting the straps on the harness, it was that Zarda was holding Orellana's hips and resting his chin on her shoulder. (Kengle Dep. pg. 19, 22, 23, 27; Orellana Dep. pg. 60; Maynard Dep. pg. 182).
79. Defendants dispute the alleged statement of fact contained within paragraph 79 of Plaintiff's 56.1 Statement to the extent it asserts the "overwhelming majority of tandem instructors are men." Maynard testified that the majority of skydive instructors at Skydive Long Island are men, not that a majority of all tandem instructors are men. (Maynard Dep. pg. 38-39). Defendants dispute that the joke suggesting a boyfriend did not know the girlfriend would be strapped to another man is "tired" and made often. Maynard testified that such a joke is made sometimes, not all the time. (Maynard Dep. pg. 40). The characterization of this joke as being "tired" is unsupported by factual evidence and should be disregarded.
80. Defendants admit the statement contained within paragraph 80 of Plaintiff's 56.1 Statement. Defendants aver that if a customer complained about an instructor making that statement Maynard would "deal with that." (Maynard Dep. pg. 41). Maynard further testified that he would instruct his instructors not make such a statement if a customer complained about that statement. (Maynard Dep. pg. 212).

81. Defendants admit the statement contained within paragraph 81 of Plaintiff's 56.1 Statement. Defendants aver that a customer getting injured is unrelated to the facts of this litigation; Plaintiff's inappropriate touching and disclosure of personal information is the issue. (Kengle Dep. pg. 19-20, 22-23, 27; Orellana Dep. pg. 47-48, 50, 89, 100; Maynard Dep. pg. 182, 196, 289; Zarda Dep. pg. 40, 43-44).

82. Defendants dispute the purported statement of fact contained within paragraph 82 of Plaintiff's 56.1 Statement to the extent it asserts Zarda was suspended on the spot. On the Monday following the June 18, 2010 jump with Orellana, Maynard had a conversation with Zarda regarding the jump. (Zarda Dep. pg. 36, 37, 39; Maynard Dep. pg. 183). During the conversation, Maynard questioned Zarda as to whether he remembered the jump with Orellana. (Zarda Dep. pg. 36). Zarda responded that he did not remember the specific jump. (Zarda Dep. pg. 37, 362). 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; Maynard Dep. pg. 187, 196). Zarda again did not remember anything about the jump. (Zarda Dep. pg. 38). 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. 43-44). 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). 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). After this conversation, Maynard suspended Zarda for a week without pay. (Zarda Dep. pg. 40).

83. Defendants admit the statement of fact contained within paragraph 83 of Plaintiff’s 56.1 Statement. Defendants aver that Maynard returned the wages he deducted from Zarda’s pay. (Maynard Dep. pg. 188). Further, Plaintiff does not maintain a cause of action for unlawful deduction of wages under New York Labor Law § 198 and therefore this fact is irrelevant. (See generally Amended Complaint).

84. Defendants dispute the purported statement of fact contained within paragraph 84 of Plaintiff’s 56.1 Statement. The purported fact asserted by Plaintiff is, in actuality, an argument, unsupported by facts in the record, and should be disregarded. Maynard testified that it would be illegal for someone to take his Blackberry and return it a week later. (Maynard Dep. pg. 190). Maynard did not testify that deducting the cost of the skydive from Zarda’s wages was the equivalent of stealing, and therefore wrong. (See Maynard Dep. pg. 190). Additionally, Maynard testified that he did not steal when he deducted from Zarda’s wages. (Maynard Dep. pg. 190). Plaintiff’s characterization of the wage deduction as “stealing” and “wrong” is therefore unsupported by any factual evidence and must be disregarded. Additionally, Plaintiffs do not maintain a cause

of action for unlawful deduction of wages under New York Labor Law § 198 and therefore this fact is irrelevant. (See generally Amended Complaint).

85. Defendants dispute the purported statement of fact contained within paragraph 85 of Plaintiff's 56.1 Statement. Plaintiff's assertion is not accompanied by citation to any fact, is conclusory, and constitutes impermissible argument. This paragraph should be disregarded.

86. Defendants dispute the purported statement of fact contained within paragraph 86 of Plaintiff's 56.1 Statement to the extent it limits Kengle's complaint to only two (2) issues. 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. 43-44). 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." (Maynard Dep. pg. 196). Maynard then informed Zarda that the customers also complained that Zarda discussed his sexual orientation with the customer during the jump. (Zarda Dep. pg. 40). This included Zarda telling Orellana, "don't worry that I'm so close because I'm gay" and that he "had recently broken up with his boyfriend." (Maynard Dep. pg. 182; Orellana Dep. pg. 89).

87. Defendants dispute the alleged statement of fact contained within paragraph 87 of Plaintiff's 56.1 Statement. Additionally, Plaintiff's citation to the Zarda Declaration as purported facts to support this alleged statement should be

disregarded, as the Zarda Declaration is self-serving, is pure, inadmissible hearsay, does not rely on any facts produced during the previous three (3) years of this litigation, and attempts to introduce new facts into evidence through conclusory and unsubstantiated assertions. Such “evidence” may not be relied on as facts in a 56.1 Statement. Zarda’s unsubstantiated assertion that he may have said “and I have the ex-husband to prove it” is a speculation, unsupported by factual evidence and should be disregarded. Defendants deny possessing knowledge or information sufficient to form a belief regarding whether Zarda had in fact recently broken up with his boyfriend in June 2010.

88. Defendants admit Zarda asked Winstock to speak to Maynard during Zarda’s period of suspension. (Zarda Dep. pg. 207). Defendants admit Winstock recommended a letter of reprimand instead of termination, as Zarda was an outstanding tandem instructor as far as safety was concerned. (Winstock Dep. pg. 24, 84).
89. Defendants dispute the purported statement of fact contained within paragraph 89 of Plaintiff’s 56.1 Statement inasmuch as it asserts Winstock did not know what the complaint was about. The deposition testimony cited does not support Plaintiff’s assertion that Winstock was unaware of the subject matter of the complaint by Kengle. (See Winstock Dep. pg. 84-85). Winstock merely testifies that he was not involved in the complaint, the investigation thereof, or the termination of Zarda. (See Winstock Dep. pg. 84-85). Zarda testified to discussing the conversation Maynard had with Zarda, wherein he was suspended, with Winstock, which is how Zarda requested Winstock speak to Maynard on his

behalf. (Zarda Dep. pg. 207-208). Defendants admit Winstock recommended the letter of reprimand in lieu of termination. (See Winstock Dep. pg. 84-85).

90. Defendants admit that Winstock quit Skydive Long Island to Maynard's dissatisfaction. Defendants admit Winstock sent Zarda a message indicating he quit Skydive Long Island because he "couldn't take Ray any longer." (Ex. E to the Decl. of Zarda). Defendants dispute the purported statement of fact that Winstock told Zarda his termination had been wrong. Winstock's message states only that he "did not agree with how it was handled," and does not state that Zarda's termination had been wrong. (Ex. E to the Decl. of Zarda).

91. Defendants dispute the alleged statement of fact contained within paragraph 91 of Plaintiff's 56.1 Statement as the cited evidence does not support the assertion. Plaintiff cites Exhibit B to the Declaration of Antollino, which is comprised of videos and photographs from the skydive and the safety video shown to Skydive Long Island's customers prior to jumping. (See Ex. B to Decl. of Antollino). These videos do not reflect Zarda's termination. (See Ex. B to Decl. of Antollino). Defendants dispute that Maynard was enraged during the termination of Zarda, the audio evidence does not support such a characterization. (See Ex. D to the Decl. of Zarda).

92. Defendants dispute the alleged statement of fact contained within paragraph 91 of Plaintiff's 56.1 Statement as the cited evidence does not support the assertion. Plaintiff cites Exhibit B to the Declaration of Antollino, which is comprised of videos and photographs from the skydive and the safety video shown to Skydive Long Island's customers prior to jumping. (See Ex. B to Decl. of Antollino).

These videos do not reflect Zarda's termination. (See Ex. B to Decl. of Antollino).

Defendants dispute that Maynard's tone was angry or enraged during the termination of Zarda, the audio evidence does not support such a characterization.

(See Ex. D to the Decl. of Zarda).

93. Defendants admit the statement of fact contained within paragraph 93 of Plaintiff's 56.1 Statement.

94. Defendants admit that Winstock believes that only rare occasion should such information be disclosed to passengers. (Winstock Dep. pg. 109-110). Winstock testified that he does not recommend bringing up sexual orientation to customers. (Winstock Dep. pg. 110). However, Winstock has revealed that he is married with children in an effort to calm older women down prior to a jump, stating "I'm married, I have three children, I want to go home to my family, it's okay." (Winstock Dep. pg. 109-110). This is the only scenario he would reveal such information. (Winstock Dep. pg. 109-110).

95. Defendants admit that Maynard testified he did not believe there was anything wrong with Winstock informing passengers that he was married with kids. Defendants dispute the purported statement of fact that this is contrary to what Maynard told Zarda. During his termination, Maynard told Zarda that Winstock was telling a passenger of his escapades, he would be in a similar situation to Zarda. (Maynard Dep. pg. 226). Defendants admit Maynard did not want Winstock to quit. (Maynard Dep. pg. 347).

96. Defendants admit the statement of fact contained within paragraph 96 of Plaintiff's 56.1 Statement. Zarda testified that he disclosed his sexuality to

Orellana in an effort to allay her discomfort. (Zarda Dep. pg. 139-140; 173, 177). Zarda testified that he did so because he thought it would be the best thing to say after the joke was made. (Zarda Dep. pg. 203-204). Zarda additionally testified that he believes disclosing his sexuality takes him “out of the hot seat” with boyfriends of his female passengers. (Zarda Dep. pg. 205).

97. Defendants dispute the purported statement of fact contained within paragraph 97 of Plaintiff’s 56.1 Statement. Plaintiff’s citation to the Zarda Declaration as purported facts to support this alleged statement should be disregarded, as the Zarda Declaration is self-serving, is pure, inadmissible hearsay, does not rely on any facts produced during the previous three (3) years of this litigation, and attempts to introduce new facts into evidence through conclusory and unsubstantiated assertions. Such “evidence” may not be relied on as facts in a 56.1 Statement. Additionally, Plaintiff’s assertion that Zarda’s “experience with women is that they are cool about homosexuality” is irrelevant to this litigation.

98. Defendants admit the statement contained within paragraph 98 of Plaintiff’s 56.1 Statement. (Zarda Dep. pg. 205). Defendants dispute the purported statement of fact that Maynard thought such a disclosure was appropriate, as the deposition testimony cited does not support Plaintiff’s assertion. (See Maynard Dep. pg. 161-162).

99. Defendants dispute the purported statement of fact contained within paragraph 99 of Plaintiff’s 56.1 Statement. Plaintiff’s citation to the Zarda Declaration as purported facts to support this alleged statement should be disregarded, as the Zarda Declaration is self-serving, is pure, inadmissible hearsay, does not rely on

any facts produced during the previous three (3) years of this litigation, and attempts to introduce new facts into evidence through conclusory and unsubstantiated assertions. Such “evidence” may not be relied on as facts in a 56.1 Statement. Defendants admit that Zarda has an athletic and masculine appearance. (Zarda Dep. pg. 116, 121-122, 364-365).

100. Defendants dispute the purported statement of fact contained within paragraph 100 of Plaintiff’s 56.1 Statement. Plaintiff’s assertion is largely conclusory and argument, improperly included in Plaintiff’s 56.1 Statement. As such Plaintiff’s assertion that “Don used his judgment to make the passenger more comfortable” and his comparison to Winstock should be disregarded. Plaintiff’s only factual citation used to support this statement is Zarda’s conclusory and argument-laden Declaration, which is not based in fact. Plaintiff’s citation to the Zarda Declaration as purported facts to support this alleged statement should be disregarded, as the Zarda Declaration is self-serving, is pure, inadmissible hearsay, does not rely on any facts produced during the previous three (3) years of this litigation, and attempts to introduce new facts into evidence through conclusory and unsubstantiated assertions. Such “evidence” may not be relied on as facts in a 56.1 Statement.

101. Defendants dispute that Maynard’s investigation was limited to reviewing the video of the jump with Orellana. Maynard investigated the complaint in several ways, including speaking to Kengle (Maynard Dep. pg. 181-182), reviewing the video. (Maynard Dep. pg. 199), and speaking with Zarda (Zarda Dep. pg. 36, 37, 39; Maynard Dep. pg. 183). Defendants dispute the remaining

purported statement of fact contained within paragraph 101 of Plaintiff's 56.1 Statement. Plaintiff's assertion is largely conclusory and argument, improperly included in Plaintiff's 56.1 Statement, and unsupported by citation to any facts. As such, the remainder of paragraph 101 should be disregarded.

102. Defendants admit that during the termination of Zarda, Maynard brought up Kengle's complaint that Zarda had touched Orellana on the hips and put his head on her shoulder, which made her and Kengle uncomfortable. (Maynard Dep. pg. 247). Defendants dispute the alleged statement of fact that this was a "second-hand allegation." Plaintiff's statement is not supported by citation to factual evidence, constitutes a conclusory statement, and should be disregarded. Additionally, Kengle testified that he observed Zarda holding Orellana's hips during the jump, which also made him uncomfortable. (Kengle Dep. pg. 19-20, 22-23, 27).

103. Defendants admit Maynard testified he had never been to a gay establishment. (Maynard Dep. pg. 114). Defendants dispute the remaining alleged facts contained within paragraph 103 of Plaintiff's 56.1 Statement, as the cited deposition testimony does not support Plaintiff's assertion. (See Maynard Dep. pg. 100, 114). Additionally, Maynard testified that he did know other gay people aside from his sister and his sister's widow. (Maynard Dep. pg. 108, 111).

104. Defendants dispute the purported statement of fact contained within paragraph 104 of Plaintiff's 56.1 Statement. Maynard did not testify that he "believes that being gay is an 'after hours' affair." Maynard testified that, in 2001, there were two women who were upset after their jump with Zarda because he

was telling them “about his after-hours activities and they didn’t want to hear it.” (Maynard Dep. pg. 137-138). He did not say that being gay is only for “after hours.” (See Maynard Dep. pg. 137-138). Nor did Maynard characterize being gay as consisting of “escapades.” (See Maynard Dep. pg. 226). Maynard testified that he did not want Zarda telling customers about his personal escapades. (Maynard Dep. pg. 226). Maynard also testified that Winstock would be in the same situation if he was telling customers “of his escapades.” (Maynard Dep. pg. 226). Maynard’s use of the term escapades was not limited to those who are gay. (Maynard Dep. pg. 226). Defendants admit paragraph 38 of Defendants’ 56.1 Statement states “Zarda was open and notorious about his sexual orientation.” Notorious is defined as “generally known and talked of” by Merriam Webster Online. (See <http://www.merriam-webster.com/dictionary/notorious>). By his own admission, it was well known at Skydive Long Island that Zarda was gay. (Zarda Dep. pg. 62-63).

105. Defendants deny the purported statement of fact contained within paragraph 105 of Plaintiff’s 56.1 Statement. Plaintiff’s citation to the Zarda Declaration as purported facts to support this alleged statement should be disregarded, as the Zarda Declaration is self-serving, is pure, inadmissible hearsay, does not rely on any facts produced during the previous three (3) years of this litigation, and attempts to introduce new facts into evidence through conclusory and unsubstantiated assertions. Such “evidence” may not be relied on as facts in a 56.1 Statement. Defendants deny possession knowledge or information sufficient to form a belief regarding whether Zarda gave Maynard an

“inclination of an idea that he was sexually gratified by women.” Defendants admit Zarda stated he was gay during the meeting with Maynard in which he was suspended. (Zarda Dep. pg. 43).

106. Defendants admit the statement contained with paragraph 106 of Plaintiff’s 56.1 Statement.

107. Defendants dispute the purported statement of fact contained within paragraph 107 of Plaintiff’s 56.1 Statement. The cited deposition testimony does not support Plaintiff’s assertion. Maynard testified that in 2001 two women had been upset after skydives with Zarda “because he was carrying on about his after-hours activities and they didn’t want to hear it.” (Maynard Dep. pg. 138-139). Maynard did not tell Zarda it was unacceptable to be gay or tell customers he was gay. (Maynard Dep. pg. 139-140). Maynard did not state being gay was only acceptable if Zarda did not flaunt it. (See Maynard Dep. pg. 139-140; 226). Maynard told Zarda he did not want any of his instructors talking about their personal escapades with customers. (Maynard Dep. pg. 226). Defendants admit paragraph 38 of Defendants’ 56.1 Statement states “Zarda was open and notorious about his sexual orientation.” Notorious is defined as “generally known and talked of” by Merriam Webster Online. (See <http://www.merriam-webster.com/dictionary/notorious>). By his own admission, it was well known at Skydive Long Island that Zarda was gay. (Zarda Dep. pg. 62-63).

108. Defendants dispute the purported statement of fact contained within paragraph 108 of Plaintiff’s 56.1 Statement. Plaintiff’s assertion that “Ray has an old fashioned notion of what it means to be gay, and didn’t want to offend

Kengle's bigotry" is unsupported by citations to facts in evidence, is conclusory, constitutes impermissible argument and should be disregarded. Additionally, the cited deposition testimony from the Kengle deposition expresses no "bigotry" on the part of Kengle. (See Kengle Dep. pg. 24, 38). Both Kengle and Orellana testified that they did not maintain bias against homosexuals. (Kengle Dep. pg. 40-41; Orellana Dep. pg. 63-65). Orellana testified to having several gay friends and being in support of gay marriage and Kengle testified to having several gay co-workers in the past. (Kengle Dep. pg. 40-41; Orellana Dep. pg. 63-65).

109. Defendants dispute the purported statement of fact contained within paragraph 109 of Plaintiff's 56.1 Statement. Plaintiff's assertion that "[o]n several occasions when plaintiff did anything that was beyond the norm of masculinity, Maynard would make a derisive comment" is unsupported by citations to facts in evidence, is conclusory, constitutes impermissible argument and should be disregarded. Additionally, Plaintiff's assertion that Maynard "demanded plaintiff paint the cast black" relies upon the Zarda Declaration. Plaintiff's citation to the Zarda Declaration as purported facts to support this alleged statement should be disregarded, as the Zarda Declaration is self-serving, is pure, inadmissible hearsay, does not rely on any facts produced during the previous three (3) years of this litigation, and attempts to introduce new facts into evidence through conclusory and unsubstantiated assertions. Such "evidence" may not be relied on as facts in a 56.1 Statement. Further, the Zarda Declaration contradicts Zarda's prior sworn deposition testimony, and should be disregarded on that basis. Zarda testified that when he was on crutches and in a pink cast, Maynard requested

Zarda put a sock over his foot. (Zarda Dep. pg. 347). Zarda did not testify that Maynard requested he paint the cast black. (Zarda Dep. pg. 346-347).

110. Defendants admit that Zarda testified that Maynard requested Zarda put a sock on when he saw the cast. (Zarda Dep. pg. 347). Defendants further admit that Maynard made such a request because 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; Winstock Dep. pg. 96-97).

111. Defendants admit the safety video and the waiver inform customers of the possibility of injury and/or death during a skydive. (See Ex. A and B to Decl. of Antollino). The assertion “the possibility of injury is affirmatively mentioned to all passengers” is an impermissible conclusion and should be disregarded.

112. Defendants dispute the purported statement of fact contained within paragraph 112 of Plaintiff’s 56.1 Statement. Plaintiff’s assertion that “the cast Don wore is large . . . and it is probably not feasible to find a sock that would fit over it” is unsupported by citations to facts in evidence, is conclusory, constitutes impermissible argument and should be disregarded. Additionally, Plaintiff’s assertion that the cast is large is contradicted by the evidence – a review of Ex. A to the Zarda Declaration reveals the cast is of average size. (Ex. A to Decl. of Zarda).

113. Defendants dispute the purported statement of fact contained within paragraph 113 of Plaintiff’s 56.1 Statement. Plaintiff’s assertion that “assuming plaintiff had placed a huge sock on the cast, he still would have been on crutches,

and it would have looked like he had a cast with a sock on it” is unsupported by citations to facts in evidence, is conclusory, constitutes impermissible argument and should be disregarded. Plaintiff’s assertion relies upon the Zarda Declaration, which consists of conclusory and speculative argument, unsupported by facts, and should be disregarded

114. Defendants dispute the purported statement of fact contained within paragraph 114 of Plaintiff’s 56.1 Statement. Plaintiff’s assertion that “[p]ink is the color of gay liberation, and that is why plaintiff chose that color for his cast” relies upon the Zarda Declaration. Plaintiff’s citation to the Zarda Declaration as purported facts to support this alleged statement should be disregarded, as the Zarda Declaration is self-serving, is pure, inadmissible hearsay, does not rely on any facts produced during the previous three (3) years of this litigation, and attempts to introduce new facts into evidence through conclusory and unsubstantiated assertions. Such “evidence” may not be relied on as facts in a 56.1 Statement. Plaintiff’s assertion that “Ray wanted him to paint it black and erase the color of the pink triangle” similarly relies upon the conclusory argument contained within the Zarda Declaration, and should also be disregarded. Further, the cited paragraph from Zarda Declaration contradicts Zarda’s prior sworn deposition testimony, and should be disregarded on that basis as well. Zarda testified that when he was on crutches and in a pink cast, Maynard requested Zarda put a sock over his foot. (Zarda Dep. pg. 347). Zarda did not testify that Maynard requested he paint the cast black. (Zarda Dep. pg. 346-347).

115. Defendants dispute the purported statement of fact contained within paragraph 115 of Plaintiff's 56.1 Statement. Plaintiff's assertion that "[s]ometime later after the cast was taken off, plaintiff was at the drop zone in a boot" relies upon the Zarda Declaration, which consists of conclusory argument, unsupported by facts, and should be disregarded. Zarda did not testify to ever appearing at Skydive Long Island in a boot, only a cast. (Zarda Dep. pg. 344-347). Plaintiff's assertion that when Maynard saw Plaintiff's pink toenails he said "'That's Gay!' in a derisive tone" is unsupported by the factual record. Further, the cited paragraph from Zarda Declaration contradicts Zarda's prior sworn deposition testimony, and should be disregarded on that basis as well. Zarda testified that Maynard said his pink cast looked gay. (Zarda Dep. pg. 344). Not that Maynard said his pink toenails looked gay, and specifically did not testify that he said it in a "derisive tone." (Zarda Dep. pg. 344-347). Maynard testified that he did not remember saying "that's gay" when seeing Zarda's pink cast, and does not recall commenting about the color of the cast. (Maynard Dep. pg. 160-161).

116. Defendants dispute the purported statement of fact contained within paragraph 116 of Plaintiff's 56.1 Statement. Maynard did not state that Zarda's homosexuality was an escapade. (See Maynard Dep. pg. 226). Maynard used the word "escapade" referring to both sexual orientations, stating that if Winstock had been "telling some chick of his escapades" he would be in a similar situation. (Maynard Dep. pg. 226).

117. Defendants dispute the purported statement of fact contained within paragraph 117 of Plaintiff's 56.1 Statement. The statement "escapade is a derisive

term to describe one's sexuality" is unaccompanied by citation to factual evidence, is conclusory, and should be disregarded. Defendants dispute the statement that "this is a disrespectful way of discussing a person's being" as it is unsupported by factual evidence, is conclusory, constitutes impermissible argument, and should be disregarded. Defendants admit that Merriam Webster online contains the cited definition of "escapade." Defendants aver that Maynard used the word "escapade" referring to both sexual orientations, not just homosexuals, stating that if Winstock had been "telling some chick of his escapades" he would be in a similar situation. (Maynard Dep. pg. 226).

118. Defendants admit paragraph 38 of Defendants' 56.1 Statement states "Zarda was open and notorious about his sexual orientation." Notorious is defined as "generally known and talked of" by Merriam Webster Online. (See <http://www.merriam-webster.com/dictionary/notorious>). It was well known at Skydive Long Island that Zarda was gay. (Zarda Dep. pg. 62-63).

119. Defendants admit paragraph 38 of Defendants' 56.1 Statement states "Zarda was open and notorious about his sexual orientation." Notorious is defined as "generally known and talked of" by Merriam Webster Online. (See <http://www.merriam-webster.com/dictionary/notorious>). It was well known at Skydive Long Island that Zarda was gay. (Zarda Dep. pg. 62-63).

120. Defendants admit discussing personal information with customers is one of the reasons Maynard terminated Zarda. (Maynard Dep. pg. 226). Defendants dispute the statement that Maynard "discredited" Zarda, as it is unsupported by the cited evidence, and should thus be disregarded.

121. Defendants admit that Maynard testified that an instructor telling customers they are Cuban, Irish, or from New Zealand is not inappropriate, despite being personal information. (Maynard Dep. pg. 256-257). Maynard also testified that it would not be inappropriate for Zarda to wear a shirt that said "I love my husband." (Maynard Dep. pg. 255). Maynard also testified that he believed some information to be inappropriate to share with customers, such as wearing shirts that said "I'm gay" or "I'm heterosexual." (Maynard Dep. pg. 252). Defendants dispute the purported statement of fact that "the only personal issue that Ray testified he [sic] admonish or discipline in [sic] employee is for discussing homosexuality." Maynard did not testify that the only personal information he would discipline was discussing homosexuality; Maynard testified that he would request an instructor wearing a "I'm heterosexual" shirt to change. (Maynard Dep. pg. 252). Additionally, Maynard testified that he would not request Zarda change if he wore a shirt that said "I love my husband." (Maynard Dep. pg. 255). Defendants admit that at Zarda's termination Maynard stated Winstock would be in a similar situation if he had discussed his personal escapades with a customer. (Maynard Dep. pg. 226). Defendants dispute the remaining purported statement of fact as it is unsupported by the evidence cited by Plaintiff, as paragraph 97 of Plaintiff's 56.1 is unrelated to Winstock or Maynard's termination of Zarda. (See ¶ 97 of Plaintiff's 56.1 Statement).

122. Defendants admit the irrelevant statement of fact contained within paragraph 122 of Plaintiff's 56.1 Statement.

123. Defendants admit that the Human Rights Campaign has a shirt which states “Legalize Gay” on it. Defendants dispute the purported fact that Maynard testified that such a shirt would be inappropriate at Skydive Long Island as Plaintiff’s assertion is unsupported by citation to any fact in evidence, and should therefore be disregarded. Defendants admit that Ex. X annexed to the Antollino Declaration contains information regarding Veterans Day. (Ex. X to Decl. of Antollino). Defendants deny the remaining purported statement of fact in paragraph 123 of Plaintiff’s 56.1 Statement. Plaintiff’s assertion that veteran’s status is personal information, political information, and permitted to be discussed at the drop zone is unsupported by factual evidence. The cited deposition testimony does not discuss veterans or the permissibility of discussing such information at Skydive Long Island. (See Maynard Dep. pg. 256-257).

124. Defendants dispute the purported statement of fact contained within paragraph 124 of Plaintiff’s 56.1 Statement. Maynard testified that wearing clothing that stated “I’m gay” or “I’m heterosexual” would be inappropriate because it would make some people uncomfortable. (Maynard Dep. pg. 252). However, Maynard also testified that wearing a shirt that said “I love my husband” would be acceptable for Zarda to wear. (Maynard Dep. pg. 255). Defendants additionally dispute Plaintiff’s assertion as it is largely inappropriate argument, and should be disregarded.

125. Defendants dispute the purported statement of fact contained within paragraph 125 of Plaintiff’s 56.1 Statement. The statement is unaccompanied by

citation to factual evidence, is conclusory, impermissible argument and should be disregarded.

126. Defendants dispute the purported statement of fact contained within paragraph 126 of Plaintiff's 56.1 Statement. The statement is unaccompanied by citation to factual evidence, is conclusory, impermissible argument and should be disregarded. Plaintiff's assertion that Defendants have no proof whatsoever that plaintiff is *not* 100% gay, has never been with a woman, and only did some pretend to date of women before he came out of the closet" similarly relies upon the conclusory argument contained within the Zarda Declaration. Plaintiff's citation to the Zarda Declaration as purported facts to support this alleged statement should be disregarded, as the Zarda Declaration is self-serving, is pure, inadmissible hearsay, does not rely on any facts produced during the previous three (3) years of this litigation, and attempts to introduce new facts into evidence through conclusory and unsubstantiated assertions. Such "evidence" may not be relied on as facts in a 56.1 Statement. Further, the cited paragraph from Zarda Declaration contradicts Zarda's prior sworn deposition testimony, and should be disregarded on that basis as well. Zarda testified that he had relationships with women prior to coming out as gay. (Zarda Dep. pg. 54).

127. Defendants dispute the purported statement of fact contained within paragraph 127 of Plaintiff's 56.1 Statement. The statement is unaccompanied by citation to factual evidence, is conclusory, impermissible argument and should be disregarded. Defendants additionally dispute the purported statement of fact that the evidence shows no impropriety by Zarda. The video evidence of the jump is

not a complete recitation of the skydive and only represents a portion of what occurred. (Kengle Dep. pg. 100).

128. Defendants dispute the purported statement of fact contained within paragraph 128 of Plaintiff's 56.1 Statement. The statement that "Maynard knows that this is normal" is unaccompanied by citation to factual evidence, is conclusory, impermissible argument and should be disregarded. Defendants dispute that whispering is required. Winstock testified that instructors prefer to have their head on either side of the passenger's, so that the passenger does not hit them in the face. (Winstock Dep. pg. 50). Winstock further testified that while the plane is loud, they can hear each other speak. (Winstock Dep. pg. 50). Maynard also testified that the passenger's head should be on the side of the instructor, so the instructor does not get hit in the mouth. (Maynard Dep. pg. 259). Neither testified that it is normal to "whisper" in the ear of the passenger. (See Maynard Dep. pg. 259; Winstock Dep. pg. 50.) Plaintiff's citation to the Zarda Declaration as purported facts to support this alleged statement should be disregarded, as the Zarda Declaration is self-serving, is pure, inadmissible hearsay, does not rely on any facts produced during the previous three (3) years of this litigation, and attempts to introduce new facts into evidence through conclusory and unsubstantiated assertions. Such "evidence" may not be relied on as facts in a 56.1 Statement. Zarda did not testify that whispering into a customer's ear was necessary. (See Zarda Dep. pg. 230-232). Zarda testified that he leans forward to give instructions to the customer, but there was no whispering required. (Zarda Dep. pg. 230-232).

129. Defendants dispute the purported statement of fact contained within paragraph 129 of Plaintiff's 56.1 Statement. Plaintiff's statement is largely conclusory, impermissible argument and should be disregarded. Defendants admit the letter disputing Zarda's unemployment benefits did not contain information regarding Zarda's inappropriate touching. (Ex. O to Decl. of Antollino). However, Maynard did not author this document, Lauren Callanan did. (Ex. O to Decl. of Antollino; Maynard Dep. pg. 344-345).

130. Defendants dispute the purported statement of fact contained within paragraph 130 of Plaintiff's 56.1 Statement. Plaintiff's statement is largely conclusory, impermissible argument and should be disregarded. Additionally, Defendants dispute the statement that Maynard immediately credited Kengle's complaint and immediately suspended Zarda, as it is unsupported by citation to the factual record. Maynard investigated the complaint in several ways, including speaking to Kengle (Maynard Dep. pg. 181-182), reviewing the video (Maynard Dep. pg. 199), and speaking with Zarda (Zarda Dep. pg. 36, 37, 39; Maynard Dep. pg. 183). Defendants admit Maynard deducted the cost of the videos from Zarda's pay, however Maynard returned the money shortly thereafter. (Maynard Dep. pg. 188).

131. Defendants dispute the purported statement of fact contained within paragraph 131 of Plaintiff's 56.1 Statement. Plaintiff's statement is largely conclusory, impermissible argument and should be disregarded. Defendants dispute the purported fact that "Maynard couldn't bring himself to mention this allegation," as it is unsupported by any fact in evidence, and is impermissible

argument. Defendants admit the letter disputing Zarda's unemployment benefits did not contain information regarding Zarda's inappropriate touching. (Ex. O to Decl. of Antollino). However, Maynard did not author this document, Lauren Callanan did. (Ex. O annexed to Decl. of Antollino; Maynard Dep. pg. 344-345). Defendants admit there is financial incentive to bring up Zarda's inappropriate touching to defeat Zarda's claim for unemployment benefits. (Maynard Dep. pg. 343).

132. Defendants dispute the purported statement of fact contained within paragraph 132 of Plaintiff's 56.1 Statement. Plaintiff's statement is entirely conclusory, impermissible argument, with no citation to facts in evidence, and should be disregarded.

133. Defendants admit Plaintiff was paid per jump. (Zarda Dep. pg. 301-302, 309; Winstock Dep. pg. 61). Defendants dispute the purported statement of fact that Zarda was "expected to be on the premises that [sic] STLI [sic] approximately 12 hours per day." On the weekends the employees are expected "to be there at 7:30 because we try to get wheels up by 8 o'clock." (Maynard Dep. pg. 306; Callanan Dep. pg. 59). 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; Callanan Dep. pg. 59). During any one day, "Skydiving goes on typically all the way until one half hour before sunset." (Zarda Dep. pg. 301).

134. Defendants dispute the purported statement of fact contained within paragraph 134 of Plaintiff's 56.1 Statement. Plaintiff's statement is unsupported by citation to admissible facts and thus must be disregarded. Additionally,

Plaintiff was paid per jump while employed by Skydive Long Island. (Zarda Dep. pg. 301-302, 309; Winstock Dep. pg. 61).

135. Defendants admit the statement of fact contained within paragraph 135 of Plaintiff's 56.1 Statement.

136. Defendants dispute the purported statement of fact contained within paragraph 136 of Plaintiff's 56.1 Statement. Plaintiff's citation to the Zarda Declaration as purported facts to support this alleged statement should be disregarded, as the Zarda Declaration is self-serving, is pure, inadmissible hearsay, does not rely on any facts produced during the previous three (3) years of this litigation, and attempts to introduce new facts into evidence through conclusory and unsubstantiated assertions. Such "evidence" may not be relied on as facts in a 56.1 Statement. Additionally, the records annexed as to the Zarda Wage Affidavit were not produced during the course of discovery, have not been authenticated, are tantamount to hearsay, and should therefore be disregarded. Moreover, there were days when there is bad weather or down time, on such occasions, the instructors were permitted to leave SDLI. (Zarda Dep. pg. 293). However, in those instances, Zarda chose not to leave SDLI because it was "more convenient." (Zarda Dep. pg. 293).

137. Defendants dispute the purported statement of fact contained within paragraph 137 of Plaintiff's 56.1 Statement. Plaintiff's statement is wholly conclusory, constitutes impermissible argument, with no citation to facts in evidence, and should be disregarded. Defendants aver that there were days when there is bad weather or down time, on such occasions, the instructors were

permitted to leave SDLI. (Zarda Dep. pg. 293). However, in those instances, Zarda chose not to leave SDLI because it was “more convenient.” (Zarda Dep. pg. 293).

138. Defendants dispute the purported statement of fact contained within paragraph 138 of Plaintiff’s 56.1 Statement. Plaintiff’s statement is largely conclusory, impermissible argument, and should be disregarded. Defendants additionally dispute Plaintiff’s statement as Maynard testified that there are stores and a “bagel place” within a mile of Skydive Long Island. (Maynard Dep. pg. 307). There were days when there is bad weather or down time, on such occasions, the instructors were permitted to leave SDLI. (Zarda Dep. pg. 293). However, in those instances, Zarda chose not to leave SDLI because it was “more convenient.” (Zarda Dep. pg. 293).

139. Defendants dispute the purported statement of fact contained within paragraph 139 of Plaintiff’s 56.1 Statement. Plaintiff’s statement is wholly conclusory, impermissible argument, with no citation to facts in evidence, and should be disregarded. Plaintiff’s statement relies upon the conclusory assertions in Zarda’s Wage Affidavit, and should therefore be disregarded. Defendants further dispute that Plaintiff is owed any wages, as at all times he was compensated above the minimum wage rate. (See Exs. 5, 6, 7, and 9 to Decl. of Zabell). Plaintiff was paid on a piece-work basis, earning \$40 per jump. (Zarda Dep. pg. 301-302, 309). Additionally, there were days when there is bad weather or down time, on such occasions, the instructors were permitted to leave SDLI.

(Zarda Dep. pg. 293). However, in those instances, Zarda chose not to leave SDLI because it was “more convenient.” (Zarda Dep. pg. 293).

140. Defendants dispute the purported statement of fact contained with paragraph 140 of Plaintiff’s 56.1 Statement. Maynard directed Callanan on how to perform the search and the information for which she was searching. (Maynard Dep. pg. 352). Maynard does not know exactly how the search was performed by Callanan. (Maynard Dep. pg. 352).

141. Defendants admit Callanan performed the search of electronic documents for Skydive Long Island. Defendants admit Callanan testified that there were multiple computers at Skydive Long Island and there was no server. (Callanan Dep. pg. 13).

142. Defendants admit Callanan testified as cited in paragraph 142 of Plaintiff’s 56.1 Statement. Defendants aver that Callanan further testified that she merely could not recall which computer or computers she used to perform the search, and that it may have been multiple computers. (Callanan Dep. pg. 14). Callanan also testified that she searched the computers for documents and emails. (Callanan Dep. pg. 12).

143. Defendants admit the statement contained within paragraph 143 of Plaintiff’s 56.1 Statement. Defendants aver that Callanan testified, with regards to Skydive Long Island’s document retention, that an e-mail may be disregarded and not kept on file. (Callanan Dep. pg. 16).

144. Defendants dispute the purported statement of fact contained within paragraph 144 of Plaintiff's 56.1 Statement. Plaintiff's statement is wholly conclusory, impermissible argument, with no citation to facts in evidence, and should be disregarded.

Dated: Bohemia, New York
May 3, 2013

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PLAINTIFF'S
DECLARATION

-----X

DONALD ZARDA,

10 Civ 4334 (JFB)

Plaintiff,

ALTITUDE EXPRESS, INC., et ano.

Defendants.

-----X

Donald Zarda, plaintiff herein, does hereby declare under penalty of perjury as follows:

1. I am an experienced skydiver, having over 20 years' experience and having made over 5,800 jumps to date, although I have now been phasing my jumping career into wingsuit base-jumping – jumping from cliffs, the top of fjords, and when permissible, tall buildings. I am also studying to receive a Bachelor's of Science in Aviation Management specializing in Logistics at Embry – Riddle Aeronautical University where I am just one class (3 credits) from obtaining a Bachelor's Degree.

2. Although I did apply for some tandem – instructing jobs since my termination, and did perform one day of tandem jumps, I felt uncomfortable doing it, and my heart was not in it like before I was fired from Skydive Long Island (“SDLI”). After that horrible event, I soon resolved I could not do another tandem jump until I was vindicated from a false charge that I “inappropriately” touched a woman during a jump.

3. This is not just out of principal, but also out of fear. A jump involves touching at many parts of the passenger's body for the passenger's safety and as necessary to perform the

job. As Rich Winstock put it at his deposition, a skydive instructor is out of necessity “invading [the passenger’s] space.” If a Skydive owner could fire me, in part, for doing my job, without any semblance of investigation, then I was without protection from any employer, and would not want to expose myself to further injury to my character.

4. It was chiefly Raymond Maynard who injured my character because, as I stated at my deposition at pages 237-40, he is a man of his significant experience who knew I had to touch the passenger at the hips, and who knew I was a homosexual, and who did no investigation whatsoever. He would not even let me see the video of the jump in question so that I could defend myself. If he would even slightly credit a frivolous allegation, by a man made on behalf of a woman, the latter whom he didn’t even speak to, at any time, ever, then I have no protection at all as a tandem instructor, and I fear that my fear of being accused of “inappropriate touching” might have compromised my expertise.

5. I make this affidavit in furtherance of my motion for summary judgment and in opposition to the defendants’. I stand by my deposition, but make this statement for the purposes of narrative clarity.

6. I worked at SDLI first in 2001. During that time, admitting one was gay was not something that might help someone from getting a job – except perhaps at a gay establishment – and I am certain I did not tell Ray Maynard I was gay before he hired me. Further, I never told any passenger my sexual orientation. I probably told one or two tandem instructors, or they figured it out when I told them I went to the Fire Island Pines for the weekend, and word eventually got to Ray.

7. Perhaps when Ray learned I was gay, he fired me. I personally believe that the reason I was fired – based on the chief instructor’s brief statement to me after Ray gave me the news – was that a customer complained that I would not perform flips from the airplane, a maneuver which at that time was deemed unsafe and forbidden by manufacturers of tandem equipment. Instructors were made aware of this manufacturer’s policy by a joint bulletin issued by the three main tandem gear manufacturers. As it was at the time, the very most senior and well known industry expert and licensing examiner for the gear manufacturer of the equipment I was using (Bill Morrissey), happened to be also working at SDLI. Had he seen me do a flip, I could have lost my license. The customer complained because he saw another tandem instructor perform the unsafe maneuver; that instructor was willing to risk his license, but I was not, and I recall that even Maynard admitted at his deposition, that the maneuver was unsafe. I left SDLI knowing I had been treated unfairly, but knowing that I had made the right decision. For the next several years, I worked as a tandem instructor at several other dropzones and skydiving centers.

8. I heard at my deposition that one or two women came to Ray “in tears” that I had told them my sexual orientation. In my informed opinion as a gay person, not so. Tears? Really? I have told some women friends in my personal life that I am gay, and not one of them cried. In fact, I have found that as a gay man, women are more sensitive and more attuned with the interests and feelings of gay men. In my opinion as a lifelong gay man, for a stranger to cry in response to having been told someone is gay is not just incredible, it is nonsensical. While a few people close to me initially weren’t so happy about learning I am gay, no one cried, when they perhaps, at a different time, had a motive to. In my opinion as a gay person, it seems not only unusual, but absurd that someone I didn’t even know would cry if I told her I am gay. In my opinion as a male, the suggestion that a woman would cry when told that someone is gay is a

sexist remark that reduces a woman to a delicate object, unable to handle the “horrific” idea that a man could love another man.

9. In any case, I said no such thing to any passenger – again, 12 years ago was a different era concerning gay rights, and I had just come out of the closet and was very discrete. Furthermore, there were few job protections for gay people, including New York. Additionally, Ray did not tell me that this is why I was fired; he just told me to get out, and the chief instructor told me about the other customer complaint concerning the flip. If I had satisfied that customer, however, that too could have been a reason to fire me, or for me to lose my license, so I was apparently in a Catch 22.

10. I am 100% gay. I have no physical attraction to women, have never been with a woman, and have never had a romantic relationship with a woman. I have had many female friends, and, before I came out, might have played a role in “pretend dating” as a cover due to my being a closeted homosexual, but I was never once physically attracted to any of the women. Further, I would say that the idea of sex with a woman physically, repulses me. I fantasize about and enjoy romance and sex with men exclusively. There are many other things that I could say to prove my proclivities, but for the sake of decorum I will say emphatically that I am gay and reading the defendants’ 56.1 statement where they try to portray me as homosexual with a liking to grope women, is bigoted and offensive. I doubt in the history of time there have been few straight men who have attempted to cover as being gay, and to imply, as Maynard and his attorney do – that homosexuality is something that can be turned on and off suggests – as Maynard did when he terminated me – that being gay is an “escapade.” That word, is defined as an adventure, an antic, or an exploit. My being gay is none of those things. My being gay is part of who I am and I have always been gay, even while I was closeted.

11. While people normally assume I am straight, again, I never once told Ray Maynard I was gay. I eventually told at least one staff member that I am gay, then most if not all of the staff knew, and it is logical that word got to Ray as well. I flatly deny that Maynard knew that I am gay until I let other staff people know and word must have gotten to him. I have never in my life experienced someone cry when I told them I am gay, as Ray testified two women did in 2001.

12. The skydiving community is mostly composed of a collection of very unique types of people and my co-workers were constantly joking around. In 2001, many of the jokes revolved around my homosexuality. I do not think that any of my co-workers were malicious about it, but at times it got to be a bit too much to shake off, and I found it distracting and embarrassing. I was named "Gay Don" by someone and the name stuck. I grew used to it, but I would not have chosen it nor did I choose it myself.

13. I worked at SDLI again starting in 2009. At the beginning of that season I had a conversation with the staff to tone down the amount of gay jokes from 2001, as I was concerned about it being overboard in a professional work setting. Though I knew no one was being malicious, I had grown out of the novelty of accepting it. The jokes were fewer, but they did not stop.

14. I worked for a couple of months in the 2009 season until, unfortunately, at the beginning of July, I did a tandem with an overweight passenger (over 225 pounds). Nothing went wrong on the jump, and the landing was normal. Nevertheless, I broke my right ankle, and could

not work for the rest of the summer. My doctors were not sure when I would be recovered enough to jump, so I stayed in Long Island, but could never go back and eventually went home.¹

15. I told Ray that I was ready and willing to return to the drop zone as soon as I could, and remained in New York, ready to start jumping again as soon as possible. My leg was in a cast, for which color I chose pink, which is, by virtue of the Pink Triangle, the symbol that represents gay people. Straights wear pink, but it is not often that one sees a straight man wearing pink. I chose pink specifically to identify with my sexuality, that is why when I wear my pink cap, no one asks if I am gay, but when I do not, they assume I am straight. A picture of me in my pink cast and painted pink toenails is attached as “Exhibit A.”

16. While I was in Long Island waiting to get back to work, there were emails calling for staff meetings, some “mandatory.” See Exhibit B, which was marked as “Callanan 3” at the deposition of Lauren Callanan. At the “mandatory staff meeting” announced at Exhibit B, which was marked as Exhibit 22 at the Maynard Deposition, I showed up with my pink cast, and as it was summer, my foot in the cast was bare. See Exhibit A.

17. Ray saw the cast, demanded that I paint the cast black if I were to stay at the dropzone that day. But the allegation, made by defendants, that the reason they didn’t want me hanging around the drop zone with a cast because it would scare other customers away is demonstrably untrue. I was on crutches, see Exhibit A, and to cover a cast with black paint would fool no one. Imagine from the picture attached as “A” I am still on crutches where the only difference is that the cast is painted black. No one would be fooled that I was not injured. Additionally, the suggestion that he asked me to cover the cast is belied not only by the fact that to paint it black or would fool no one, but there is a woman at the hospital at the same time I was

¹ I started this lawsuit as a citizen of Missouri, but had to leave because the land upon which my residence was standing on was sold and I am for the duration in Texas.

– Tara, the girlfriend of a co-worker by the name of Ed Reiter – who came to the drop zone on crutches after her jump accident where she broke her back on a landing, which happened the within days of my accident. She was not asked to leave by Ray because of not wanting broken jumpers around customers.

18. Additionally, at one time in 2009, after I broke my ankle, but while the pink cast was off and I was still healing, I was at the dropzone and encountered Ray near a coke machine. I took off a boot that covered my entire foot and Ray said about my pink toenails and said “That’s gay!” in a derogatory tone. Since the boot covered my foot, he did not demand I paint them black, but the fact that I was allowed to remain at the dropzone with a recovery boot – clearly evidence of an injury – demonstrates that Ray’s objection was the color, not any worry that a customer would be afraid to go on a tandem jump. Ray’s safety video, as well as the waiver all passengers sign, mentions death as a possible outcome, and dissuading anyone who has any fear of jumping. This further demonstrates the falsehood of Ray’s explanation for objecting to my pink cast and pink toenails.

19. My doctors would not clear my return to work in the summer of 2009 but before I left in or about late August/early September was rehired for the following summer.

20. I returned in May 2010. Nothing of incident occurred for about a month. On Friday, June 18th, 2010, however, I was in attendance at work performing my routine duties taking primarily first-time passenger jumpers on their first skydives. It was a typical day for me at work and the start of a fairly busy weekend of jumping. At some point that day, a couple came to Skydive Long Island to make their scheduled jumps. It was a heterosexual couple making a jump, which, I later learned, was to be a birthday present for the female from the boyfriend.

21. I was randomly assigned to take the female jumper (Rosana Orelana) and a co-worker was assigned to take the male (David Kengle). The couple was manifested aboard the same aircraft so that they could jump at the same time. Both passengers ordered videographer services provided by the drop zone, which involves a third jumper to document the event taking video and/or still photography. At some point during the ride in the aircraft to the designated jump altitude, another employee of the drop zone had asked Mr. Kengle what he thought about his girlfriend being strapped to another guy in presence of myself, Rosana, and other passengers and staff in the aircraft.

22. This is a common joke or statement made before an opposite sex couple does a jump to loosen the tension, though it has long lost its humor to me and is not funny to every customer, particularly Rosana and Kengle, and her discomfort embarrassed me; I wanted her to know that despite our being so physically close to each other, I got no gratification from it.

23. I sensed Rosana felt awkward by that comment, and I did too; I did not want to be presumed to be heterosexually attracted to her, so I in front of Rosana (and others in the aircraft if they should have happened to hear) stated that she should not to worry about me because I am gay. She testified that I said I told her I had just broken up with my boyfriend; I don't think I said that because it is not true - my ex and I broke up years ago. What I believe I said was that "and I have an ex-husband to prove it."

24. While I was in the aircraft that day, as on any jump, if you are sitting on a bench, straddled, and a passenger is sitting between your legs, the instructor's legs are forced to spread apart. In that position, your arms naturally end up resting on your legs and your hands naturally rest near the hips are of the passenger; the passenger is strapped to you, sitting between your legs in very close proximity. This is normal. In the cramped aircraft, there is no other place to put

them. I have never had a passenger injury, so why should I do things differently for Rosana – who said nothing about being uncomfortable; I also had no idea that she was claustrophobic and didn't even read the waiver about touching. To have strapped her more loosely might have resulted in her injury or fatality. See Exhibit C, Notice from United Parachute Technologies (“If you think you are doing your student a favor outside of your normal or recommended procedures, you could be making a fatal error in judgment.”)

25. Furthermore, speaking into someone's ear is normal. The passenger's head is right in the instructor's face when strapped together and more particularly giving final instructions in a noisy environment right into the ear of the passenger so as not to be shouting, but rather calmly giving instructions as we go through all the processes towards the jump and landing. Due to the surrounding noise, this calm delivery might be interpreted as a whisper.

26. There was nothing more said about anything at that time about me and the jump operation went forward and was performed in the normal manner expected. I took her up on the jump, she saw the scenery that is to be seen, and iterated “awesome!” at the end of the jump.

27. The couple landed within seconds of each other and happily took pictures together in the landing field and together with the other instructor and myself. That was the last interaction I had with either of these two customers until their deposition where Kengle, now knowing I was gay - or fearing as he testified that gay men like to flirt with women - wanted to be in the deposition room to protect Rosana from me. I also witnessed Rosana back away from my attorney when he inoffensively moved closer to her to show her a video on a laptop.

28. The next three days were busy and I performed numerous jumps each day – Saturday, Sunday, and all day Monday, June 21st, 2010 – until sunset at which time I was called aside by the owner of Skydive Long Island, Ray Maynard, into an unplanned, private meeting in

his office area just after sunset located in the passenger video briefing room adjacent his office. Ray proceeded to question me about a jump I performed on the previous Friday. It was now Monday. He was asking me to recall a specific jump I had done with Rosana. I could not recall any details about any specific jump after so many jumps and days had passed.

29. I said that to Ray, yet he proceeded to press me to recall and acknowledge specific knowledge of this one jump. I told him that I did not know anything specific about the jump he was referring to. He told me that I had taken Rosana on a jump on Friday, June 18th and that there was a complaint about my sexuality coming up in front of the customers. I did not either confirm or deny that it came up because I did not have specific recollection of that jump, which is very common after a busy few days and after about 30 jumps.

30. I also stated to him that, as he knew, it was quite common that my sexuality was raised by numerous staff, friends, and visitors at the drop zone everyday and that it comes up all the time and in front of customers, and that I did not know if I had said something or if someone else did about it.

31. Ray proceeded to inform me that the customers were offended by it and that it was inappropriate for my sexuality to come up and that he was suspending me for one week, without pay, and as well was going to dock my pay for the full cost of two tandem jumps and two video/picture packages while claiming he was forced to refund the customer's money and I was going to pay for it. This he did.

32. I said to Ray that if attention to my sexuality is a problem that he was going to need to have a meeting with everyone to tell them not to joke about it anymore in front of customers. He replied that there was going to be a meeting about it in my absence. I asked him if that was it or if there was anything else and he said yes there was something more. I asked him

what and he replied stating that I had inappropriately touched Rosana during the jump. I was surprised to hear such a thing and asked him to verify my understanding of which passenger, the male or female, that I took on the skydive.

33. He said it was the girl, referring to Rosana. Not believing what I had just heard, I asked Ray to specifically state where she had been inappropriately touched at which time Ray stuttered and pointed at his hips and said it was at the hips. To be sure I understood what Ray was saying, I asked him, summarizing, that what was happening is that me, the gay guy, was being suspended for my sexuality being mentioned in front of Rosana and her boyfriend and I am also being accused of touching my female passenger at the hips in an act of heterosexual misconduct. I asked Ray if that was seriously what he was proceeding on and he just looked at me.

34. Rosana testified at her deposition that she wanted for me to do what was necessary to safeguard her on the jump. If I had not attached the required hip attachments, and adjusted them as necessary, she easily could have fallen out of the harness, died, and I would have lost my license (or worse) for that, since it would result in a fatality.

35. I then pointed out that since he was taking money from me for two video packages that there must be video and still camera footage of both jumps and that I would like to see it. He refused to allow me to see the videos stating to me that it was irrelevant. I responded that I thought it was relevant and that I would like to see it and suggested to him that we pull the manifest log from that Friday and see which videographer filmed the jumps and we look at the raw footage and see if there was a problem. He refused again and stomped outside.

36. After he left the office, I composed myself and proceeded outside at which time I came across Rich Winstock who was at the time the chief instructor at the drop zone. I asked to

speak with him urgently at which time we went to the drop zone classroom where I informed him about everything that just transpired. During the conversation, Ray barged open the door and in disgust shouted at us talking about what Ray and I had just spoken about, and left, slamming the door back closed.

37. Rich calmed me and assured me that he would try to talk some sense into Ray and that I should go on home and we would be in contact during the week. We did exchange email that week about the progress with the situation. He ensured me that he would advocate on my behalf with Ray stating also that the decision to continue my employment would be left with Ray the Sunday night before my scheduled return to work from suspension.

38. I returned to work on time on Monday, June 28, 2010 at 9:00AM. Ray was nowhere on the drop zone. I waited for several hours until Ray returned at which time he called me into the same room he had the suspension meeting with me a week prior, this time with Lauren Callanan in attendance. I had an iPhone voice recorder to document the meeting.

39. The tape of the meeting is attached as “Exhibit D.” In sum, Ray told me in extremely angry terms that I was terminated.

40. I pressed further for answers or a reason for my termination. Ray got further agitated refusing to offer a reason again, then attempted to claim it was not a “gay issue” but that I had ruined a man’s fiancé’s birthday by talking about my personal life with the customer, and stating that if Rich Winstock had done the same, he would be fired too. In fact we know this to be a lie because Rich later quit to Ray’s dismay²; he also testified in his deposition that he did, on occasion, referencing his sexuality by referring to his wife and children, and Ray did not fire him.

² See Exhibit E, email from Rich Winstock from me.

41. I pressed further for an acceptable explanation for him not investigating the allegations and suggested that perhaps they were simply trying to get a refund for a bogus claim. Ray lied and said they refused a refund, but the record now shows he gave one. And Kengle accepted it. He refused to answer my questions as to whether he investigated.

42. Rather, he re-iterated that this was the action that is being taken, told me to get my things out and left the room much in the same angry manner as the week prior. I asked Lauren, who was the office manager, to provide me with final jump logs and I also attempted to get from her the information Ray refused to give me about the video footage of the two tandem jumps. She refused, stating that it was on Ray's orders.

43. I proceeded to the staff video room area to collect my equipment. There was confusion among my colleagues. I had little time to say anything to them about what had happened. I asked the room if anyone knew why I had been gone and they did not. I asked a closer colleague videographer to check his records for the name of my passenger I took, he did and showed me that it was not he. I was unable to determine who filmed either jump and at that time I did not know David Kengle's name either or Rosana's last name, although Rosana's first name was on my manifest. I asked my colleagues to come forward with any information they might have later, and also stated that this was not over as I was very upset.

44. During the month of July 2010, I sought employment at two drop zones. One was Ray's competitor. I had a meeting with the owner of Long Island Skydiving and discussed what transpired with SDLI. He regrettably informed me that this was not surprising behavior by Ray and apologized that I had experienced that treatment but did not have any openings at the time. There were no other possible employment opportunities within over 100 miles from the condo I had leased for the summer to work at SDLI.

45. I also answered an ad for employment at a large commercial Midwest drop zone in the third week of July by email exchange with that owner (Doug Smith, Chicagoland Skydiving Center). He was prepared to offer me employment based upon the positive feedback and recommendations he received about me up until he was told that I was suing SDLI – which, at that time, had not happened or been discussed with anyone. I asked the Mr. Smith to tell me who told him that and he refused and stated in an email that I would be hard-pressed to ever find work again if I pursued a lawsuit against Ray.

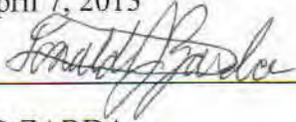
46. Before this event happened in my skydiving career, I had always enjoyed the sport and made it a life-long pursuit of 20 years through most all of my adult life to date. I made thousands of customers happy. I began working as an instructor just two years after my inception into the sport. Customers typically praised my performance – as did even Ray in his deposition – and I did received one email, attached as “Exhibit F” from Lauren Callanan and marked as “Callanan 2” at her deposition. She cannot explain why it was not turned over to us in discovery. I have seen the affidavit of Ray attached as “Exhibit G,” indicating that no electronic information had been destroyed. That would appear to be impossible, and at a minimum unexplained, if I have electronic information from 2009 that defendants attest that they search for but have not turned over. A search as outlined by Ray’s affidavit, Exhibit G, would have turned up the customer compliment attached as “Exhibit F.” However, it was I who produced it to the defendants, not the other way around.

47. The customer who wrote in Exhibit F that “[e]mployees like Don will be the reason for the continued success” of SDLI was like many of the thousands of passengers whom I took into the air and provided a safe, exhilarating experience that they will never forget. But this matter has ruined my relationship with skydiving both professionally and as the passionate

activity I partook in for personal enjoyment, social interaction and comradery among a diverse collection of people. As if having my sexuality illegitimately used against me in such a way wasn't terrible enough, falsely accusing me of the misconduct Ray Maynard cited in addition to trying to use that to cover up discriminating against me and lying and stealing from me; has damaged me severely. I know longer feel like I can be myself working jumping, especially tandem jumping having to strap people to me and touch in so many places to perform the job. Because of what Ray Maynard did terminating me for such reasons, regardless of the bogus customer complaint, I can no longer work in this industry without fear of having been branded as some kind of gay pervert. I cannot even enjoy non-work skydiving because there are tandem jumps taking place at every skydiving center and it is a stark and vivid reminder about what happened to me, which takes away the enjoyment I get from jumping and keeps me from interacting with friends and social circles developed over two decades. No amount of personal loss, injury, or death in the sport has ever pushed me away, until now.

Dated: Dallas, Texas

April 7, 2013



DONALD ZARDA



EXHIBIT
tabbles
CALLMAN 3
12-21-11

EXHIBIT A

JA 0581

Don Zarda

From: Skydive Long Island [funjumps@skydivelongisland.com]
Sent: Thursday, July 09, 2009 12:43 PM
To: SDLI
Subject: Staff Meeting this Saturday

Hey Guys!

Just wanted to let you know we have a busy weekend lined up with 120 on the books for Saturday and almost 100 so far for Sunday :-). Let's just hope the weather cooperates! **Also, we will have a mandatory STAFF meeting this Saturday at 7:30am.** See you all then!!

Blue Skies,

-L

EXHIBIT B

R 21

UNINSURED UNITED PARACHUTE TECHNOLOGIES, LLC.**Attention all Tandem Instructors
Please review this before making your next Tandem Jump.**

A similar notice was sent out last year and being that is the beginning of the season for most TI's, and because of a recent incident that has been reported to us we are sending this notice once again.

The incident that occurred is as follows:

An experienced TI was in the process of fitting the student harness onto a 85-year-old woman. He thought that he would do her a favor and leave the harness a bit loose. The TI thought that she was frail and did not want to make her uncomfortable or hurt her.

The result of this was that while they were exiting the aircraft she slipped down in the harness. This might have resulted in her being ejected from the harness. The fact that this harness had a Y-Strap, and that the TI managed to control the passenger by grabbing her, may have prevented a fatality.

What can we learn from this?

1. If you think you are doing your student a favor by doing something outside of your normal or recommended procedures you could be making a fatal error in judgment. Make sure the harness is fitted correctly.

2. Not everyone is capable or physically suited to make a tandem skydive. You can say no.

3. Always have the student harness fitted correctly and in a jumpable configuration before boarding the aircraft. No exceptions.

It is important to note that by not following the manufacturers and USPA's guidelines you could have your TI rating revoked or suspended.

It is apparent that on occasion the Sigma student harness is not fitted correctly during the initial gear set up prior to boarding the plane. It is then extremely difficult to correctly fit the harness once in the aircraft, as the passenger will not be in an upright position. If the student is 'wide', it is important that the main lift web be moved further to the sides of the passenger - if the main lift web is too far forward then it leaves a bigger hole for the butt to slide out. Make sure that all straps are tightened including the **horizontal back strap** and the **diagonal back strap**. It is imperative that the harness is fitted correctly prior to boarding the aircraft.

No parachute harness can safely contain all body types. The Sigma student harness is no exception. Certain body types require careful evaluation and extreme care before the decision to let them jump is made. These groups include but are not limited to: the frail, woman with a high body mass index, extremely large or small people, amputees and paraplegics etc. The Y strap does increase the utility of a poorly adjusted harness somewhat but there will still be body types that cannot safely make a tandem jump. The complete assembly of the Y-Strap mod is available from UPT for \$120, or you can manufacture it yourself using the work instructions from our website. We highly recommend that each drop zone using our systems have a least one of this type of harness.

Mark Procos
General Manager
uninsured United Parachute Technologies LLC

EXHIBIT C

1645 LEXINGTON AVENUE ♦ DELAND FL 32724-2106 ♦ TELEPHONE +1 386 736 7589 ♦ FAX +1 386 734 7537

WWW.UPTVECTOR.COM

EXHIBIT D IS THE
RECORDING OF
PLAINTIFF'S
TERMINATION, PROVIDED
IN THE COURTESY COPY.

IT IS ALSO AVAILABLE AT
YOUTUBE <http://tinyurl.com/c3cs5k7>

IT IS ALSO AVAILABLE
STARTING AT PAGE 224 OF
THE MAYARD DEPOSITION

AND TRANSCRIBED FROM THE DEPOSITION BELOW

TRANSCRIPT OF EXHIBIT D

224

1 MAYNARD

2

7 TRANSCRIPTION OF AUDIO:

8 "Mr. Maynard: All right, after a
9 week of me thinking about the entire
10 situation, from day one that you came
11 here years ago and everything, uh, first
12 off, I'm going to give you the refund
13 back of the people because I thought
14 about it and I shouldn't take that money
15 from you.

16 Mr. Zarda: All right.

17 Mr. Maynard: But also, I'm going
18 to let you go because this just isn't
19 working.

20 Mr. Zarda: What's not working,
21 Ray?

22 Mr. Maynard: It's not working.

23 Mr. Zarda: Well what is 'it'?

24 Mr. Maynard: That's all I have to
25 say. I went -- I went -- I went and

225

1 MAYNARD

2 spoke to my attorney. I explained
3 everything to him exactly the history of
4 everything and that and he said that, you
5 know, I have to let you go.

6 Mr. Zarda: Well, Ray --

7 Mr. Maynard: He's -- I'm letting
8 you go.

9 Mr. Zarda: All right. Okay, well
10 let me --

11 Mr. Maynard: I'm not going to --
12 that's all, I'm going to say.

13 Mr. Zarda: Well, Ray, you haven't
14 told me what I've been accused of.
15 What did they --

16 Mr. Maynard: It's not -- let me
17 just put it this way, it's not working
18 and that's all I'm going to say. It's
19 not working for me for you to be here
20 anymore and that's -- there's no more
21 explanation. There's nothing else I'm
22 going to say. That's all on my
23 attorney's advice.

24 Mr. Zarda: Well, you just told me
25 that a gay issue came up with these

1 MAYNARD
2 people.
3 Mr. Maynard: It wasn't a gay
4 issue. It was a personal issue. When I
5 told you the other day -- that's -- I'm
6 not going to get into it. Because if it
7 was a heterosexual thing -- if Richie
8 Winstock was telling some chick of his
9 escapades, he would be in the same
10 situation. It's not about gay. It's
11 about your personal life, talking to
12 people about it. Not -- I don't care --
13 I don't care what you do and I don't care
14 what those guys do, but what I do care
15 about is that it's not shared with my
16 customers.
17 Mr. Zarda: Okay, well --
18 Mr. Maynard: Okay? So don't take
19 this as a gay thing. It's not a gay
20 thing. It's about your personal
21 escapades and what you're telling people,
22 what you're saying. So --
23 Mr. Zarda: Okay, well, can I
24 before -- can I say something?
25 Mr. Maynard: Sure.

1 MAYNARD
2 Mr. Zarda: Okay. You said in
3 here, I know you were upset, that that
4 came up and that they were offended and
5 then you said something about this girl,
6 I took the girl, being inappropriately
7 touched. You said that.
8 Mr. Maynard: Well, she felt
9 that -- that you were holding her hips in
10 a way that she was very uncomfortable.
11 Mr. Zarda: Ray, does that make any
12 sense to you?
13 Mr. Maynard: Don --
14 Mr. Zarda: I mean, really.
15 Mr. Maynard: Don, listen, I'm not
16 going to explain anything else to you.
17 That's -- this is what is happening, this
18 is what's going to happen and I'm sorry,
19 but that's -- that's what I'm saying.
20 Mr. Zarda: Okay. What about -- I
21 mean, when you say 'personal escapades,'
22 these guys -- I mean -- I mean, Marco
23 runs around saying everything is gay.
24 Petretti still is in the 2001 mode --
25 Mr. Maynard: But this is not --

1

MAYNARD

2 Mr. Zarda: -- he jokes about it.

3 Mr. Maynard: They're not talking

4 to the customers. They're not saying

5 things to the customers that you're

6 saying to the customers.

7 Mr. Zarda: What was I -- what did

8 I say to the customer?

9 Mr. Maynard: Listen, I'm done.

10 You know, this is what -- I mean, I

11 thought about this for a very long time.

12 I went to my lawyer. I got legal advice

13 of what I should do here and I'm doing

14 what I feel I have to do. This is not

15 working anymore for me or for my company

16 to have you work here.

17 Mr. Zarda: But based on -- okay,

18 what are you letting me go for?

19 Mr. Maynard: I'm -- because it's

20 not working.

21 Mr. Zarda: Okay, you suspended me

22 for a week, okay. So, I mean, did you

23 decide a week ago that something wasn't

24 working? You made a decision a week ago.

25 So what did I get suspended for? I mean,

1

MAYNARD

2 I've been sitting in the dark at home.

3 Mr. Maynard: You were suspended

4 for completely ruining somebody's

5 birthday because of you talking about

6 your personal life to them. That is it

7 in a nutshell.

8 Mr. Zarda: I ruined somebody's

9 birthday because I got -- okay, that's

10 fine. That's not --

11 Mr. Maynard: They were very

12 sincere on the phone. There was nothing

13 about -- they weren't demanding their

14 money back or nothing like that. They

15 were just saying there's no way can I

16 ever give my fiancée her birthday back

17 because it was taken away because of you

18 putting your head on her shoulder,

19 whispering in her ear and talking about,

20 'Don't worry about me, I'm gay,' under

21 canopy and everything else.

22 Mr. Zarda: Ray, did you think at

23 all to -- that maybe these people just

24 were looking for a free jump and that

25 they --

1

MAYNARD

2

Mr. Maynard: No, because I offered them a free jump. I offered them everything and they didn't want it.

3

4

5

Mr. Zarda: No, no, no, I mean --

6

Mr. Maynard: They didn't want it. They didn't want it.

7

8

Mr. Zarda: I mean, that that's what they thought about that they could just use this --

9

10

Mr. Maynard: Absolutely not. Absolutely not. It doesn't even matter. It doesn't matter. The decision is that this is not working anymore for me for you to be working here.

11

12

13

14

15

Mr. Zarda: Ray, did you investigate at all? When did they call? When did they call, on Friday or Monday? Because you let me work all through the weekend.

16

17

18

19

20

Mr. Maynard: They called on Monday.

21

22

23

Mr. Zarda: Okay, on Monday.

24

25

Mr. Maynard: And if they had called on Friday, that would have been

1

MAYNARD

2

done then.

3

4

5

Mr. Zarda: So you made this decision really fast on Monday. Did you investigate -- did you ask any of the other people on the plane? There was a bunch of people on the plane. Did Don say to them --

6

7

8

9

10

Mr. Maynard: Things happened under canopy, Don. Things were said under canopy. There was nobody there. There's nobody there to see you do what you're doing.

11

12

13

14

Mr. Zarda: Okay.

15

16

Mr. Maynard: It doesn't even matter. It's over.

17

18

19

Mr. Zarda: What did she say happened under canopy?

20

21

22

23

Mr. Maynard: It's over. I -- just about -- about -- about, you know, don't be worried, I'm gay. Don't worry about me being so close. I have to go. I have to go do work. You can take care of what you have to care of, get your stuff out.

24

Mr. Zarda: Ray, I came up here

1 **MAYNARD**

2 *from a long way.*

3 *Mr. Maynard: It's not working*

4 *anymore. It's over."*

Rich Winstock

+ New Message * Actions ▾ 🔍

I'm ok so far over here. Just trying to have fun without dying, lol! Lot of that going on lately!



Rich Winstock

5:45pm

Stay safe you crazy bastard. I have said this to you, to Ray, and to your attorney. I did not agree with how it was handled. I will testify at your trial the same way. Assuming it goes to trial. I said you were and are an excellent Tandem Instructor, and I stick by it. Watch out for the ground it comes up quick.lol Talk soon Pal



Donald Zarda

6:07pm

Ok, thank you man. Been a very tough few weeks over here. We have lost a lot of people.

Thanks for being straight up!

Cheers, ttyl man!

October 15, 2012



Rich Winstock

11:29am

Hey Don,
Just thought I would give you a heads up, I quit Skydive Long Island. I couldnt take Ray any longer, he and I have not seen eye to eye for a very long time. I thought you might get a smile from that one. Long story.

Stay Safe,
Rich

October 25, 2012

Jim McVie, 08:18 PM 6/29/2009, Thanks

Page 1 of 1

Date: Mon, 29 Jun 2009 20:18:44 -0400
 From: Jim McVie <classicinteriortrim@gmail.com>
 Subject: Thanks
 To: funjumps@skydivelongisland.com
 Reply-to: nst1@optonline.net
 DKIM-Signature: v=1; a=rsa-sha256; c=relaxed/relaxed; d=gmail.com; s=gamma; h=domainkey-signature:mime-version:received:reply-to:date:message-id:subject:from:to:content-type; bh=cf4nZ0VglBcUdKrxv/fCjdDD6XaDnFetYDnpPRtZVF8=; b=leP0GAbOX0E2liBy/DbkRwoGzlf/1p214wKEW0CquS6Llpcqeb8LW4+RDAdHSczgF2z8C/bWq1ex0NdWhsZeWubh0zUMIDSi1YWEWdDCzHSZw+CwpkSWgD80g5hwWJIW1xsbCASYvSjdCZ5b9U1QWrdlCrfG6dtzBMKIOv7505c=
 DomainKey-Signature: a=rsa-sha1; c=noFws; d=gmail.com; s=gamma; h=mime-version:reply-to:date:message-id:subject:from:to:content-type; b=SlntYfZ0Z+CNFYLABDO6gqiYjU0r1kGNgpXW9Heoa9svdBzbwYcdHSrOG9Ut1miZ1WlcHWpF3tChJ94wZAZVZSYeTey+Gc7SiRUIRJozFcsLQo2cCauh+hS2PdUqg1ltxc1LOdGHXcjlU1817fMAshEHBxbpXJi+G1dgRApbU=
 X-EN-OrigIP: 72.14.220.153
 X-EN-IMPSID: A0Jk1c03w3KAAdgQ0A0JIEv
 Original-recipient: rfc822;jumperay@optonline.net

Just wanted to drop a note and compliment your tandem jump instructor Don from Kansas. He was very professional in every way and that made the entire experience even better. Employees like Don will be the reason for continued success. Looking forward to my next jump.
 Jim McVie
 Jumped Sat. 6-27-09

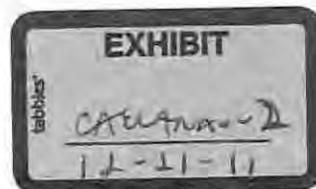


exhibit f

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

**DECLARATION OF
GREGORY ANTOLLINO**

DONALD ZARDA,

Plaintiff,

01 Civ 4334 (JFB)

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

Defendants.

-----X

GREGORY ANTOLLINO, an attorney admitted to the courts in this state and judicial district, does hereby affirm under penalty of perjury as follows:

1. Attached as "Exhibit A" is the complete of waiver-agreement between Altitude Express Inc, DBA Skydive Long Island and Rosana Oreallana. This document was produced by the defendants.
2. Attached as "Exhibit B" are copies of different videos as if follows: (1) Orellana's video of the jump on June, 18, 2010; (2) Kengle's video of the jump on June, 28, 2010; (3) Safety videos from Maynard's deposition and (4) photographs of the Kengle/Orellana Jump. These were not uploaded, and (3) is deemed confidential. See envelope attached to courtesy copy.
3. Attached as "Exhibit C" is the First page of the waiver-agreement between Altitude Express Inc, DBA Skydive Long Island and David Kengle, signed on June 18. This document was produced by the defendants and indicates Kengle is unemployed.
4. Attached as "Exhibit D" is the subpoena sent to Lauren Callanan which commands to the production of any and all correspondence (including by not limited to e-mail, letter, fax, cable, fedex) from Altitude Express or Ray Maynard communicating to employee of

- altitude express concerning Donald Zarda, concerning his law suit, as well as any communication with Rosanna Orellana, or David Kengle and any documentation of “complaints from paying customers” referenced in the attached letter. This document was previously marked as “Exhibit 1,” at the Lauren Callanan Deposition.
5. Attached as “Exhibit E” is an advertisement from Skydive Long Island stating to hire for several positions in Calverton, NY posted on October 21, 2012.
 6. Attached as “Exhibit F” are two customer’s complaints against SDLI. (1) the online review by Kevin W, a customer of Skydive Long Island. The review is dated on October 26, 2010 and states “Customer Service Does No Exist Here!!!” (2) The online review by Anthony F, a customer of Skydive Long Island. On July, 11, 2011, Anthony F writes five negative points regarding his experience with Skydive Long Island.
 7. Attached as “Exhibit G” is a picture from SDLI’s Facebook page. The picture shows Don Zarda and “Eddie” in extreme close proximity.
 8. Attached as “Exhibit H” is a Picture from SDLI’s Facebook page. The picture shows Mr. Winstock walking topless wearing a towel and a hat.
 9. Attached as “Exhibit I” is a Picture from SDLI’s Facebook page. The picture shows Mr. Maynard and his girlfriend Barbara and a rant about his ex-wife follows which Maynard at his deposition described as “personal information.”
 10. Attached as “Exhibit J” is an a-mail correspondence between Mr. Zarda and Mr. Winstock. Mr. Winstock writes on June, 25, 2010, “I already advocated for you with him, strongly.” This documented was previously marked as plaintiff’s Exhibit 6, Winstock Deposition.

11. Attached as “Exhibit K” is a complaint Review from the “Ripoff Report” by a person identified as Ronkonkoma. The Report is identified with the number 514269 and was submitted on October 24, 2009. Ronkonkoma writes, “Once in the Plane the tandem instructor was feeling up my girl friend and her friend as well. The girls explained once the parachute opened they were touching their breasts and it was not a good feeling as they could not protect themselves.” The report contains six replies. The reply by Ray – Drop zone owner was written on November 5, 2009 in which he asks why they didn’t say anything or call the police. This document was previously marked as Exhibit R-32, Maynard Deposition, and he attested to its authenticity.
12. Attached as “Exhibit L” is a picture from SDLI’s Facebook page. The picture shows SDLI’s instructor resting his head on the passenger. The instructor places his hands as if pretending to take a nap on his passenger. The document was previously marked as Exhibit R-30, Maynard Deposition.
13. Attached as “Exhibit M” is an announcement written by “milehighpres” stating “Skydive Long Island Get Laid Luau!!!” and refers to “Pulling your Pork.” The announcement is dated on August 1, 2007 and the author is identified as Jordan Miles. The document was previously marked as Exhibit R-33, Maynard Deposition.
14. Attached as “Exhibit N” is the defendant’s Rule 26 disclosure statement listing persons with pertinent information respecting claims defenses, and damages including Brbara Ann Schiano, Maynard’s girlfriend. The documents list emails to and from Schiano to Maynard as discoverable documents.
15. Attached as “Exhibit O” is a certification written by Lauren Callanan, Office Manager of Skydive Long Island. The document is dated on October 1, 2010, and fails to mention

any inappropriate touching on the part of Zarda. This document was produced by the Department of Labor.

16. Attached as “Exhibit P” is a document entitled Misconduct/ Discharge Summary Sheet, Claimant Donald Zarda. The document states, “The employer did not respond to a reasonable attempt to gather facts. They state the claimant was discharge for sharing personal information with customers resulting in complaints. The claimant admits no wrongdoing and believes he was wrongfully terminated. There remains no evidence of deliberate misconduct.” Document states N/A for a rebuttal offered by employer. This document was produced by the Department of Labor.
17. Attached as “Exhibit Q” is the asset information regarding the unemployed waiter David Kengle obtained legally through TLO.com revealing that (1) Mr. Kengle rents or lives freely in a \$150,000 home in Garfield, NY; (2) Mr. Kengle drove a 1988 vehicle as recently as 2006 and; Mr. Kengle now leases a 2003 Jeep Cherokee. He admitted being an unemployed waiter at his deposition.
18. Attached as “Exhibit R” are various correspondences relevant to the lawsuit that I was ordered to produce to the court. The document shows comments by Mark Markovich and Joanne Maynard. Mrs. Maynard states refereeing to Ray Maynard, “He hated your sexual preference.” (October 28, 2010) and she adds “...at other times other customers have complained about tandem masters behavior but those people were not fired.”(October 31, 2010) Mr. Mrokovich writes as it follows: (1) May 24, 2010, “Brett stop being gay your supposed to sent that to don”; (2) Mary 19, 2010, “don didnt jump cuz hes a pussy hahaha”; (3) May 16, 2010, “GAYYYYYYYYYYYY”; (4) April 12, 2010, “u got it gay boy”; (5) April 5, 2010, “do it pussssssy”; (6) April 5 2010, “fly gay boy flyyyyyy

- hahaha”; (7) March 27, 2010 “GAYYYYYYYY”; (8) January 20, 2010, “Nope not gay!!!thats pretty gay guys!!!”; (9) January 3, 2010, “gay hahaha”; (10) November 3, 2009, “gay”; (11) May 11, 2010, “Fucken rednecks...i heard they dont like gays out there...hurry and get outa the state!!”; (12) September 2, 2010, “stop being a vagina and take the cast off now” and; (13) August 15, 2009, “Don your a weirdo”.
19. Attached as “Exhibit S” is page 4 of the Stigma Tandem System Owner’s Manual. The page has for title, Student Hardness Adjustment Guide. The document describes how to adjustment the harness in different points of the passenger such as, shoulders, chest, belt around the hips, hip junctions and legs. This document was recognized by Mr. Maynard at his deposition.
20. Attached as “Exhibit T” is page of the Tandem Vector 2 Owner’s Manual that shows images and procedures to install the handle on the student harness. This document was recognized by Mr. Maynard at his deposition.
21. Attached as “Exhibit U” are messages from SDLI’s Facebook page in which Mr. Maynard makes comments about his ex-wife. The document is undated but the messages show dates of June 28 and June 29. This Document was previously marked as Plaintiff’s Exhibit 5, Maynard’s Deposition.
22. Attached as “Exhibit V” is a map of Skydive Long Island’s surrounding area.
23. Attached as “Exhibit W” is a spoliation letter from Saul D. Zabell written on December 16, 10 sent to Mr. Gregory Antollino and the response from Gregory Antollino dated on April 7, 2013.
24. Attached as “Exhibit X” is an advertisement from “Human Right Campaign” T-shirt entitled “Legalize Gay.”

25. Attached as “Exhibit Y” is a message from SDLI’s Facebook page in which Mr. Maynard calls to celebrate Veterans Day on November 11. The page does not have year but it shows the date of November 11.
26. Attached as “Exhibit Z” is the defendant’s Response to plaintiff’s second combined discovery demands.
27. There is no reason to reattach depositions that the defendant has already uploaded:

Zabell Dec. 11 Zarda
Zabell Dec. 12 Maynard
Zabell Dec. 13 Winstock
Zabell Dec. 14 Callanan
Zabell Dec. 15 Kengle
Zabell Dec. 16 Orellana

We incorporate these within our opposition and motion.

Dated: New York, New York
April 8, 2013

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

pages 599-600 are intentionally omitted